

CHAPTER 2

DOMESTIC VIOLENCE: THE WHAT, WHY, AND WHO, AS RELEVANT TO CRIMINAL AND CIVIL COURT DOMESTIC VIOLENCE CASES^{1,2}

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Author's Note:

It has been 30 years since the Washington Courts Administrative Office of the Courts (AOC) provided its first judicial training on domestic violence in 1984, and 22 years since the Washington AOC published its first Domestic Violence Manual for Criminal Court Judges (1992).³ Most of what was written for the 1992 Chapter 2 and for subsequent versions (1993, 1997, 2001, 2006) regarding “the what, why, and who of domestic violence” remains the same in 2014. That understanding has been enriched and honed by years of debate and additional data from many diverse communities. Washington State domestic violence–specific laws, policies, interventions, research, and prevention efforts have also evolved. There have been twists and turns in our understanding of how the courts can respond to the realities of domestic violence, often more influenced by economics than by the reality of domestic violence. While it is beyond the scope of a judicial manual to review that history, this author notes the 30-plus year history as the context for this 2014 version. A review of the post-2006 literature affirms overwhelmingly that what was written in earlier versions still stands. While not all that research is cited here in chapter 2, a sample of additional footnotes is provided to reflect that the points made in earlier versions are still supported by current research.

As always, the Washington Domestic Violence Manual for Judges is shaped and informed by the women, children, and men whose lives have been shattered by domestic violence but whose resiliency allows them to move all of us forward in working to end domestic violence in our communities. *A. Ganley, PhD, 2014*

¹ This chapter is an updated version of **Domestic Violence Manual for Judges** (Olympia, WA: published by the Administrative Office of the Courts, 1992, 1993, 1997, 2001, 2006)

² Sections of the chapter have been adapted from other Washington publications of this author: A. Ganley & M. Hobart, *Social Worker's Practice Guide to Domestic Violence* (2010, R 2012), Children's Administration, Washington State Department of Social and Health Services; A. Ganley, *Domestic Violence, Parenting Evaluations and Parenting Plans*, 2009. King County Coalition Against Domestic Violence and from *Domestic Violence: The Crucial Role of the Judge in Criminal Court Cases: A National Model for Judicial Education* (1991), *Domestic Violence in Civil Court Proceedings: A National Model for Judicial Education* (1993), A. Ganley & C. Warshaw, *Improving the Health Care Response to Domestic Violence: A Resource Manual for Health Care Providers* (1995); A. Ganley & S. Schechter, *Domestic Violence: A National Curriculum for Family Preservation Practitioners* (1995), *Domestic Violence: A National Curriculum for Child Protective Services* (1996) (San Francisco, CA: all published by Futures Without Violence).

³ See Washington Domestic Violence Laws, Chapter 3, for review of DV specific laws (1979-present).

I. Introduction

Domestic violence (DV) continues to be a widespread⁴ societal problem with consequences both inside and outside the family. Once considered merely a symptom of other underlying individual problems such as poverty, substance abuse, mental illness, or a dysfunctional relationship, domestic violence now is understood to be a problem in and of itself that is found independent of or co-occurring with other individual, family, or community problems.

Domestic violence has devastating short- and long-term effects on the abused parties and their children, as well as entire communities. It impacts all areas of a person's life: physical and mental health, housing, education, employment, family stability, social relationships, spirituality, and community participation. There is continuing evidence⁵ that violence within the family becomes the breeding ground for other social problems such as substance abuse, juvenile delinquency, and violent crimes of all types. As such, the financial costs of domestic violence are enormous, not just for individuals but also for their communities.

Given that the roots of domestic violence are embedded in our social structures and customs,⁶ the courts and the law have a unique role in addressing domestic violence at both a societal and an individual level. While this manual focuses on the role of Washington judicial officers in state and tribal courts, it is with the understanding that the courts cannot address this problem alone. To eliminate the abuse and to bring about change, a coordinated community response is required.^{7,8} Each segment of a community has a role both to intervene and to prevent domestic violence: state and tribal courts, the legislature, mental/medical health providers, victim advocates, educators, child welfare workers, faith leaders, the media, and social activists. How each segment of the community carries out its respective role in responding to domestic violence is greatly influenced by its understanding of the realities of domestic violence: what it is, why it occurs, who is involved, and what the impact is on the adult victims, the children, and the community.

To strengthen and continue to improve the unique roles of judicial officers, this chapter provides an overview of domestic violence:

- The What: Behavioral and Legal Definitions of Domestic Violence
- The Why: Causes of Domestic Violence
- The Who: The Domestic Violence Perpetrator, the Abused Party, the Children, and the Community
- The Impact of Domestic Violence on Criminal and Civil Court Proceedings

⁴ Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J. & Stevens, M.R. (2011). *The National Intimate Partners and Sexual Violence Survey. (NISVS): 2010 Summary Report*, Atlanta, GA. National center for Injury Prevention and Control, Centers for Disease Control and Prevention.

⁵ J. Silverman, A. Raj, L. Mucci and J. Hathaway, "Dating Violence Against Adolescent Girls and Associated Substance Abuse, Unhealthy Weight Control, Sexual Risk Behavior, Pregnancy, and Suicidality," *Journal of the American Medical Association* 286, no. 5 (2001): 572-579.

⁶ E. Pence and M. Paymar, *Criminal Guide for Policy Development* (Domestic Abuse Intervention Project, 1985).

⁷ S. Schechter and J.L. Edleson, *Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice* (Reno, Nevada: The National Council of Juvenile and Family Court Judges, 1999), the Greenbook Initiative Resources 2000- 2009, <http://www.thegreenbook.info/read.htm>.

⁸ *National Consensus Guidelines on Identifying and Responding to Domestic Violence Victimization in Health Care Settings* (San Francisco, CA: The Family Violence Prevention Fund, 2002).

The presence of domestic violence is salient to both criminal and civil court proceedings. Criminal courts for adults and juveniles must respond to the multiple issues raised by the DV perpetrator's criminal conduct, and by the resulting safety issues for domestic violence victims/witnesses, their children, and the public. The criminal court may also have to respond to a DV survivor's conduct⁹ (whether or not conduct was self-defense, or whether DV is a mediating factor in the DV survivor's criminal case). Civil courts face multiple issues raised by the presence of domestic violence in proceedings for dissolution of marriages, parenting plans, dependency issues, court orders, and even in tort actions.

Understanding the what, why, and who, as well as the impact of domestic violence, enables judicial officers to improve the court's fact-finding and decision-making in domestic violence cases, and to develop appropriate court procedures to handle these cases more effectively, efficiently, and safely.

II. The What: The Behavioral¹⁰ and Legal Definitions of Domestic Violence

Understanding domestic violence (whether it is called domestic violence,¹¹ intimate partner violence (IPV)¹², coercive control¹³, battering, spousal assault, wife beating, etc.) requires an understanding of both the behavioral definition¹⁴ (see Section II) and the legal definitions of domestic violence (see Section III). The Washington State behavioral and legal definitions delineate both (1) the relationship between the parties that constitutes the context for the abusive conduct, and (2) the behaviors that constitute that domestic violence conduct. There is significant overlap between the two definitions.

⁹ B. E. Richie *Compelled To Crime: The Gender Entrapment of Battered Black Women* (New York: Routledge Press, 1996), multiple other publications related to Domestic Violence victims as defendants have been published, e.g., [Intimate Partner Violence Victims Charged with Crimes](#)²⁰¹⁰.

¹⁰ *U.S. v. Castleman*, 695 F.3d 582 (2014) (citing A. Ganley, *Understanding Domestic Violence, in Improving the Health Care Response to Domestic Violence: A Resource Manual for Health Care Providers* 18 (2d ed. 1996).

¹¹ Department of Justice, Office of Violence against Women, March 2013 "domestic violence as a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone."

¹² [Intimate Partner Violence \(IPV\), Center for Disease Control designation for this category of family violence \(1999\)](#).

¹³ Evan Stark, *Coercive Control, How Men Entrap Women in Personal Life*, New York, Oxford University Press (2007).

¹⁴ Ganley publications 1991, 1996, 2001, 2006, 2009, 2010.

A. Domestic Violence Relational Context

Behavioral definition of DV	Washington State legal definition of DV
<p>“adults or adolescents ... against their intimate partners”</p> <ul style="list-style-type: none"> • focused on intimate partners • former, current or future 	<p>“One (16 or older adult) family or household member by one (16 or older adult) family or household member.”</p> <ul style="list-style-type: none"> • more inclusive: both <ul style="list-style-type: none"> ○ former, current, or future intimate partners: dating, cohabitating, married, separated, divorced, etc. and ○ adult household members (family or nonfamily relationships)

- Intimate partner violence (IPV) is the most prevalent type of adult family or household member violence as defined in Washington legal definitions.
- Both the Washington behavioral and legal definitions of domestic violence focus on IPV, rather than on non-intimate partner violence between other adult household members (e.g., adult relatives, roommates).¹⁵

B. Domestic Violence Conduct

Behavioral Definition of DV	WA Legal Definitions of DV
<p>“pattern of assaultive and coercive behaviors” ...</p> <p>“ Including physical, sexual, and psychological attacks, as well as economic coercion”</p> <ul style="list-style-type: none"> • more inclusive regarding the conduct • pattern includes both criminal and non-criminal conduct • includes but is not limited to the conduct noted in the legal definition 	<p>“a. physical harm, bodily injury, assault, or the infliction...of fear of imminent physical harm, bodily injury or assault... (b) sexual assault... (c) stalking ... (RCW 26.50.010).”</p> <ul style="list-style-type: none"> • notes only certain conduct and harm; does not define the conduct that constitutes the infliction of fear of imminent physical harm, bodily injury or assault

The behavioral definition (“pattern of assaultive and coercive behaviors”) is particularly salient:

¹⁵ While violence towards other family members and cohabitants is also very important for the community to address, the dynamics, sources and solutions to such violence in those adult family/household relationships are different than those for intimate partner violence and as such need to be addressed separately. Moreover, other types of family violence (child maltreatment, elder abuse, and violence by a child/youth against an adult caregiver, etc.) are already addressed in other legal and court contexts and are beyond the scope of this manual.

- for understanding the multiple consequences that the pattern of conduct has on the adult victim, children, the community and the DV perpetrator,
- for assessing lethality/dangerousness, and
- for developing interventions and prevention strategies.

Focusing only on an isolated incident rather than the pattern or just on assaults that result in physical harm is inadequate for 1) the assessment of lethality, risks, or impacts, and 2) for developing effective interventions. Using *both* the Washington behavioral and legal definitions of DV is critical for making the complex decisions facing judicial officers hearing these cases in criminal, family law, juvenile, dependency, or protection order courts. Section II provides the overview of the behavioral definition of domestic violence and Section III provides the legal definition.

III. The What: Behavioral Definitions of Domestic Violence ¹⁶

Domestic violence, also known as intimate partner violence, is a *pattern of behavior* that consists of multiple, often daily behaviors, including both criminal and non-criminal acts, injurious and non-injurious acts. While the criminal justice and sometimes even the civil court proceedings tend to focus on individual events, it is the entire pattern of the perpetrator’s conduct that shapes how the abused party, their children, and the abuser are affected and function. Whether or not children injured physically by the DV perpetrator, children are impacted by IPV as they are used by the perpetrator to control the adult victim and as they are exposed to one parent abusing the other. The entire pattern of the DV perpetrator’s conduct needs to be considered as civil and criminal courts deliberate about the most appropriate findings, sanctions, and court orders for a case involving DV.

A. Behavioral Definition of Domestic Violence

1. Domestic Violence is:

- A pattern of assaultive and coercive behaviors;
- Including physical, sexual, and psychological attacks, as well as reproductive and economic coercion;
- That adults or adolescents use against their intimate partners.

a) Assaultive and Coercive Tactics

¹⁶ The behavioral definition (“pattern of assaultive and coercive behaviors... against intimate partner”) has been used to varying degrees in Washington courts since 1984 and is very similar to the definitions used nationally and internationally. There have been shifts in emphasis on which part of the definition captures the full reality of domestic violence. This behavioral definition of domestic violence (and those similar to it) have been discussed, researched, and tweaked. And 30 years later the WA behavioral definition has stood the test of time and remains in combination with the legal definition the viable framework for WA courts. For comprehensive discussion of the behavioral definition as Intimate Partner Violence (<http://www.cdc.gov/violenceprevention/intimatepartnerviolence/definitions.html>) or as Coercive Control. see Evan Stark, (2007) *Coercive Control, How Men Entrap Women in Personal Life*, New York, Oxford University Press.

(1) Physical attacks

Spitting at, poking, shaking, grabbing, shoving, pushing, throwing, hitting with open or closed hand, restraining, blocking, strangulation, hitting with objects, kicking, burning, using weapons, etc. Physical attacks where the DV perpetrator uses physical force directly against the DV victim's body with or without injury.

(2) Sexual Attacks

Pressured, coerced, or physically forced sexual activity of all types.

(3) Psychological attacks

- a. Acts of violence against others, property, or pets.**
- b. Intimidation through:** referencing acts of past violence, threats of violence against victims, children, others, or self (suicide), surveillance, stalking, hostage-taking, screaming, controlling victim's sleep, nutrition, or medications, and abuse of victims through legal proceedings, immigration status, etc.
- c. Physically and or psychologically isolating** victims from family, friends, community, culture, and accurate information.
- d. Humiliation; emotional abuse:** repeated attacks against victim's self-esteem and competence, forcing victims to do degrading things, humiliating victim in front of others, controlling victim's activities, controlling decision making, etc.
- e. Reproductive coercion:**¹⁷ Explicit behaviors the abuser uses to manipulate and control the victim's reproductive health and decision making, including controlling family planning decisions, forcing unprotected sex, engaging in birth control sabotage and condom manipulation, and pressuring the victim to continue or terminate a pregnancy.
- f. Alternating use of indulgences:** promises, gifts, being affectionate, etc.

¹⁷ Linda Chamberlain & Rebecca Levenson, *Addressing Intimate Partner Violence Reproductive and Sexual Coercion: A Guide for Obstetric, Gynecologic, Reproductive Health Care Settings*, 3rd Edition, Futures Without Violence, 2013, available at <http://www.futureswithoutviolence.org/userfiles/file/HealthCare/Reproductive%20Health%20Guidelines.pdf>

(4) Economic coercion

- a. Control of funds:** not contributing financially to family, withholding funds, impoverishing victims through legal system, etc.
- b. Control of victim's access to resources:** money, health care, transportation, communication, child care, employment, housing, immigration status, legal representation, etc.

(5) Use of children to control victim

- a.** Threats or use of physical or sexual attacks against children to control the other adult;
- b.** Forcing child to participate in the physical or psychological abuse of adult victim;
- c.** Using children as hostages, using visitation with children to monitor adult victim or to send messages to victim through children, interrogating children about victim's activities, being under- or over-engaged with children in order to control the victim, etc.;
- d.** Undermining parenting of adult victim, prolonged custody or visitation conflicts, seeking parenting plans that allow them to maintain control over the adult victim post separation or divorce, etc.;
- e.** False reports to Child Protective Service, refusal to participate in Child Welfare proceedings.

B. Domestic Violence (DV) Relational Context: Adult or Adolescent Intimate Relationships

1. Variety of intimate relationships:

- a) adult or adolescent intimate relationships.
- b) DV perpetrator and victim are known to each other.
- c) are or have been or may become intimate partners.
- d) may be or have been dating, cohabiting, married, divorced, or separated.
- e) may or may not have children in common.
- f) may be of very short or very long duration.
- g) may involve partners who identify as heterosexual, gay, lesbian, or bisexual, as well as transgender or non-transgender individuals.¹⁸

¹⁸ **Pronouns, terminology:** For the purposes of this manual, masculine pronouns are sometimes used when referring to DV perpetrators, while feminine pronouns are sometimes used to reference adult victims. This is not meant to detract from those cases where the victim is male or the perpetrator is female. This pronoun usage reflects the fact that in heterosexual relationships the majority of domestic violence victims are female and perpetrators are male (US

2. **Increased DV perpetrator access and control due to this intimate context**

- a) DV victims are known to the perpetrator.
- b) DV perpetrator has ongoing access to the victim, uses their extensive knowledge of the victim (daily schedule, employment, children, resources, vulnerabilities) to exercise considerable power and control over the victim's daily life, both physically and emotionally, even if separated. Most perpetrators of stranger violence usually do not have this continued access or control over their victims.
- c) The intimate context of domestic violence shapes the behavior of both the abused party and the perpetrator during criminal and civil court process. (See Sections IV and V.)

3. **Entitlement and social supports for domestic violence**

DV victims not only deal with the particularities of a specific trauma (e.g., head injury) and the fear of future assaults by a known assailant, but they also must deal with the complexities of an intimate relationship with that assailant (shared history, social relationships, children, finances, etc.).

- a) Unlike victims of stranger violence, DV victims face many social barriers to separation from the DV perpetrators, as well as other barriers to their protection of themselves and their children.¹⁹ (See Section V, H. Barriers.)
- b) Many DV perpetrators believe that they are entitled to use specific tactics of control with their partners and too often find social supports for those beliefs. For example, DV abusers, regardless of their conduct against the other parent, believe they have “parental right” to access to the child and to decision making about the child. This is too often supported by practices in both family law and in child welfare proceedings.
- c) DV perpetrators blame their DV tactics on the victims and are often successful in moving the focus off their conduct onto the alleged deficits of the DV victim.
- d) The intimate context frequently leads those outside the relationship
 - (1) to take DV less seriously than other types of violence.
 - (2) to inadvertently collude with the DV perpetrator in abusing and controlling the adult victim.

Department of Justice Report 243300, *Intimate Partner Violence: Attributes of Victimization, 1993-2011*, Shannon Catalano, Ph.D., BJS Statistician, November 2013, and in the previously cited 2010 The National Intimate Partner Survey by the CDC, November 2011). This latter survey (NISVS, 2011) also reports the findings on Victimization by Sexual Orientation as those self-identifying lesbian, gay or bi-sexual have equal or higher prevalence experiencing IPV, SV, and stalking as compared to self-identified heterosexual. Consequently, there are examples in this manual specific to gay, lesbian, bisexual or heterosexual relationships, while other examples can be found in all intimate relationships.

¹⁹ B. Hart, “Battered Women and the Criminal Justice System,” *American Behavioral Science* 36 (1993): 624-38.

- e) It is the "intimate partner" or "family" nature of the relationships that sometimes gives the perpetrator social, if not legal, permission to use abuse.

4. Child victims of domestic violence

- a) This behavioral definition of domestic violence focuses on the pattern of abuse and coercive control in adult or adolescents against their intimate partners and does not technically include child abuse or **neglect**. In Washington State, domestic violence is not in of itself child maltreatment (see Chapter 11).
- b) However, for some DV cases with children present, the children *may be* physically harmed or emotionally and developmentally impacted due to their being used as weapons against the DV adult victim by the perpetrator or as a result of being exposed to the violence. This is not true for all children and has to be carefully assessed. (For discussion on the impact of domestic violence on children, see Section VI, Children as Victims.)

5. Adolescent domestic violence

- a) The perpetrator and/or the victim may be an adolescent rather than an adult.
- b) **In cases involving adolescents, there is the same pattern of assaultive and coercive behaviors as in adult relationships.²⁰ For the purposes of the behavioral definition, domestic violence includes the abusive control done by one adult intimate to another, or by one adolescent intimate to another.²¹**

C. Domestic Violence Conduct

1. Wide variety of behaviors: Assaultive as well as coercive conduct

- a) **Some criminal:** acts of domestic violence such as hitting, choking, kicking, assault with a weapon, shoving, snatching, biting, rape, unwanted sexual touching, forcing sex with third parties, threats of violence, harassment at work, attacks against property, attacks against pets, stalking, harassment, kidnapping, arson, burglary, unlawful imprisonment, etc.
- b) **Some non-criminal:** Other behaviors may not constitute criminal conduct, such as degrading comments, interrogating children or other family members, suicide threats or attempts, or false reports to CPS, INS, employers, family, and friends. Coercive conduct may also include controlling the victim's access to family resources: time, money, food, clothing, and shelter, as well as controlling the abused party's time and activities, etc. Whether or not there has been a finding of criminal conduct, evidence of such

²⁰ Barrie Levy, ed., *Dating Violence: Young Women in Danger* (1991).

²¹ In Washington, individuals 16 years or older come within the scope of both [RCW 26.50](#) (orders for Prosecution of Domestic Violence Offender) and [RCW 10.99](#) (criminal provisions concerning domestic violence).

behaviors indicates a pattern of assaultive and abusive control that is considered domestic violence.

- c) **Wide range of consequences** due to DV perpetrator's pattern of conduct: some life threatening, some not; some physically injurious and some not; some health shattering, some not; depriving victims of agency and of resources (funds, employment, housing, education, etc.); all tactics are damaging. (See Section V.)

2. **Pattern of behavior, not an isolated, individual act.**

- a) The pattern may be evidenced either by
 - (1) **multiple tactics in one episode:** physical assault combined with threats of violence against self or others, isolating victim, control of resources or children, etc., and/or
 - (2) **multiple episodes of varying tactics over time:** multiple assaults, repeated stalking, repeated threats, repeated violation of protection orders, or assault followed by repeated episodes of harassment through the courts, the victim's employment, etc.
- b) One battering tactic or episode builds on past tactics or episodes and sets the stage for the future. All incidents or tactics of the pattern interact with each other and have a profound effect on the abused party. Abuse parties constantly have to calculate what to do in the present based on their knowledge of what the perpetrator did in the past and is likely to do in the future.
- c) The intermittent use of physical force against person or property combined with psychological coercion establishes a dynamic of power and control in the relationship.

3. **Ongoing pattern of abusive and controlling tactics**

- a) While DV perpetrators may shift tactics, they continue their pattern of abusive control before and after court proceedings, before and after separation, and before and after entering into new relationships (both against new partners as well as continuing to be abusively controlling of past partners).
- b) Until the DV perpetrator directly engages in changing their conduct, the coercive control will continue.

4. **Attacks against others or property or pets to control the adult victim.**

- a) Some of the acts may appear to be directed against or target children, other family members, friends, property, or pets when in fact the perpetrator is committing these acts to control or punish the intimate partner (e.g., physical attacks against a child, throwing furniture through a picture window, strangling the adult victim's pet cat). Often DV perpetrators will reference their violence elsewhere as a reminder to victims that they should comply.

Although someone or something other than the abused party is physically damaged, that particular assault is actually part of the DV perpetrator's pattern of abuse directed at controlling the intimate partner.

5. Psychological attacks through verbal, emotional abuse; humiliation.

- a) Verbal/emotional abuse as a tactic of control: repeated verbal attacks against victim's parenting, family, friends, faith, employment, appearance, intelligence, or competence; often in front of others significant to the victim (children, family, employers, friends, the courts, etc.) or in public.
- b) Not all verbal insults between intimates are necessarily psychological battering. A verbal insult by a person who has not also been physically assaultive or threatening is not the same as a verbal attack by a person who has been violent in the past.
- c) It is the perpetrator's use of physical force against property or persons that gives power to their psychological abuse by instilling a dynamic of fear that physical force could be used against their victims.

6. DV perpetrator's use of reproductive coercion

- a) Reproductive and sexual coercion is a unique form of domestic violence used by predominantly male batterers to exercise control over their partner's body and reproductive health choices, to ensure economic dependency through unplanned pregnancies, and to secure a long-term presence in her life. Abused women's decision making is undermined or ignored regarding her access to health care, her reproductive health needs, and contraceptive use and family planning methods.
 - (1) Pregnancy Coercion: The abuser threatens to leave the relationship or have a child with someone else if a child is not conceived; injures a pregnant partner in a way that leads to a miscarriage; threatens physical and psychological violence if the partner does not become pregnant or refuses to end a pregnancy.
 - (2) Birth Control Sabotage: The abuser hides, withholds, or destroys the victim's birth control pills and removes contraceptive rings or patches; intentionally breaks, pokes holes in, or removes condoms; fails to withdraw when that is the agreed upon method of contraception; threatens physical harm if birth control is used; inhibits or stops the victim's ability to obtain contraception.
- b) Although sexual and reproductive coercion can occur outside the context of abuse in an intimate partner relationship, the use of reproductive and sexual coercion as a tool to gain control over a

partner is especially damaging to DV victims, as it exposes them to increased rates of unplanned pregnancy, sexually transmitted infections, and HIV.²²

7. Stalking as a tactic to monitor and control victim movements, activities, and contacts.²³

- a) Common stalking tactics include: physical surveillance (following, spying on, watching, or approaching the victim); making unwanted phone calls or other unwanted contact (letters, e-mails, text messages); sending gifts or photos; property invasion or damage; and making threats to harm the victim, her children or family, a new partner, or even themselves.²⁴
 - o Approximately 1 in 6 women in the United States has experienced stalking at some point in her lifetime in which she felt very fearful or believed that she or someone close to her would be injured as a result, with 62 percent of female stalking victims reporting the aggressor as a current or former partner.^{25,26} Stalking limits the victim's basic personal freedoms with drastic economic, social, legal, psychological, and physical consequences.²⁷
 - o Cyber-stalking and the use of technology to track victims has become an integral tactic for stalkers. Telephone technologies, GPS and location services, and computer and internet technologies are often used to track the victim's every move.^{28,29}

²² In one of the largest studies on reproductive coercion to date, 35 percent of surveyed women who reported intimate partner violence (IPV) also reported birth-control sabotage. Approximately 75 percent of women reporting pregnancy coercion or birth control sabotage also reported a history of partner violence, with risk for unintended pregnancy doubling within this group. Elizabeth Miller, et. al., *Pregnancy Coercion, Intimate Partner Violence and Unintended Pregnancy*, Contraception, 81, 316-322, 2010.

²³ For a complete overview of partner stalking and its relationship to intimate partner violence, please refer to T.K. Logan & Robert Walker, *Partner stalking: Psychological dominance or "business as usual?"* Trauma Violence Abuse, 10, 247-270, 2009, available at http://is.jabok.cz/el/JA10/zima2012/S2041/um/stalking_ENG.pdf

²⁴ For more information on stalking behaviors, please visit <http://www.nij.gov/topics/crime/intimate-partner-violence/stalking/documents/research-on-partner-stalking.pdf>

²⁵ Michele C. Black, et. al., *The National Intimate Partner and Sexual Violence Survey 2010 Summary Report*, National Center for Injury Prevention and Control Centers for Disease Control and Prevention, 2014, available at http://www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf.

²⁶ T. K. Logan, *Research on Partner Stalking: Putting the Pieces Together*, National Institute of Justice, 2010, available at <http://www.nij.gov/topics/crime/intimate-partner-violence/stalking/documents/research-on-partner-stalking.pdf>

²⁷ For a complete review of the impact of stalking on victims, please visit <https://www.stalkingriskprofile.com/victim-support/impact-of-stalking-on-victims>

²⁸ For more information on cyber-stalking and the use of technologies to control victims, please visit <http://www.nij.gov/topics/crime/intimate-partner-violence/stalking/pages/tactics.aspx#note48>

²⁹ Cynthia Fraser, et. al., *The New Age of Stalking: Technological Implications for Stalking*, Juvenile and Family Court Journal, 61(4), 39-55, 2010.

- Additionally, abusers often engage in acts of procedural stalking and paper abuse. Abusers use legal systems to stalk and control their partners through frivolous lawsuits, false reports of child abuse, and other system-related manipulations; exerting power, forcing contact, and financially burdening their ex-partners.^{30,31} For more information about “abusive litigation,” see Appendix H.

8. **Coercive control maintained by intermittent use of physical force and psychological attacks.**

- The control of abused parties through intermittent use of physical assault or the credible threat of physical harm to the victim or others along with psychological abuse (verbal abuse, isolation, threats of violence, etc.) is domestic violence.
- **The non-physical battering becomes an effective weapon** in controlling abused parties because they know through experience that perpetrators may back up the threats or taunts with physical assaults. The use of physical force does not have to be frequent or even recent. The reality that the perpetrators have used violence in the past, against this victim or against someone else, to get what they want gives the DV perpetrator additional power to coercively control the victims in other non-physical ways.

Examples: an abuser’s interrogation of the abused party about the victim’s activities becomes an effective non-physical way to control the abused party’s activities when the perpetrator has assaulted the victim in the past. Sometimes abusers are able to gain compliance from the abused party by simply referencing their past violence against the victim or others: “Remember what happened the last time you tried to get a job/to leave me/etc.?” Because of past assaults, there is the implied threat in the simple statement, “Remember...”

9. **Perpetrator’s use of indulgences to control victim.**

- Domestic violence perpetrators, like captors of prisoners of war, may also alternate their abusive tactics with occasional indulgences, such as flowers, gifts, sweet words, promises to get help, paying attention to children, etc. Some victims may think that the abuse has stopped, but for batterers this is usually a shift in their control tactics. Early domestic violence literature sometimes referred to this conduct as part of a “honeymoon phase” when, in fact, these are merely different tactics of control.

³⁰ Susan L. Miller & Nicole L. Smolter, “*Paper Abuse: When All Else Fails, Batterers Use Procedural Stalking*,” *Violence Against Women*, 17(5), 637-650, 2011.

³¹ For a complete list of suggested stalking response tips for judges, please visit <http://www.ovw.usdoj.gov/docs/tips-for-judges.pdf>

- **Some mistakenly argue that both the perpetrator and the abused party are “abusive,” one physically and one verbally.** While some abused parties may resort to verbal insults, the reality is that verbal insults are not the same as a fist in the face or a credible threat of physical harm. Furthermore, domestic violence perpetrators use both physical and verbal assaults. Research indicates that domestic violence perpetrators are more verbally abusive than either their victims or other persons in distressed/non-violent or in non-distressed intimate relationships.^{32,33}

10. Primary aggressor.

- Some argue that there is “mutual battering” where both individuals are using physical force against each other. Careful fact-finding often reveals that one party is the primary aggressor and the other party’s violence is in self-defense (e.g., she stabbed him as he was choking her) or that one party’s violence is more severe than the other’s violence (e.g., punching/choking versus scratching).³⁴ Sometimes the domestic violence victim uses physical force against the batterer in retaliation for chronic abuse by the perpetrator, but this retaliation incident is not part of a pattern of assaultive and coercive behavior that would constitute domestic violence.
- Research of heterosexual couples indicates that typically, women’s motivation for using physical force is self-defense, while men use physical force for power and control.³⁵
- So called “mutual combat” among gay and lesbian partners is also rare. Even though gay and lesbian partners may be the same gender and similar size and weight, there is usually a primary aggressor who is creating the atmosphere of fear and intimidation that characterizes battering relationships.³⁶

³² G. Margolin, L. Gleberman, J. John and T. Ransford, *Interpersonal Factors Associated with Marital Violence* (paper presented at the Third National Family Violence Research Conference, University of New Hampshire, Durham, 1987).

³³ M A Dutton, L. Goodman; R, James Schmidt, *Development and Validation of a Coercive Control Measure for Intimate Partner Violence, Executive Summary*, 2005, National Institute of Justice.

³⁴ D. Saunders, “When Battered Women Use Violence: Husband-Abuse or Self-Defense?” *Violence and Victims* 1, no. 1 (1986): 47-60; L. K. Hamberger and T. Polente, “Counseling Heterosexual Women Arrested for Domestic Violence: Implications for Theory and Practice,” *Violence and Victims* 9, no. 2 (1994): 125-37.

³⁵ D. Saunders and A. Browne, “Domestic Homicide,” *Case Studies in Family Violence*, ed. R. Ammerman and H. Michel (1991); M. Wilson and M. Daly, “Til Death Do Us Part,” in *Femicide: The Politics of Woman Killing*, ed. J. Radford and D. E. Russell (1991).

³⁶ P. Letellier, “Gay and Bisexual Male Domestic Violence Victimization: Challenges to Feminist Theory and Responses to Violence,” *Violence and Victims* 9, no. 2 (1994): 95-106; K. Lobel, ed., *Naming the Violence: Speaking out about Lesbian Battering* (1986); C. Renzetti, *Violent Betrayal: Partner abuse in lesbian relationships* (1992).

IV. The What: the Legal Definition of Domestic Violence

A. Relationship Context:

1. **Washington State defines domestic violence as certain crimes committed** by one family or household member against another. The majority of the family or household members defined by the state in [10.99.020 RCW](#) fit the behavioral definition of intimate partner: “spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time . . . persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship..”
2. However, [RCW 10.99.020](#) also includes household or family members who are not, nor have they ever been, intimate partners: “adult persons who are presently residing together or who have resided together . . . persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.”
3. While intimate partner violence is the most common form of domestic violence, non-intimate partner violence as defined by Washington law may also appear in the courts. The dynamics are different for intimate partner violence and domestic violence perpetrated by household members who are not, nor have they ever been, intimate partners with their victims (adult siblings, adult child to parent, roommates, etc.). This chapter, as well as Appendix A on DV evaluations and Appendix B on DV perpetrator treatment, focus on IPV, although the statutory framework does not make this distinction.

The following charts are provided to assist the court in identifying these cases.

Relationships Provided for by Domestic Violence Statutes:

Relationship Between Parties	Applicable Statutes
Current Spouses	RCW 26.50.010(2) ; 10.99.020(3)
Former Spouses	RCW 26.50.010(2) ; 10.99.020(3)
Parents of Child in Common	RCW 26.50.010(2) ; 10.99.020(3)
Adult Persons Related by Blood or Marriage	RCW 26.50.010(2) ; 10.99.020(3)
Unmarried Persons of Same or Different Genders Currently or Previously Residing Together	RCW 26.50.010(2) ; 10.99.020(3)
Intimate Partners of Same Gender	RCW 10.99.020(1) ; 10.99.020(3)
Dating Relationships	RCW 26.50.010(2) ; 10.99.020(3)
Biological or legal parent-child relationship	RCW 26.50.010(2) ; 10.99.020(3)

Behaviors Included in Domestic Violence Statutes:

Behavior	Statute Citation
Physical Harm, Bodily Injury	RCW 26.50.010(1)
Assault	RCW 26.50.010(1)
Infliction of Fear of Imminent Physical Harm, Bodily Injury, or Assault	RCW 26.50.010(1)
Sexual Assault of One Family or Household Member by Another	RCW 26.50.010(1)
Stalking	RCW 9A.46.010 ; 10.14.020 ; 26.50.010(1)

Criminal Charges that Can Result from Domestic Violence

The following chart (pp.16-17) is not an exhaustive list but illustrates both the behavioral and legal definitions of domestic violence as well as the criminal charges that can result from these acts. Note that some of the behaviors are not considered criminal, but they are nonetheless used by the perpetrator as part of the pattern to control the victim. The chart on pp. 18-19 indicates how these same DV tactics may appear in family court, dependency court, or protection order proceedings.

DOMESTIC VIOLENCE: BEHAVIORS AND CRIMINAL CHARGE

Type of Domestic Violence	Behaviors (examples of both criminal and non-criminal acts)	Criminal Charges/Procedures	Relevant RCWs
Physical Attacks	Shoving, spitting at, grabbing, pushing, slapping, punching, kicking, shaking, choking, hitting, burning, assault with a weapon, or physically restraining, imprisonment, etc.	Assault Manslaughter or Murder Reckless Endangerment Drive by Shooting, Criminal No Contact Orders. Arrest, bail, imprisonment	9A.36.011-.041 9A.32.060-.070 9A.32.010-.050 9A.36.050 9A.36.045
Sexual Attacks	Forced sex, attacks against genitals, forcing sex in front of children or others, coerced sex, pressured sex, unwanted sexual touching, pimping, etc.	Rape Rape of a Child Indecent Liberties Assault with Intent to Commit Rape	9A.44.040-.060 9A.44.073-.079 9A-44.100 9A.36.021(2)(b)
Psychological Attacks	Threats of violence against victim or others, suicidal threats or acts, false reports to third parties (CPS, INS, employers), child snatching, reckless driving to intimidate victim, isolating, interrogating, controlling, verbal assaults, degrading victim, surveillance, distributing intimate images, etc.	Coercion Telephone Harassment Custodial Interference Harassment Criminal Trespass Stalking Cyber stalking Unlawful Imprisonment Reckless Driving Violation of Court Orders Wrongful Distribution of Intimate Images	9A.36.070 9.61.230 9A.40.060-.070 9A.46.020 9A.52.070-.080 9A.46.110 , 9A.86 9.61.260 9A.40.040 46.61.500 10.99.040 , 10.99.050 , 26.09.300 , 26.10.220 , 26.26.138 , 26.44.063 ,

Type of Domestic Violence	Behaviors (examples of both criminal and non-criminal acts)	Criminal Charges/Procedures	Relevant RCWs
			26.44.150 , 26.50.060 , 25.50.070 , 26.50.130 , 26.52.070 , 74.34.145
Attacks against Property/Pets	Attacks against property to control victim, hitting walls, destroying objects, giving away property, setting fire to property, tormenting/abusing pets, etc.	Cruelty to Animals Malicious Mischief Theft Arson or Reckless Burning Burglary	9.08.070 9A.48.070-.090 9A.56.030-.050 9A.48.020-.050 9A.52.025
Use of Children to Control Victim	Injury to child during assault on victim, physical or sexual abuse of child, threats of violence, kidnapping, hostage taking, child concealment, children witnessing violence, etc.	Assault of a child Kidnapping Custodial Interference Criminal Mistreatment Homicide by Abuse	9A.36.120-.140 9A.40.020-.030 9A.40.060-.070 9A.42.020-.035 9A.32.055
Economic Coercion	Control of family resources: money, transportation, health care, telephone, retirement/investment funds, lengthy court battles to impoverish victims, etc.	Theft Fraud Embezzlement	9A.56 9A.60

**DOMESTIC VIOLENCE: BEHAVIORS IN CIVIL, FAMILY LAW, AND
DEPENDENCY COURT PROCEEDINGS**

Type of Domestic Violence	Behaviors	Civil, Family Law, Dependency Court Descriptors	Relevant RCWs
Physical Attacks	Spitting, shoving, grabbing, pushing, slapping, punching, kicking, strangulation, hitting, burning, assault with objects or weapon, etc.	Domestic Violence Protection Order; DCFS Child Protective Order, Restrictions in Parenting Plans; Termination of Residential Leases; Leave from Employment; Good Cause for Unemployment Insurance.	26.50 26.44.063 , .067 , .150 26.09.191 59.18.570 , .575 , .580 , .585 49.76 50.20.050(1)(b)(iv)
Sexual Attacks	Forced, coerced or pressured sex, attacks against genitals, forcing sex with or in front of third parties including children,, forced use of pornography or unwanted sexual practices, etc.	Sexual Assault Protection Order; DCFS Child Protective Order,, Restrictions in Parenting Plans; Leave from Employment	7.90 26.44.063 , .067 , .150 26.09.191 59.18.570 , .575 , .580 , .585 49.76

Type of Domestic Violence	Behaviors	Civil, Family Law, Dependency Court Descriptors	Relevant RCWs
Psychological Attacks	Threats of violence against victim or others, suicidal threats or acts, false reports to third parties (CPS, INS, employers), child snatching, reckless driving to intimidate victim, isolating, stalking/surveillance, interrogating, controlling, reproductive coercion or degrading victim, abusive litigation, distribution of intimate images ³⁷ , etc.	Threats of Physical Harm in Domestic Violence Protection Orders; Anti-Harassment Orders; Stalking Protection Orders; Cyber-stalking; Abusive Use of Conflict as Restriction in Parenting Plans; Basis for Declining Mediation; Civil liability for distribution of intimate images; Time needed to acquire skills for employment in consideration of maintenance.	26.50.010 10.14 7.92 26.09.191 26.09.016 26.09.120
Attacks against Property/Pets	Attacks against property/pets to control victim, hitting walls, throwing objects, damaging property, giving away property, setting fire to property, tormenting pets, etc.	Threats of Physical Harm in Domestic Violence Protection Orders; Anti-Harassment Orders; Abusive Use of Conflict as Restriction in Parenting Plans; Just and equitable property distribution	26.50.010 10.14 26.09.191 26.09.080
Use of Children to Control Victim	Attacks against child to control adult victim, injury to child during assault on victim, physical or sexual abuse of child, threats of violence, kidnapping, child concealment, using children for surveillance, children witnessing violence, threatening to call CPS, etc.	DCFS Child Protective Order, Child Maltreatment (physical or sexual abuse), Neglect of Child; Abusive Use of Conflict, or Withholding Parental Access as Restriction in Parenting Plan; Stalking; Cyber-stalking	26.44.063 , .067 , .150 26.09.191 7.92
Economic Coercion	Control of family resources: money, transportation, health care, telephone, withholding child support, retirement/investment funds, lengthy court battles to impoverish victims, etc.	Abusive Use of Conflict or Child Neglect as Restriction in Parenting Plans, Just and Equitable division of property; Time needed to acquire skills for employment in consideration of maintenance	26.09.191 26.09.080 26.09.120

³⁷ Chapter 8, Laws of 2015, ESB 2160 took effect on September 26, 2015 but has not been codified as of the date of printing. <http://lawfilesexxt.leg.wa.gov/biennium/2015-16/Pdf/Bills/Session%20Laws/House/2160-S.SL.pdf>

V. Assessing Lethality/Dangerousness: Domestic Violence May Be Lethal or Health Shattering:

One of the more challenging aspects³⁸ of responding to domestic violence is assessing how dangerous the domestic violence may be in a specific individual case. It is usually the first concern when domestic violence is identified and remains the primary concern throughout the life of a case.

Domestic violence may result in death or severe injury

- to the adult victim, the children, others (family, friend, or innocent bystanders), or to the DV perpetrator
- due to the behaviors of the perpetrator, or of the adult victim, or of the children.

What domestic violence fatality reviews in various states³⁹ have shown is that much of the salient information related to the homicides or severe injuries was known prior to the homicides by various community systems, but too often decision-makers did not understand the connection between the domestic violence tactics and individual factors or knew only part of the information.

A. Assessing lethality effectively:

- **Danger assessments that use direct input from the adult survivor** continue to be the most accurate for the assessment of dangerousness. DV survivors have the most direct knowledge of the DV abuser. While at times DV survivors may under-report the danger, whenever DV survivors do express fear of being killed (or the children/others being killed), that should be given priority and never minimized.
- **Consider multiple factors:** factors (the specific tactics have been used previously, presence of co-occurring issues substance abuse, suicide, children fighting back, etc.) all interact and effect an assessment of danger. The lethality of domestic violence often increases when the perpetrator believes that the abused party is leaving or has left the relationship.⁴⁰ Other risk factors for dangerousness are: threats to kill or maim, stalking, use of weapons,

³⁸ Andrew R. Klein, *Lethality Assessments and the Law Enforcement Response to Domestic Violence*, (Journal of Police Crisis Negotiations), 12(2), 87-102, 2012.

³⁹ J Fawcett, "Up to Us," *Washington State Domestic Violence Fatality Review 2010*; K. Starr, M. Hobart and J. Fawcett, "If I had One More Day," *Washington State Domestic Violence Fatality Review 2006*; K. Starr, M. Hobart and J. Fawcett, "Every Life Lost is a Call for Change," *Washington State Domestic Violence Fatality Review 2004*; M. Hobart, "Tell the World What Happened to " *Findings and Recommendations from the Washington State Domestic Violence Fatality Review 2002*; M. Hobart, "Honoring Their Lives, Learning from Their Deaths," *Findings and Recommendations from the Washington State Domestic Violence Fatality Review 2000* (Seattle, WA: Washington State Coalition Against Domestic Violence, 2006, 2004, 2002, 2000), <http://dvfatalityreview.org/>, www.wscadv.org.

⁴⁰ J. Campbell, "If I Can't Have You No One Can: Power and Control in Homicide of Female Partners," *Femicide: The Politics of Women Killing*, ed. J. Radford and D. Russell (1992).

suicidality of the perpetrator, use of alcohol or drugs, co-occurrence of child abuse, and failure of past systems to respond appropriately. Page 23 provides a list of factors to consider when attempting to assess the danger to any party, either through significant injury or death in a particular domestic violence case.

- **Consider all tactics of abuse:** When the courts and the community are weighing the safety needs of the victims, their children, and the community, they must consider all the factors, including information about the coercive controlling tactics. Focusing exclusively on the assaults will result in misreading danger to the adult victims, their children, and the community.
- **Consider multiple sources of input:** the information must be gathered from multiple sources: the adult victim, children, other family members, perpetrators, and others (probation, counselors, and anyone having contact with family).
- **Repeat lethality assessments:** danger level is not static. It ebbs and flows.

The lethality of domestic violence is tragically clear when the perpetrators kill their partners, as well as the children or other family members, and then kill themselves, or when the abused persons desperate to protect themselves and their children kill their perpetrators.

For this reason, it is critical that the courts use all available legal remedies, such as protective orders, courtroom security, jail, court review, etc., to provide the victim with protection throughout the duration of the court proceedings and after.⁴¹ Effective intervention in domestic violence cases may stop the violence before it becomes a homicide case.⁴²

⁴¹ Research on battered women who kill has found no distinguishing characteristics between battered women who kill and those who do not. The only differences found in comparing these two groups of battered women were found in their batterers (the men who were killed had been more violent against the victim, as well as the children, than those who were not killed). A. Browne, *When Battered Women Kill* (1987).

⁴² For a more complete discussion on the legal issues involved in cases where an alleged battered woman kills the alleged perpetrator, see C. Gillespie, *Justifiable Homicide* (1989).

LETHALITY ASSESSMENT: FACTORS TO CONSIDER⁴³

- Perpetrator's access to the victim**
- Pattern of the perpetrator's abuse**
 - Frequency/severity/escalation of the abuse and control tactics in current, concurrent, and past relationships.
 - Use of weapons and use of dangerous acts (strangulation, repeated blows, throwing victim down flight of stairs, killing pets, etc.).
 - Threats to kill adult victim, children, self.
 - Stalking, imprisonment, hostage taking.
- Perpetrator's state of mind**
 - Obsession with victim, jealousy.
 - Ignoring negative consequences of their abusive behavior
 - to abuser (arrests, court orders, jail time, etc.)
 - or to the victim (severe injuries, employment, etc.)
 - Depression/desperation.
- Co-occurring issues: Individual factors that reduce behavioral controls of either adult victims to protect themselves or perpetrators to self-regulate**
 - Substance abuse
 - Certain medications
 - Psychosis
 - Brain damage
- Suicidality of perpetrator, victim, or children**
- Adult victims' use of physical force; fighting back**
- Children's use of physical force or inserting themselves in the fights**
- Situational factors**
 - Separation violence/perceived loss of control over victim /victim autonomy
 - Presence of other stresses
- Past failures of systems to respond appropriately; this emboldens batterers**

⁴³ A. Ganley, Ph.D., *Domestic Violence: National Curriculum for Children's Protection Services* (Family Violence Prevention Fund, 1996).

B. Impact of Domestic Violence on Health: Not All Danger Results in Death.

- 1. Statistics regarding the prevalence and severity** of intimate partner violence vary greatly, depending on survey type, date, and subjects screened. The groundbreaking 1996 National Violence Against Women Survey revealed that approximately 2 million women were physically assaulted, stalked, or raped by an intimate partner annually in the United States, with an estimated 5.3 million victimizations occurring among U.S. women annually.⁴⁴ The most recent data collected by the CDC in 2010 reveals that one in three women in the United States will experience intimate partner violence, sexual assault, or stalking within their lifetime. An estimated 5.9% of women in the United States, almost 7 million women, reported an experience of rape, physical violence, or sexual violence by an intimate partner *within the past year*. Additionally, an estimated 5.7 million men reported experiencing these forms of violence by an intimate partner.⁴⁵
- 2. Homicides: On average, every day more than three women are murdered by their intimate partners in the US.**⁴⁶ According to the *Washington State Uniform Crime Report* there were **45,944 domestic violence offenses reported to law enforcement agencies in 2012**, making up 49.6% of all crimes against persons in Washington State.⁴⁷ Female victims made up 75% of the 1,496 murder cases that were attributed to intimate partners in 2010.⁴⁸
- 3. Injuries 14.8% of women and 4% of men have been injured as a result of IPV. The United States Department of Justice reported that 37% of all women who sought care in hospital emergency rooms for violence-related injuries were injured by a current or former spouse, boyfriend, or girlfriend.**^{49,50}
- 4. Domestic violence has a major long-term health impact on victims and their children**, not only through direct injury or death but also in terms of

⁴⁴ National Center for Injury Prevention and Control, [Costs of Intimate Partner Violence Against Women in the United States](#), Centers for Disease Control and Prevention, 2003.

⁴⁵ Michele C. Black, et. al., [The National Intimate Partner and Sexual Violence Survey \(NISVS\): 2010 Summary Report](#), Centers for Disease Control and Prevention, 2011.

⁴⁷ Kellie Lapczynski, et. al., [Crime in Washington 2012 Annual report](#), Washington Association of Sheriffs and Police Chiefs, 2012.

⁴⁸ Mathew R. Durose, et. al., [Family Violence Statistics Including Statistics on Strangers and Acquaintances](#), Bureau of Justice Statistics, 2005.

⁴⁹ Michel R. Rand, *Violence-Related Injuries Treated in Hospital Departments*, (Bureau of Justice Statistics, 1997).

⁵⁰ M. Durose, C. Wolf Harlow, P. Lanagan, M. Motivans, R. Rantala, E. Smith and E. Constantin, *Family Violence Statistics Including Statistics on Strangers and Acquaintances* (Bureau of Justice Statistics, United States Department of Justice, June 2005).

impact on illnesses. Women who have experienced domestic violence are 80% more likely to have a stroke, 70% more likely to have heart disease, 60% more likely to have asthma, and 70% more likely to drink heavily than women who have not experienced intimate partner violence.⁵¹ For a complete review of the health impact of domestic violence, see the introduction by P. Salber, M.D., to *Improving the Health Care Response to Domestic Violence*.⁵² There is a large body of research documenting the health impact on adult victims.⁵³

5. **Without intervention, the perpetrator’s pattern of abusive behaviors will most likely escalate in both frequency and severity.** The pattern may change with more emphasis on the psychological abuse, or the physical assaults, over time. Regardless of these variations, damage to the abused party and the children may become more severe.

C. Cautions regarding the assessments of lethality

1. There are a variety of written risk assessment instruments that have become available in last ten years.⁵⁴ While they all purport to evaluate the risk of domestic violence, often they evaluate different aspects of domestic violence and rely on different sources of the data (professional vs. victim reports, etc.)⁵⁵
 - a) **Re-offending or recidivism in legal system** (DV Mosaic deBecker), DVSI (Williams & Houghton), K-SID (Gelles & Lyon), O.D.A.R.A. (Z. Hilton), SARA (Kropp et al).
 - b) **A systems safety audit** (PSI -Duluth)
 - c) **Predicting homicides or attempted homicides** (Danger Assessment)⁵⁶
 - d) **Measures based on offender intervention programs** (PAS- D. Dutton)

⁵¹ Centers for Disease Control and Prevention, *Adverse Health Conditions and Health Risk Behaviors Associated with Intimate Partner Violence*, Morbidity and Mortality Weekly Report, 57, 113-140, 2008.

⁵² C. Warshaw and A. Ganley, *Improving Health Care Response to Domestic Violence: A Resource Manual for Health Care Providers* (San Francisco, CA: Family Violence Prevention Fund, 1995).

⁵³ A. Coker, P. Smith, L. Bethea, M. King and R. McKeown, “Physical Health Consequences of Physical and Psychological Intimate Partner Violence,” *Archives of Family Medicine* 9 (2000). Bonomi, A.E., Anderson, ML., Rivara FP, Thompson RS, 2009, Health Care Utilization and Costs Associated with Physical and Non-physical-Only Intimate Partner Violence. *Health Services Research*, 44 (3): 1052-67.

⁵⁴ Andrew R. Klein, *Lethality Assessments and the Law Enforcement Response to Domestic Violence*, *JOURNAL OF POLICE CRISIS NEGOTIATIONS*, 12(2), 87-102, 2012.

⁵⁵ Evan Stark, *The Dangers of Dangerousness Assessment*, *FAMILY & INTIMATE PARTNER VIOLENCE QUARTERLY*, 6(2), 13-22, 2013.

⁵⁶ Jacquelyn C. Campbell & Nancy Glass, [Danger Assessment](#), John Hopkins School of Nursing, 2014, Jacquelyn C. Campbell, et. al., *the Danger Assessment: Validation of a Lethality Risk Assessment Instrument for Intimate Partner Femicide*, *Journal of Interpersonal Violence*, 24, 4653-674, 2009.

2. **Most dangerousness assessments are based on homicide studies and** focus exclusively on how dangerous the DV perpetrator is. This research on predicting domestic violence homicides (or attempted homicides) reveals crucial but only partial elements of predicting dangerousness.
 - a) Adult victims have to die (or almost die) to make their way into homicide statistics and studies. In many domestic violence cases, the abused parties are left with their health shattered: paralyzed, deaf, blind, brain damaged, etc., but not necessarily dead. Such cases would rarely appear in homicide studies.
 - b) Also, domestic violence homicide statistics often do not capture the perpetrators' violence toward children, others, or themselves.
 - c) Nor does the homicide research capture the damage done when DV victims or children fight back to escape or protect themselves.
 - d) Nor do homicide studies capture those victims who are entrapped and their lives forever damaged by the abuser's excessive, continuous control.⁵⁷ .
3. **Inadequacy of Psychological Testing for Assessing DV Dangerousness** Psychological tests (e.g., MMPIs or other personality measures or cognitive testing) are not useful for either (1) identifying whether or not there is DV in a case, or for (2) assessing dangerousness. (See Appendix A on domestic violence evaluations and assessments). Psychological testing is typically personality testing. DV is a conduct problem and not a personality problem (see Section V on perpetrators) and therefore psychological testing has limited relevance to judicial decision making in DV cases. Psychological testing *in conjunction* with behavioral assessments may have limited usefulness for treatment planning once there is a finding of DV and dangerousness has been assessed.
4. **Instruments to predict child abuse are not useful in predicting** either intimate partner abuse or the risk to children posed by intimate partner perpetrators.

VI. The Why: Causes of Domestic Violence

A. Domestic Violence is “Caused” by Learning, Not Biology or Genetics

1. **Domestic violence conduct**, as well as the rules and regulations of when, where, against whom, and by whom domestic violence is to be used, are learned through both observation and reinforcement throughout the DV

⁵⁷ Evan Stark, *Coercive Control, How Men Entrap Women in Personal Life*, New York, Oxford University Press(2007)

perpetrator's life.⁵⁸ While there are co-occurring issues that interact with the DV perpetrator's experience that affect a specific individual's pattern of conduct, this learning about the use of assaultive and coercive conduct from observation and reinforcement of experience at individual, family, community, and societal levels is the root or primary "cause."

- a) **Learning through observation:** seeing the conduct carried out successfully or at least without negative reinforcement; e.g., the male child witnessing the abuse of his mother by his father, or in the proliferation of images of abuse/control against women in the media.
- b) **Reinforcement of behavior:** engaging in the conduct and then being reinforced for it (e.g., a judge colluding with the perpetrator in blaming the victim and not holding the perpetrator accountable for his own conduct).

2. **Domestic violence is learned throughout a person's lifetime, through observing family and friends as well as having experiences in community.**

DV is learned (and reinforced) by interactions with all of society's major institutions: the familial, social, legal, religious, educational, mental health, medical, child welfare, entertainment, media, etc. In all of these social institutions, there are various customs that perpetuate the use of domestic violence as legitimate means of controlling family members at certain times (religious institutions that state that a woman should submit to the will of her husband; laws that do not consider violence against intimates a crime, practices where courts ignore impact of IPV on children if they have not been directly hit, etc.). These practices inadvertently reinforce the use of violence to control intimates by failing to hold the perpetrator accountable for the violence and by failing to protect the abused party.

3. **Domestic violence is learned through reinforcement** by the DV perpetrator engaging in the behavior and repeating it when it works (at least some of the time). It is overtly, covertly, and inadvertently reinforced by all of society's institutions at some point.⁵⁹ An individual batterer may be arrested only to have the case dropped as he successfully minimizes or denies responsibility for his conduct or blames the victim for his own conduct. This ongoing pattern of assaultive and coercive control allows the perpetrator to gain control of the victim some of the time through fear and intimidation. Abusive conduct only has to be reinforced intermittently to keep the abusive conduct going.

⁵⁸ A. Bandura, A. **Aggression: A Social Learning Analysis**, 1973, New Jersey, Prentice Hall, Inc., A. Ganley, "Integrating A Feminist and Social Learning Analysis of Aggression: Creating Multiple Models For Intervention With Men Who Batter," in *Treating Men Who Batter: Theory, Practice, and Programs*, ed. P.L. Caesar and L.K. Hamberger (1989).

⁵⁹G. Dutton, *The Domestic Assault of Women* (1988).

4. **The fact that most domestic violence** is learned means that the DV perpetrator's behavior can be changed. Learning is not destiny. There are individuals who are exposed to domestic violence in their family and yet do not go on to be abusers. The histories of these individuals reveal where they had alternative role models for respectful interactions or were challenged to take another path. Most individuals can learn not to batter when they take responsibility for their behaviors and when there is sufficient motivation for changing that behavior. The court plays a strong role in providing perpetrators with sufficient motivation to change and to participate in the rehabilitation process by holding perpetrators, not the victims, accountable for both the violence and for making the necessary changes to stop their patterns of coercive control. Most importantly, the court plays an essential role in protecting the abused party during the perpetrator's rehabilitation process, and by monitoring that process to ensure the perpetrator's compliance with the court orders. (See Appendix B on court-ordered treatment).

B. Illness-Based Violence vs. Learning-Based Violence of Domestic Violence

1. **Illness-based violence** (e.g., Alzheimer's disease, Huntington's, chorea, psychosis) is uncommon, but it does happen, and such cases may end up in court as domestic violence. A very small percentage of violence against intimates is mislabeled as domestic violence when actually it is caused by organic or psychotic impairments.
 - a) It is relatively easy to distinguish this illness-based violence from the learning-based violence typical of domestic violence cases.
With illness-based violence:
 - Usually no selection of a particular victim (whoever is present when the "short circuit" occurs will get attacked, so it may be a helping professional, family member, stranger, etc.), and there is no pattern of assaultive and coercive control tactics.
 - With learning-based violence the perpetrators direct a pattern of abusive behaviors toward a particular person or persons and adjust their tactics strategically to any constraints in the context (e.g., increasing use of children to monitor DV victim when a no-contact order in place).
 - b) With illness-based violence there is usually a constellation of other clear symptoms of the disease.
 - For example, with an organic brain disease there are changes in speech, gait, physical coordination, etc. With psychosis there are multiple symptoms of the psychotic process (e.g., he attacked her "because she is a CIA agent

- sent by the Pope to spy on him using the TV monitor”).
- With illness-based violence the assaultive acts are strongly associated with the progression of a disease (e.g., the patient showed no prior acts of violence or abuse in a 20-year marriage until other symptoms of the disease had appeared).
2. Poor recall of the event alone is *not* an indicator of illness-based violence (see Section IV, B on perpetrators for discussion of their minimization and denial).
 3. Knowing in these rare cases that the violence is caused by a disease will not alter the fact that the violence occurred, but it should influence:
 - the strategies the court chooses to use to increase the safety of the victim, the children, and the public.
 - strategies for rehabilitation of the perpetrator: specialized domestic violence counseling is contraindicated for illness-based violence. In such cases, the violence can be more effectively managed by appropriate external constraints and by appropriate medical or mental health intervention.

C. Domestic Violence Is Not “Out of Control” Behavior

1. **Often there is a claim that domestic violence is the result of “losing control.” Some perpetrators will batter only in particular ways, e.g., hit certain parts of the body, but not others; only use violence towards the victim even though they may be angry at others (their boss, other family members, etc.); break only the abused party’s possessions, not their own. Domestic violence perpetrators make choices even when they are supposedly “out of control.” Such decision making indicates they are actually in control of their behavior.⁶⁰**
2. Domestic violence involves a pattern of conduct that involves choice. Certain tactics require a great deal of planning to execute (e.g., stalking, interrogating family members, controlling and hiding money). Some batterers impose “rules” on the victims, carefully monitoring their compliance and punishing victims for any “infractions” of the imposed

⁶⁰ A. Ganley, *Court Mandated Counseling For Men Who Batter* (1981) (available from author); A. Ganley, “Impact of Domestic Violence on the Defendant and Victim in the Courtroom,” in Janet Carter, et al., *Domestic Violence: The Crucial role of the Judge in Criminal Court Cases: A National Model for Judicial Education* (Family Violence Prevention Fund, 1991); A. Ganley, “Feminist-Based Interventions for Battering Men,” in *Treating Men Who Batter: Theory, Practice, and Programs*, ed. P. Caesar and L. Hamberger (1989).

rules.⁶¹ Such attention to detail contradicts the notion that perpetrators “lost” control or that their abusive behavior is the result of poor impulse control.

3. Battering episodes are done intentionally to gain victim compliance. Some tactics are carried out occur when the perpetrator is not even emotionally charged.⁶² The perpetrators choose to use assaultive and coercive tactics to get what they want or to get that to which they feel entitled or to punish victims for an infraction. Interviews with perpetrators reveal that when using both overt and subtle forms of abuse, perpetrators know what they want from the victims.⁶³ Perpetrators use varying combinations of physical force and threats of harm and intimidation to instill fear in their victims. At other times, they use other manipulations through gifts, promises, and indulgences. Regardless of the tactic chosen, the perpetrator’s intent is to get something from the victims, to establish domination over them, or to punish them. Perpetrators selectively choose tactics that work to control their victims.⁶⁴

D. Domestic Violence Is Not Caused By.

There are various misconceptions about the causes of domestic violence which can often mislead courts in their response to domestic violence cases.

1. Domestic Violence Is Not Caused By Stress

- There are different sources of stress in our lives (e.g., stress from the job, stress from not having a job, marital and relationship conflicts, losses, discrimination, poverty). People respond to stress in a wide variety of ways (problem solving, substance abuse, eating, laughing, withdrawal, violence, etc.).⁶⁵ People choose ways to reduce stress according to what has worked for them in the past.
- People can be in distressed relationships and experience negative feelings about the behavior of the other without choosing to respond with violence or other criminal activities.
- It is important to hold people accountable for the choices they make regarding how to reduce their stress, especially when those choices involve violence or other illegal behaviors. Just as we would not excuse a robbery or a mugging of a stranger, simply because the perpetrator was “stressed,” we should not excuse the perpetrator of domestic violence because he or she was “stressed.”

⁶¹ K. Fischer, N. Vidmar and R. Ellis, *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 SMU L. REV. 2117, 2174 (1993).

⁶² N. Jacobson and J. Gottman, *When Men Batter Women: New Insights into Ending Abusive Relationships* (Simon and Schuster, 1998).

⁶³ A. Ganley, *Review of Intake Interviews With Batterers Seeking Treatment Program* (unpublished data, 1995; 1988-94).

⁶⁴ E. Pence and M. Paymar, *Educational Groups for Men Who Batter: The Duluth Model* (1993).

⁶⁵ A. Bandura, *Aggression: A Social Learning Analysis* (1973).

- Moreover, as already noted, many episodes of domestic violence occur when the perpetrator is not emotionally charged or stressed. When we remember that domestic violence is a pattern of behavior consisting of a variety of behaviors repeated over time, then citing specific stresses (divorce, loss of job, etc.) becomes less meaningful in explaining the entire pattern.

2. Domestic Violence Is Not Caused by Anger

- The role of anger in domestic violence is complex and cannot be simplistically reduced to cause and effect. Some battering episodes occur when the perpetrator is upset. Some abusive conduct is carried out calmly to gain the victim's compliance. Some displays of anger or rage by the perpetrator are merely tactics used to intimidate the victim and can be quickly altered when the abuser thinks it is necessary (e.g., upon arrival of police).
- Current research indicates that there is a wide variety of arousal or anger patterns among identified domestic violence perpetrators, as well as among those identified as not abusive.⁶⁶ These studies suggest that there may be different types of batterers. Abusers in one group actually reduced their heart rates during observed marital verbal conflicts, suggesting a calming preparation for fighting rather than an out of control or angry response. Such research challenges the notion that domestic violence is merely an anger problem and raises major questions about the safety and efficacy of anger management programs for batterers.
- Remembering that domestic violence is a pattern of behaviors rather than isolated, individual events help to explain the number of abusive episodes that occur when the perpetrator is not angry. Even if experiencing anger at the time, perpetrators still choose to respond to that anger by acting abusively. Ultimately, individuals are responsible for how they express anger or any other emotions, and for how they try to control adult victims through intimidation or force.

3. Domestic Violence Is Not Caused by Relationship Dynamics or by the Abused Party's Behavior

- Batterers develop their pattern of control in early dating relationships and maintain them across relationships. They tend to repeat those patterns in all their intimate partnerships, regardless of the significant differences in the personalities or conduct of their intimate partners or in the characteristics of those particular

⁶⁶ J. Gottman, N. Jacobson, R. Rushe, J. Wu Short, J. Babcock, J. La Taillade and J. Waltz, "The Relationship Between Heart Rate Reactivity, Emotionally Aggressive Behavior and General Violence in Batterers," *Journal of Family Psychology* 9, no. 2 (1995); N. Jacobson, J. Gottman, J. Waltz, R. Rushe, J. Babcock and A. Holtzworth-Munroe, "Affect, Verbal Content, and Psychophysiology in the Arguments of Couples With a Violent Husband," *Journal of Consulting and Clinical Psychology* 62 (1994): 982-88.

relationships themselves. These variables in partners and relationships support the position that, while domestic violence takes place within a relationship, it is not caused by the relationship.

- **Not victim’s personality or behavior:** Research indicates that there are no personality profiles for battered women.⁶⁷ Battered women are no different from non-battered women in terms of psychological profiles or demographics. Once again this challenges the myth that something about the woman causes the perpetrator’s violence. Furthermore, one research study indicates that no victim behavior could alter the perpetrator’s behavior.⁶⁸ IPV victims report being assaulted when they agreed or disagreed, when asleep, passed out or awake, when they fought back or complied. This also suggests that the victim’s behavior is not the determining factor in whether or not the perpetrator uses violence and abuse in the relationships.
- **Adolescent DV abusers:** Domestic violence in adolescent relationships further challenges the belief that the abuse is the result of the victim’s behavior. Oftentimes, the adolescent abusers only superficially know their victims, having dated them only a few days or weeks before beginning to abuse the victim. Such an abuser is often acting out an image of how to conduct an intimate relationship based on recommendations from peers, media, or models set by family members, etc.
- Both adult and adolescent batterers bring into their intimate relationships certain expectations of who is to be in charge and what mechanisms are acceptable for enforcing that dominance. It is those attitudes and beliefs, rather than the victims’ behavior, which determine whether or not persons are violent.
- Domestic violence does not end when the relationship ends—it may continue or escalate, and children can become the conduit for control and abuse. That is because batterers continue to use a pattern of assaultive and coercive conduct even if victims leave.
- Looking at the relationship or the abused party’s behavior as a causal explanation for domestic violence takes the focus off the perpetrator’s responsibility for the pattern of assaultive and coercive conduct, and unintentionally colludes with the perpetrator’s minimization, denial, externalization, and rationalization of the violent behavior.
- Blaming the abused party or locating the problem in the relationship provides the perpetrator with excuses and

⁶⁷ G.T. Hotaling and D.B. Sugarman, “An Analysis of Risk Markers in Husband to Wife Violence: The Current State of Knowledge,” *Violence and Victims* 1, no. 2, (1986): 101-124.

⁶⁸ N. Jacobson, J. Gottman, J. Waltz, R. Rushe, J. Babcock and A. Holtzworth-Munroe, “Affect, Verbal Content, and Psychophysiology in the Arguments of Couples With a Violent Husband,” *Journal of Consulting and Clinical Psychology* 62 (1994): 982-88.

justifications for the conduct. This inadvertently reinforces the perpetrator's use of abuse to control family members and thus contributes to the escalation of the pattern. The abused parties are placed at greater risk, and the court's duties to protect the public, to assess damages, to act in the best interests of children, and to hold perpetrators accountable are greatly compromised.

4. **Domestic Violence Is Not Caused by Alcohol or Most Drugs: Substance Abuse as Co-Occurring Issue**

- **Alcohol and drugs such as marijuana, depressants, anti-depressants, or anti-anxiety drugs do not cause non-violent persons to become violent.** Many people use or abuse those drugs without ever battering their partners. Alcohol and drugs are often used as the excuse for the battering, although research indicates that the pattern of assaultive behaviors which comprise domestic violence is not being caused by those particular chemicals.⁶⁹
- There is mixed evidence that other particular drugs (e.g., speed, cocaine, crack, meth) may chemically react within the brain to cause violent behavior in individuals who show no violent behavior, except under the influence of those drugs. Further, research is needed to explore the exact cause and effect relationship between these drugs and violence. The use of those substances are not associated with a pattern of assaultive behavior directed specifically at intimate partner.
- While research studies cited above have found high correlation between aggression and the consumption of various substances, there is no data clearly proving a cause and effect relationship. There are a wide variety of explanations for this high correlation.⁷⁰ Some say that the alcohol and/or drugs provide a disinhibiting effect, which gives the individual permission to do things they ordinarily would not do. Others point to the increased irritability or hostility which some individuals experience when using drugs and which may lead to violence. Others state that the high correlation may merely reflect the overlap of two widespread social problems: domestic violence and substance abuse.
- Regardless of the exact role of alcohol and drugs, it is important to maintain a focus on the domestic violence and not allow substance use or abuse to become the justification for the violence.

⁶⁹ B. Critchlow, "The Powers of John Barleycorn: Beliefs About the Effects of Alcohol on Social Behavior," *American Psychologist* 41 (1986): 751, 764.

⁷⁰ A. Ito, N. Miller and V. Pollock, "Alcohol and Aggression: A Meta-Analysis of the Modulating Effects of Inhibitory Cues, Triggering Events and Self Focused Attention," *Psychological Bulletin* 129 (1996): 60-82.

- **Substance Abuse as a Co-occurring Issue:** While substance abuse is not the cause of DV and the presence of alcohol or drugs does not alter the finding that domestic violence took place, it is relevant to certain court considerations and in dispositions of cases. The use and/or abuse of substances may increase the lethality of domestic violence and needs to be carefully considered when weighing safety issues concerning the abused party, the children, and the community.
 - **Court decisions in cases where the DV perpetrator also abuses alcohol and/or drugs must be directed at both the DV and the substance abuse.** For individuals who abuse alcohol and drugs, changing domestic violence behavior is impossible without also stopping the substance abuse.
 - It is not sufficient for the court to order the substance-abusing perpetrator of domestic violence into treatment either just for substance abuse or domestic violence. Intervention must be directed at both co-occurring problems, either through (a) concurrent treatments for domestic violence and substance abuse, or (b) residential substance abuse treatment with a mandatory follow-up program for domestic violence, or (c) an involuntary mental health commitment with rehabilitation directed at both the substance abuse and the domestic violence.

VII. The Who: The Domestic Violence Perpetrator

The following information about perpetrators cannot be used as a predictive profile to determine whether or not a party is a perpetrator of domestic violence.

Domestic violence perpetrators are a very heterogeneous population whose primary commonality is their conduct in that they use a pattern of assaultive and coercive behaviors against their intimate partners. Individuals may have some of the characteristics listed below and yet not act in abusive ways. Obviously, only by evaluating the facts of the case and hearing evidence of the behavioral pattern associated with domestic violence can the court determine if domestic violence is present and if so, who the perpetrator is. However, knowing some of the following issues related to domestic violence perpetrators can assist in fact-finding, decision-making, and determining how the court can intervene most effectively.

The diversity of the batterers is limited only by the diversity represented in the community. Sometimes the court system as a whole, or a particular court, deals with one group more than another (e.g., a particular socioeconomic class or a particular ethnic group). This may lead to some inaccurate generalizations about perpetrators (or victims) as courts think about perpetrators (or victims) only in terms of those cases that happen to be in that court. When the court process

is accessible to all, and domestic violence issues are identified, then the diversity of perpetrators becomes apparent.

A. DV Perpetrators from All Groups

DV perpetrators are a very heterogeneous population whose primary commonality is their use of a pattern of assaultive and coercive behaviors to control intimate partners.

1. All personality types and physical/cognitive abilities:

There is no specific personality diagnosis for domestic violence perpetrators. There is a great deal of discussion in the literature about the psychological profile of batterers, especially as it relates to assessing their dangerousness or choosing most appropriate treatment and /or predicting outcome in their relationships.⁷¹ There appear to be clusters of personality characteristics for different abusers just as there are clusters of personality characteristics for non-abusers.⁷² The literature suggests that there may be different types of batterers who use different controlling tactics to different degrees.^{73,74} Part of this variance may be explained by different types of batterers or by the fact that those studied are at different stages in their own histories as abusers.

2. All ages, educational levels, occupations, socioeconomic classes:

- Adolescent to elderly populations: DV perpetrators range from eleven years old to those in their eighties.
- No formal education, GEDs, high school diploma, college/university degrees, advanced degrees
- Unemployed, entrepreneurs, trade workers, professionals
- Low, middle, and high income. While certain courts may have a higher percentage of one income group of batterers over another

⁷¹ D. Saunders, "Men Who Batter: Multiple Profiles Requiring Multiple Responses," in *Legal Responses to Wife Assault*, ed. N.Z. Hilton (1993).

⁷² R. Tolman and L. Bennet, "A Review of Quantitative Research on Men Who Batter," *Journal of Interpersonal Violence* 5 (1990): 87-118; L.K. Hamberger and J. Hastings, "Recidivism Following Spouse Abuse Abatement Counseling: Treatment Program Implications," *Violence and Victims* 5, no. 3, (1990): 157-170; D. Saunders, "Men Who Batter: Multiple Profiles Requiring Multiple Responses," in *Legal Responses to Wife Assault*, ed. N.Z. Hilton (1993).

⁷³ E. Gondolf, "Who are Those Guys? Toward a Behavioral Typology of Batterers," *Violence and Victims* 3, no. 3 (1988): 187-203; N. Issac, D. Cockran, M. Brown and S. Adams, "Men Who Batter: Profile From a Restraining Order Database," *Archives of Family Medicine* 3 (1994): 50-54, , Danuta Rode, *Typology of Perpetrators of Domestic Violence*, Polish Psychological Bulletin, 41(1), 36-45, 2012. Sheila H. Chiffrieller, et. al., *Understanding a New Typology of Batterers: Implications for Treatment*, *Victims and Offenders*, 1(1), 79-97, 2006., Elizabeth Gilchrist, *Implicit Thinking About Implicit Theories in Intimate Partner Violence*, *Psychology, Crime, and Law* 15(2/3), 131-145, 2009.

Jana Jasinski, et. al., *Testing Johnson's Typology: Is There Gender Symmetry in Intimate Terrorism?* *Violence and Victims*, 29(1), 73-88, 2014.

⁷⁴ Albert R. Roberts, *Classification Typology and Assessment of Five Levels of Woman Battering*, *Journal of Family Violence*, 21, 521-527, 2006. Sarah Weldon & Elizabeth Gilchrist, *Implicit Theories in Intimate Partner Violence Offenders*, *Journal of Family Violence*, 27(8), 761-772, 2012.

income group, domestic violence perpetrators are found in all economic classes.

3. **All cultural groups: race, ethnicity, religious affiliation:** Prevalence studies of domestic violence among certain populations show some variance but usually these variances are ascribed to factors other than the DV (e.g., differential of systems response to people of color).
- Most often the question of whether there are cultural differences in the frequency or severity of domestic violence is raised regarding cases that involve persons of color or third-world immigrants. Certain racial, ethnic, and religious groups are sometimes viewed as being more violent than others are in the United States. Many cultures, including the white culture in the United States, give very mixed messages about domestic violence.
 - Sometimes there is a tendency to view other cultures as being more violent than one's own by focusing only on that other culture's more obvious cultural supports for domestic violence, without also being aware of that culture's prohibitions against it. Cultural illiteracy results in the failure to see that most cultures have a mixture of conflicting messages about domestic violence (e.g., "you never hit a woman" versus "sometimes women have to be disciplined,"). And there is tendency to avoid acknowledging just how violent one's own culture is and how one's own culture tolerates domestic violence.
 - Culture may influence the specific tactics available to an abuser to control the victim. For example, a Christian batterer may quote scripture out of context to justify the abusive conduct and to blame the victim. Or, a gay batterer may threaten to "out" the victim in order to gain further control by intimidation. Or, a batterer may threaten a victim about immigration status or deny a victim contact with ethnic traditions.
 - Culture may also influence the resources accessible (language and cultural sensitivity) to victims and their children. Within certain cultures there is high regard for community authorities, and in others there is fear of government authorities. These cultural differences will affect whether or not victims will access resources of community systems or agencies (courts, police, shelters, etc.).
 - Culture may influence the intervention strategies (e.g., treatment programs) used with DV perpetrators. There is a growing body of literature on culture-specific intervention approaches for

batterers.^{75,76 77,78,79}

- Just as the court would not find the values of a culture to be a mitigating circumstance in crimes such as robbery, speeding, or violence against a stranger, it should not treat domestic violence any less seriously based on assumptions regarding a particular culture's acceptability of domestic violence.

B. Gender: Majority of DV Perpetrators in Heterosexual Relationships Are Male, while the Abused Parties Are Female

1. National crime statistics show that approximately eighty-five percent (85%) of spouse abuse victims are women.⁸⁰
2. While women sometimes do use physical force against intimate partners, it is often self-defensive violence.⁸¹
3. Furthermore, studies indicate that while both men and women sometimes use some of the same behaviors, the effects of male violence are far more serious than female aggression as measured by the frequency and severity of injuries.⁸²
4. In gay, lesbian, bisexual and transgender relationships, the gender issues are different. (See Appendix D for discussion of DV for LGBTQ relationships.)
5. Regardless of the gender pattern, the courts must take domestic violence seriously and determine the primary aggressor, taking into consideration who is doing what to whom.

⁷⁵ E. Aldarondo and F. Mederos, *Men Who Batter: Intervention and Prevention Strategies in a Diverse Society* (Kingston, NJ: Civic Research Institute, 2002).

⁷⁶ R. V. Almedia and K. Dolan-Delvecchio, "Addressing Culture in Batterers Intervention: The Asian Indian Community as an Illustrative Example," *Violence Against Women* 5, no. 6 (1999), 654-681.

⁷⁷ R. Carrillo and J. Tello, eds., *Family Violence and Men of Color: Healing the Wounded Male Spirit* (New York: Springer, 1998).

⁷⁸ S. S. Doe, "Cultural Factors in Child Maltreatment and Domestic Violence in Korea," *Children and Youth Service Review* 22, no. 3/4 (2000): 231-236.

⁷⁹ O. J. Williams, "Treatment for African American Men Who Batter," *CURA Reporter* 25, no. 3 (1995): 6-10; O. J. Williams and L. R. Becker, "Partner Abuse Programs and Cultural Competence: The Results of a National Study," *Violence and Victims* 9, no. 3 (1994): 287-296; O. J. Williams, "Ethnically Sensitive Practice to Enhance Treatment Participation of African American Men Who Batter," *Families in Society*, 73 (1992): 588-95; O. J. Williams, "Group Work With African American Men Who Batter: Toward More Ethnically Sensitive Practice," *Journal of Comparative Family Studies* 25 (1994): 91-103.

⁸⁰ M. Durose, C. Wolf Harlow, P. Langan, M. Motivans, R. Rantala and E. Smith, *Family Violence Statistics, Including Statistics on Strangers and Acquaintances*, Bureau of Justice Statistics (U.S. Department of Justice, Office of Justice Programs, June 2005), <http://www.ojp.usdoj.gov/> (NCJ 207846).

⁸¹ D. Saunders, *supra* note 11, at 47-60.

⁸² R. A. Berk, S. F. Berk, D. R. Loseke and D. Rauma, "Mutual Combat and Other Family Violence Myths," in *The Dark Side of Families: Current Family Violence Research*, ed. D. Finkelhor, R. J. Gelles, G. T. Hotaling and M. A. Straus (1983); D. C. Berios and D. Grady, "Domestic Violence; Risk Factors and Outcome," *The Western Journal of Medicine* 155, no. 2 (August 1991).

C. **Some Domestic Violence Perpetrators Minimize, Deny, or Lie about Their Domestic Violence Conduct.**

1. **Minimization and denial as a self-con:** For some, minimization and denial are defense mechanisms against the psychological pain of recognizing they are abusing those they supposedly love, or those who are family to them. This kind of minimization and denial is a self-con rather than an attempt to lie to someone else or to even avoid the consequences. Because of the intimate nature of the relationship there is a great deal more of this self-conning in intimate partner violence than found in perpetrators of stranger violence. Examples of DV minimization or denial may include: “I only hit once,” “I never hit them,” “I just put them to the floor,” “The children never saw the abuse,” “We got into a little fight,” “I sort of lost it,” etc., even when there is clear data that the victim had been hospitalized for severe injuries due to his assault against her.
2. **Minimization, denial, lying as a tactic of control:** Other perpetrators do lie, even in court, to avoid the consequences of their behavior and to maintain control of their partner. Unlike the “self-conners” who are deluding themselves, those who are lying know they are not telling the truth and are conning others. Many times batterers are looking for others to collude with them in order to establish further control over the victim (e.g., “See, even the judge agrees with me that it was not a big deal or that you deserved what you got.”).
3. **Damaging to victim:** The DV perpetrators’ use of minimization and denial is particularly damaging to victims when they are able to enlist others (family, friends) and institutions (courts, child welfare, family law proceedings) in colluding with them.
4. **Court’s Role:** These DV perpetrator characteristics of minimization, denial, and lying go to the core of the court’s role of holding DV perpetrators responsible for both their abusive conduct and for changing to be a safe adult, partner, parent, and community member. People do not change when they do not think there is anything that needs to change. The judicial officer can cut through the DV perpetrator’s minimization, denial, or lying in the legal proceedings by addressing them as they come up and then by establishing clear, measurable goals for change with a review process for monitoring changes during the rehabilitation phase. This often has to be done in collaboration with the other community partners involved with the family.

D. Perpetrators of Domestic Violence Externalize Responsibility (Blame) for Their Behavior to Others, Particularly to Their Victim or to Factors Supposedly Outside of Their Control

1. **Perpetrators blame others for their abusive behavior** as in the following collection of offenders' statements about their abusive conduct while in court-ordered treatment: "She wouldn't listen to me," "She's an alcoholic," "I have PTSD (post-traumatic stress disorder)," "The cop didn't like me," "The Child Protective Services worker believes anything my kids say," and "I got a women's libber judge." These perpetrators failed to mention their own abusive conduct even though there was clear evidence that they had committed serious assaults against their partners.
2. **DV perpetrators justify their abusive conduct:** They go into great detail to "explain" or justify their abusive behavior even if they do acknowledge their conduct. They focus on the abused party's behavior that supposedly "caused" their violence. Batterers attempt to keep the court's focus off their abusive conduct by moving the focus to the victim.
3. **Court's role to cut through a perpetrator's minimization, denial, and externalization.** Focus on descriptions of the perpetrator's behavior (as well as considering the DV survivor's descriptions) during an incident and over several incidents, and not on the circumstances surrounding the behavior. Descriptions of how and when the perpetrators acted provide more relevant information for the court than why they acted, and allows for more productive fact-finding.

E. Domestic Violence Perpetrators Seek To Be in Control of Others, Especially the Abused Party

Those who batter are very controlling of situations and other people. Perpetrators often direct their behaviors in court primarily for the purpose of controlling the abused party, and secondarily to control the court process. They will use whichever tactics will work in a particular situation. (See behavioral definition of domestic violence for list of controlling behavior, Section I.)

F. The DV Perpetrators as Parents: Coercive Control also Extends to the Children^{83, 84}

- **Batterers tend to be highly controlling of children** (see Section VI on children). The abusers think of their children as merely an extension of themselves and are often unable to consider the needs of the children as separate from their needs or issues as adults. They ignore what is in best interests of the children in the development of parenting plans and visitation schedules, and often simply focus on maintaining their control over the children as “their parental right.” For example, they will make extraordinary demands on very young children to maintain their contact during periods of court-ordered supervised visits (demanding that young preschool child call every night to say good night to them).
- **DV perpetrators use the children to control the adult victim**; requiring the children to participate in the physical or verbal abuse of the other parent or requiring developmentally inappropriate behavior from children in order to undermine the parenting of the DV victim or to control the court process. For example, a parent who insists that young children in state care be given daily notes from the parent (which they are too young to read), then interrogates the children during supervised visits about their reading of the notes. Such a perpetrator is more focused on controlling the state care process than on meeting needs to children during this period.
- **DV perpetrators are often self-absorbed and view children solely in terms of meeting their own needs.** Some perpetrators ignore their children and focus solely on the adult intimate, while others also focus on the children but only as a means to control the victim or the court process. Domestic violence perpetrators are often unwilling or unable to consider the best interests of the children.⁸⁵

G. Domestic Violence Perpetrators: Excessive Jealousy and Possessiveness

- Some perpetrators are very possessive of the abused party’s time and attention. They often accuse the abused party of sexual infidelity, and of other supposed infidelities, such as spending too much time with the children, with the extended family, with work, with friends, etc. With or without social networks, perpetrators experience themselves as being very

⁸³ A. Ganley & S. Schechter, *Domestic Violence: A National Curriculum for Child Protective Services* (1996) (San Francisco, CA: all published by Futures Without Violence, A. Ganley & M Hobart, *Social Worker’s Practice Guide to Domestic Violence* (2010, R 2012), Children’s Administration, Washington State Department of Social and Health Services; A. Ganley, *Domestic Violence, Parenting Evaluations and Parenting Plans*, 2009./ King County Coalition Against Domestic Violence

⁸⁴ Marissa L. Beeble, Deborah Bybee, and Cris Sullivan., *Abusive Men’s use of Children to Control their Partners and Ex-partners*, *EUROPEAN PSYCHOLOGIST*, 12(1), 54-61, 2007.

⁸⁵ J. L. Edleson, L. F. Mbilinyi and S. Shetty, [*Parenting in the Context of Domestic Violence*](#) (Center for Families, Children, and the Courts Staff, 2003).

isolated and only able to talk to the abused party. Their jealousy is not based on the victims' behavior or intent, but instead is one more part of the perpetrators' pattern of coercive control. Abusers may even be jealous of the victim's attention and nurturing towards children, such as interfering with breastfeeding or disallowing comforting and holding of children.

- The excessive obsession and possessive of adult victim is an indicator of lethality (see section on Assessment of Lethality/Dangerousness, *infra*, pg. 23).

H. DV Perpetrators May Have Good Qualities

Some domestic violence perpetrators may be good providers, hard workers, good conversationalists, witty, charming, or intelligent. Sometimes the court, evaluators, and the abused party are misled by the appearance of positive qualities and assume then that the violence did not really happen since only individuals who are “monsters” could commit such acts, or that the violence can be ignored because this “good” person will soon stop. The reality is that even seemingly normal and nice people may batter and may be very dangerous. Battering stops only when perpetrators are held accountable for both their abuse and for making the changes necessary to stop the violence. Battering stops when perpetrators choose to stop.

VIII. The Who: The Abused Party

A. Victims of Domestic Violence in All Groups: Age, Racial⁸⁶, Socioeconomic, Educational, Occupational, Religious, and Personality Groups

Victims of domestic violence are a very heterogeneous population whose primary commonality is that they are being abused by someone with whom they are or have been intimate. They do not fit into any specific “personality profiles.” Being the abused party is the result of behaviors done by another rather than the result of personal characteristics. Consequently, just as with victims of other trauma (car accidents, earthquakes, etc.), there is no particular type of person who is battered.

⁸⁶ For current summary research (2014) see The Facts on Violence Against American Indian/Alaskan Native Women, The Facts on Immigrant Women and Domestic Violence, available from www.futureswithoutviolence.org/

B. Abused Parties May or May Not Have Been Abused as Children, or in Previous Relationships

There is **no** evidence that previous victimization, either as adults or as children, results in women seeking out or causing current victimization.⁸⁷

While some DV survivors may end up in another abusive relationship, the majority do not. Courts often do not see those DV survivors who move on and eventually partner with non-abusers or are not partnered at all. The courts may see a higher percentage of those DV survivors who have been in more than one abusive relationship. For those who experience another abusive relationship, the explanations vary. Domestic violence is a widespread problem and if a DV survivor gets into a new relationship there are high odds that it will be with another abuser. DV perpetrators are not always visible at the start of a relationship. Often DV perpetrators will seek out victimized partners and use that information to gain and maintain a controlling relationship (e.g., “I will protect you from your abuser”). Even for those survivors who know about the abuser’s past abusive relationships, they may have been conned by the abuser that “I am different now,” “You are not like the last one,” and/or “I would never harm you.” Even if the survivor is in another abusive relationship, that current abuser is responsible for the abusive conduct, not the DV victim.

C. Abused Parties’ Isolation Due to Perpetrator’s Control Over DV Victim’s Activities and Contacts with Friends, Children, Family, etc.

1. Some of the abused party’s behaviors within the court process can be understood in light of the degree of control the perpetrator has managed to enforce by isolating the victim, either physically or psychologically.
2. **Incremental isolation of the abused party:** Some perpetrators increase their psychological control of the abused party to the point that they literally determine reality for the abused party. At first perpetrators may cut the abused parties off from other supportive relationships by claims of “loving them so much and wanting to be with them all the time.” In response to this “love,” the abused party initially spends ever-increasing amounts of time with the perpetrator. These tactics are replaced with more overt controls, such as verbal and physical assaults to separate the abused party from family or friends. Without outside contact, it becomes more and more difficult for the abused party to avoid the psychological control of the perpetrator. Even when victims maintain contact with family, friends, or coworkers, the batterer continues to undermine the support or influence of such relationships by continually undercutting and criticizing those relations (e.g., “Your friend is a dyke,” “Your family just wants to

⁸⁷ L. Walker, *The Battered Women’s Syndrome* (1984); M.A. Dutton, *Empowering and Healing the Battered Woman* (New York: Springer Publishing Company, 1992).

interfere,” “Those people are trying to break up this family,”). Some abused parties come to believe the perpetrator when they are told that if they left the perpetrator, they would not be able to survive alone. Others resist such distortions, but only at great emotional and sometimes physical cost.

3. **Batterers isolate and control** by controlling the victim’s access to accurate information and by providing disinformation. Batterers continually give misinformation to the victims (e.g., “You need my signature to file for citizenship”) and intervene to keep victims from getting accurate information (e.g., child welfare, domestic violence advocates, health care providers, legal advocates).
4. **DV perpetrators control tactics** (intermittent threats of physical harm, isolation from support, and periodic indulgences) are similar to brainwashing tactics used with prisoners of war and hostages. Their impact on DV victims are sometimes even more insidious because they are being carried out by an intimate partner rather than by an identified “enemy.” The more successful a perpetrator has been in isolating the abused party, the more the DV perpetrator controls what the abused party believes. Breaking the isolation of the abused party requires intervening in the control that the perpetrator has imposed on the abused party.

D. Sometimes Abused Parties Minimize and Deny the Abuse to Protect their Children and Themselves

1. **The majority of victims do not minimize or deny the abuse.** Battered victims talk directly about the domestic violence, but the community too often does not want to listen to or acknowledge what the victims are saying. Rather than confront its own barriers to accepting the truth from victims, the community ignores what they are hearing and focuses in a pejorative way on the minority of battered women who minimize the abuse in order to survive.
2. **Protective strategies: some battered women deny or even lie about the abuse.** Understanding this can assist the community in designing appropriate supports for DV victims regardless of whether they self-disclose.
 - **Victims fear the perpetrators’ escalating abuse and control.** Abused parties minimize, deny, or lie about the abuse against themselves or their children because of the escalating retaliation and control by the perpetrator. Whenever domestic violence goes public (in criminal, family law, or child welfare proceedings), batterers dramatically increase their coercive control over victims by any means necessary. The perpetrator may increase the violence or threats of violence, threats to take the children, or they may

bargain with the abused party to change the story with promises that if they do, the abuse will stop.

- **Victims minimize and deny the abuse due to community barriers.** Sometimes the abused party minimizes or does not reveal the abuse because they have been told by law enforcement, lawyers, counselors, their ministers, child welfare, etc., that nothing can be done, and that only the abused party can stop the violence by changing their behavior that makes the perpetrator angry or by leaving. Or systems advise adult victims to avoid raising issues regarding domestic violence because it will be used against them (e.g., family law attorneys who advise clients not to raise domestic violence concerns or allegations of child abuse in dissolution proceedings) or because raising DV issues will be seen as by child welfare or opposing counsel in family law only as a manipulation to “get a leg up” in their case. In such cases, the abused party has learned that the systems with the power to intervene will not act. Thus, they are forced to try to work out their own deals with or around the abuser in hopes of stopping the abuse.
- **Sometimes, the abused party’s minimization and denial is actually a survival mechanism.** For example, the abused party may block out the physical pain of assault in order to be more able to protect the children from the violence. When asked by others if they were injured or if their spouse hurt them, an abused party may honestly say “no” because they have been so successful in blocking out even the physical pain. Other abused parties may tell only parts of the violent episode in court because openly acknowledging what happened is too overwhelming. Or, they may not think their abuse is really domestic violence because it did not result in hospitalization or life-threatening injuries. This minimization or denial about parts of the abuse becomes part of surviving domestic violence and of being able to keep moving.
- Oftentimes, the community focuses on the victim as still “loving” the perpetrator without considering the very real community barriers that prompt minimizing by the abused parties.

3. **Victims’ minimization and denial can be reduced by increasing safety and support.** In court proceedings, the abused parties’ minimization and denial of domestic violence may be decreased when they are encouraged to behaviorally describe what happened at specific dates and times, rather than asking them to evaluate whether or not the perpetrators’ behavior was abusive. Use questions such as “When the perpetrator got angry, what did he do?” or “What did she do next?” etc., rather than “did he hurt or beat you?” This will often provide the court with the information (e.g., what, how, when, who) necessary to ascertain the facts. Having safe options for DV victims and their children also decreases minimization.

E. What May Appear at First To Be “Crazy” Behavior May in Fact Be a Normal Reaction to a “Crazy” Situation

- 1. The primary reason given by victims of domestic violence for staying with the perpetrator is the realistic fear of the escalating violence.** Some want to return to the perpetrator in spite of severe violence, or ask for divorce only after years of abuse. Victims may know from past experience that the pattern of assaultive and coercive behavior gets worse whenever they attempt to get help. Research shows that domestic violence tends to escalate when the victim leaves the relationship. National crime statistics show that in almost seventy-five percent (75%) of reported spousal assaults, the partners were divorced or separated.⁸⁸ Separated women are 3 times more likely than divorced women and 25 times more likely than married women still living with their husbands to be victimized by a batterer.⁸⁹ More recent research confirms that the most dangerous time for the battered woman is at separation.⁹⁰ Perpetrators may repeatedly tell the abused parties that they will never be free of them. The abused party believes this due to past experience. When they did attempt to leave, the perpetrator may have tracked them down or abducted the children in the attempt to get the victim back. Experience of survivors in family court proceedings illustrates how separation from the DV perpetrator often results in severe consequences to the DV victim and their children, both financially and in terms of parenting.
- 2. DV vs Homelessness:** Many DV victims are forced to choose between DV in the home and homelessness⁹¹ because of economic circumstances, the abuser’s financial control, or exploitation. Most nurturing parents will go to great lengths to avoid making their children homeless, even if it means coping with abuse.
- 3. Perpetrators do not let abused parties leave their control. It is a myth that abused parties could easily leave the relationship if they wanted to, and that the perpetrators would let the abused party leave without using pattern of assaultive and coercive behavior against them.** It is a myth that abused parties stay with perpetrators because they like to be abused. Even in cases where the abused party was abused as a child, she/he does not seek out violence and does not want to be battered.

⁸⁸ United States Department of Justice (1983).

⁸⁹ Ronet Bachamn and Linda E. Saltzman, *Violence Against Women: Estimates from the Redesigned Survey*, Bureau of Justice Statistics, 1995.

⁹⁰ *Violence Against Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends, and Girlfriends* (United States Department of Justice, March 1997).

⁹¹ *When There is Nowhere to Go: Domestic Violence and the Need for Better housing Options for Survivors and their Children*, Tampa, FL: ChildNet/SafeNet Collaborative. Equal Rights Center, 2008
No-vacancy: Housing Discrimination Against Survivors of Domestic Violence in the District of Columbia.

F. Domestic Violence Victims in Court Proceedings Have the Same Goal as the Court: To Stop the Violence

1. Victims use various formal and informal strategies to resist or stop the abuse

Contrary to the myth that all victims are passive and submissive, they use many different formal and informal strategies to cope with, and to resist, the abuse and to protect their children.

2. Majority of Domestic Violence Victims Follow Through with Court Proceedings

Contrary to the myth of the reluctant witness or petitioner, the majority of domestic violence victims follow through with the court proceedings when appropriate supports and resources are made available. When courts have high percentages of domestic violence victims not following through, the courts can remedy this by identifying and correcting the court barriers to follow through, rather than blaming the victims.

Reasons some abused parties may fail to show up at later hearings:

- Police have failed to enforce the temporary order; the abused party feels that a permanent order will be useless in stopping the violence.
- It is the 10th or 15th continuance the DV abuser has been granted and they fear losing their employment if they take any more time off.
- Perpetrator or others tell them that the orders will be dropped if they do not show up for the hearing. Thinking that the violence has stopped and that the order is no longer necessary, the abused party may not appear at the next hearing.
- The perpetrators have intercepted the notification of hearings intended for the abused party, or threatened the victim by an escalation of violence.
- Violence has temporarily stopped. Abused parties may be unaware that the perpetrator has merely switched tactics of control. Rather than use violence, or the threat of violence, the perpetrators are temporarily using good behavior in order to manipulate their way out of the court proceedings.

3. Victims looking for immediate stop to abuse

While the court may be able to stop some DV using the legal remedies available over a period of time (e.g., no-contact orders, bail, hearings, convictions, sentence, probation, family law proceedings), the abused party may be attempting to stop the violence immediately. Using a variety of strategies, such as agreeing with the perpetrator's denial and minimization of the violence in public or with child welfare, accepting promises that it will never happen again, requesting that the court terminate the protective order, not showing up for court hearings, not requesting a DV finding in a family law case, saying that she "still loves" him, etc., the victim may be able to stop the immediate violence temporarily.

4. Legal systems' lack of follow-through on stopping the pattern of assaultive and coercive behaviors:

Sometimes the victims will turn to the court system for help, and will follow through on the court process, only to see that the court does not stop the violence. Examples:

- Abused party may obtain a protective order, and then see that the existence of that order does not deter the perpetrator. This is particularly true in jurisdictions where perpetrators are rarely arrested for violations of court orders. The abused party may seek a continuation of a restraining order, or extension of the protection to children or other family members, only to be told there has not been a recent assault to justify extension of the order for a longer period of time.
- Or, because the perpetrator is police or military, the court is unwilling to grant the new protection order which may have consequences to employment.
- Or the family law proceedings force survivors into parenting plans that not only do not protect them but also endanger the children.
- In such cases, the abused party sometimes re-engages in prior survival strategies of complying with the perpetrator during the court process because it often appears that the perpetrator is more in control of the process than the court is.

5. Trauma-induced ambivalence

Sometimes victim behavior, such as being a reluctant witness or an ambivalent petitioner, is consistent with both being traumatized by violence and being a person traumatized by an intimate. People who have experienced trauma, especially multiple times, may appear inconsistent and being overwhelmed. Sometimes the way that the abused party is

acting is in direct response to what the perpetrator did immediately preceding the court hearing, or has been doing throughout the relationship. The victim's safety plan and protective strategies are merely different than the ones the court may have.

6. Victim behaviors as survival behaviors

Rather than viewing the domestic violence victim's behavior as either masochistic, or crazy, or "in denial," or as indicating that there really was no violence, it should be viewed as a normal response to the DV abuser's pattern of assaultive and coercive behaviors and as contributing to the adult victim's survival and the survival of the children.

G. DV Survivors/Victims as Parents

The research^{92,93,94,95} on DV survivors as parents indicates that DV survivors parent competently, often under extreme circumstances. On measures of parenting practices: nurturing, support, and setting appropriate limits for children, DV survivors do well. The research on the negative impact of domestic violence on children indicates that negative consequences come from the DV perpetrator's parenting practices and or the stress on the children from living with the domestic violence abusive tactics. All the resiliency research indicates that children's resiliency is fostered by maintaining a relationship with the non-offending parent. As more court systems look to change how the systems support DV victims as parents and hold DV perpetrator (and not the victim) accountable for changing to become a safe and responsible parent⁹⁶, the systems expect to reach better outcomes for children exposed to domestic violence.^{97,98,99}

⁹² Simon Lapierre, *More Responsibilities, Less Control: Understanding the Challenges and Difficulties Involved in Mothering in the Context of Domestic Violence*, British Journal of Social Work, 40(5), 1434-1451, 2010.

⁹³ Kantahyane W. Murray, et. al., *The Impact of Intimate Partner Violence on Mothers' Parenting Practices for Urban, Low-Income Adolescents*, J. FAM. VIOL., 27, 573-583, 2012.

⁹⁴ Lynette M. Renner & Shamra Boel-Studt, *The relation between intimate partner violence, parenting stress, and child behavior problems*, Journal of Family Violence, 28, 201-212, 2013.

⁹⁵ Cris M. Sullivan, et. al., *Beyond Searching for Deficits: Evidence That Physically and Emotionally Abused Women are Nurturing Parents*, Journal of Emotional Abuse, 2(1), 51-71, 2000, accessible at <http://vaw.msu.edu/wp-content/uploads/2013/10/Beyond-search-for-deficits.pdf>

⁹⁶ A. Ganley & M Hobart, *Social Worker's Practice Guide to Domestic Violence* (2010, R 2012), Children's Administration, Washington State Department of Social and Health Services

⁹⁷ Echo A. Rivera, et. al., *Secondary Victimization of Abused Mothers by Family Court Mediators*, Feminist Criminology, 7(3), 234-252, 2012. Echo A. Rivera, et. al., *Abused Mothers' Safety Concerns and Court Mediators' Custody Recommendations*, Journal of Family Violence, 27 (4): 321-32, 2012.

⁹⁸ April Zeoli, et. al., *Post-Separation Abuse of Women and their Children: Boundary-Setting and Family Court Utilization among Victimized Mothers*, Journal of Family Violence, 28 (6): 547-60, 2013.

⁹⁹ Susan P. Johnson & Cris M. Sullivan, *How Child Protection Workers Support or Further Victimize Battered Mothers*, Affilia, Journal of Women and Social Work, 23(3), 242-258, 2008.

H. In Summary: Barriers to Victims Protecting Themselves and Their Children

Sometimes uninformed helpers or courts assume that DV victims could just leave, get a protection order, file for a parenting plan, or do something to stop the violence safely if they just wanted to act. The reality is that there are multiple external barriers that victims have to overcome or work around in order to carry out a protective strategy. Understanding these barriers allows communities to join with victims to solve problems, overcome the barriers, and plan for safety, rather than continue to blame the victim.

The barriers to victims taking steps to protect themselves and their children (leaving the relationship, getting a protection order, testifying in court, following a parenting plan, being safe with their children, etc.) are multiple and vary for each abused person. The barriers include:

1. Perpetrator's escalating violence and control

Perpetrators escalate their physical and sexual assaults against victim, children, or others, as well as escalate their intimidation by stalking, attacks against property, threats to take children, false reports to Child Protective Services (CPS) or Immigration and Customs Enforcement, etc.

2. Economic and resource barriers

Economic barriers include lack of safe housing, income, child care, health insurance, transportation, education, and funds for lawyers, etc. The batterers often control the victims' access to resources either because they provide them (e.g., the health insurance) or because they consume the resources (e.g., gasoline for transportation) needed to support the victim and the children.

3. Community barriers

Community barriers include: lack of victim services, childcare, a coordinated legal response, etc.; low-cost or pro bono family attorneys; pressures to maintain relationship from family/religious/cultural values; and victim blaming attitudes (e.g., being told by perpetrator, counselors, courts, child welfare, ministers, police, family, friends, etc. that the abuse is the victim's fault and that victims are responsible for making all the changes needed to stop the abuse).

4. Individual barriers

Individual barriers include ambivalence about relationship; being immobilized by psychological and physical trauma (some victims of trauma may not be able to organize everything required to separate and to establish a new life for themselves and their children, particularly during the period immediately following the trauma and while the perpetrator

continues to escalate the abusive tactics).

Too often helpers focus solely on wanting victims to overcome the individual barriers and ignore the reality of multiple barriers posed by the batterer and the community.

IX. The Who: The Children as Victims of Domestic Violence¹⁰⁰

Children do not merely witness domestic violence, but also are at risk of being victims of physical or sexual abuse by domestic violence perpetrators, or of being victimized by the perpetrator's use of children to control the adult victim.¹⁰¹ The early literature in the field noted that male children of battered spouses may be more at risk to grow up to be abusers, but little attention was initially given to the immediate effects on children of the perpetrator's abusive conduct. In the 1990s, there was more focus given to these more immediate effects. Studies show that we can no longer presume that children free of physical injuries are not (nor will be) damaged psychologically, developmentally, and emotionally by the domestic violence perpetrator's conduct.

However, studies also show that we cannot presume that all children in homes where there is intimate partner violence experience statute-defined child maltreatment or neglect and should be removed from those homes.^{102 103} That overreaction by child welfare puts children in danger of losing the one parent (the adult victim) who is supportive of them, and it puts them at risk of being traumatized by being separated from their home and community.¹⁰⁴ Current research

¹⁰⁰ There is an ever-growing body of research on relationships between intimate partner violence and children. This literature focuses on the need for programs to respond to the safety of the abused adult as the most effective strategy to improve the safety of the children. The following resources have been designed specifically for the courts working collaboratively with community agencies: *Effective Interventions in Domestic Violence and Child Maltreatment Cases: Guidelines For Policy and Practice* (recommendations from the National Council of Juvenile and Family Court Judges Family Violence Department, 1999); *Family Violence: Emerging Programs For Battered Mothers and Their Children* (State Justice Institute, The David and Lucile Packard Foundation, 1998); N. Lemon and P. Jaffee, *Domestic Violence and Children: Resolving Custody and Visitation Disputes, A National Judicial Curriculum* (San Francisco, CA: The Family Violence Prevention Fund, 1995), www.endabuse.org - not a valid URL, possibly <https://www.ncjrs.gov/pdffiles1/Digitization/169016NCJRS.pdf>; L. Goodmark, JD, "Domestic Violence and Child Maltreatment in Immigrant Communities," *ABA Child Law Practice: Helping Lawyers Help Kids* 22, no. 4 (2003); R. Fitzgerald, C. Bailey and L. J. Litton, *Using Reasonable Efforts Determinations to Improve Systems and Case Practice in Cases Involving Family Violence and Child Maltreatment*, 54 *Juvenile and Family Court Journal* 97 (2003).

¹⁰¹ A. Ganley & M Hobart, **Social Worker's Practice Guide to Domestic Violence** (2010, R 2012), Children's Administration, Washington State Department of Social and Health Services, , A. L. Ganley and S. Schechter, *Domestic Violence: A National Curriculum for Child Protective Services* (San Francisco, CA: The Family Violence Prevention Fund, 1996).

¹⁰² Jeffrey L. Edleson, "Should Childhood Exposure to Adult Domestic Violence Be Defined as Child Maltreatment Under The Law?" in *Protecting Children from Domestic Violence: Strategies for Community Intervention*, ed. P. G. Jaffe, L. L. Baker and A. J. Cunningham (New York, NY: Guilford Press, 2004): 8-29.

¹⁰³ Lois A. Weithorn, J.D., Ph.D., *Protecting Children from Exposure to Domestic Violence: The Use and Abuse of Child Maltreatment*, *HASTINGS L.J.* 53 1 (November 2001): 53-60.

¹⁰⁴ Evan Stark, *The Battered Mother in the Child Protective Service Caseload: Developing an Appropriate Response*, 23 *WOMEN'S RTS. L. REP.* 2 (Rutgers Law School, 2002): 107-133.

indicates that domestic violence impacts children in a wide variety of ways.¹⁰⁵ The nature and extent of the damage and risk of danger to children will vary depending primarily on six factors:

1. The specific abusive control tactics used by the perpetrator.
2. The impact of the intimate partner abuse on the adult victim.
3. The impact of the intimate partner abuse on the child.
4. A lethality assessment of the domestic violence.
5. Presence of co-occurring issues (substance abuse, mental health issues, poverty).
6. The specific protective factors in the case: the adult victim's, the child's, the perpetrators, and the community's.

The effects of the perpetrator's conduct may be mitigated by the social supports to the child provided by the adult victim, family, other significant adults, social groups, and communities.

Given the widespread prevalence of domestic violence, all court cases involving children (e.g., family law, juvenile, dependency courts, as well as criminal courts) should be routinely screened for domestic violence (see section below on routine screening). If domestic violence is identified, then the routine screening should also identify the adult victim and domestic violence perpetrator. Given that there is so much variance in domestic violence impact on children, any time domestic violence is identified in cases involving children, a comprehensive assessment of the specific risk posed to children by the intimate partner violence should be conducted and made available to the court. As of 2009, this is now the policy of Washington Children's Administration for its cases. (See section below for overview of children's domestic violence risk assessment.)

In responding to either criminal or civil domestic violence cases where children are involved, the court should consider the following information in its deliberations. (For further discussion regarding how these findings can assist the court in fact-finding and decision-making, see Chapter 11.)

A. Overlap between Domestic Violence and Child Maltreatment

Researchers estimate that the extent of overlap between domestic violence and child physical or sexual abuse ranges from 30 to 50 percent.¹⁰⁶ Girls are five to six times more likely to be sexually abused by battering fathers than non-battering

¹⁰⁵ J. L. Edleson, L. F. Mbilinyi and Sudha Shetty, *supra* note 45.

¹⁰⁶ Hamby, S, Finkelhor, D., Turner, H. & Ormrod, R. (2011), *Children's Exposure to Intimate Partner Violence and Other Family Violence*. Juvenile Justice Bulletin- NCJ 232272, Washington DC., Hamby, S, Finkelhor, D., Turner, H. & Ormrod, R (2010) *The overlap of witnessing partner violence with child maltreatment and other victimizations in a nationally representative sample of youth*, **Child Abuse and Neglect**, 34, 734-741. P. Jaffe, D. Wolfe and S. Wilson, *Children of Battered Women* (1990). See also M. A. Straus and R. J. Gelles, *Physical Violence in American Families* (1990) (surveying over 6,000 American families, researchers found that 50 percent of men who frequently assaulted their wives also frequently abused their children); M. Roy, ed., *Battered Women: A Psychological Study of Domestic Violence* (1977) (Pescott and Letko report 43 percent of women in a shelter had children who also were victims of abuse by the domestic violence perpetrator. Roy reports 45 percent of the children of battered women are physically abused).

fathers.¹⁰⁷ Some shelters report that the first reason many battered women give for fleeing the home is that the DV perpetrator was also attacking the children.¹⁰⁸ Adult victims report multiple concerns about the impact of spousal abuse directly on the children.¹⁰⁹ Furthermore, the more severe and fatal cases of child abuse overlap with domestic violence.¹¹⁰

B. Perpetrators May Physically or Psychologically Traumatize Children in the Process of Battering Their Adult Intimates

While the children may not be the specific target of the domestic violence perpetrator, domestic violence perpetrators may traumatize children in the process of battering their adult intimate partners in the following ways:

1. **DV perpetrator intentionally injures** (or threatens violence against) the children, pets, or the children's loved objects, as a way of threatening and controlling the abused parent.
 - For example, the child is used as a physical weapon against the victim, is thrown at the victim, or is abused as a way to coerce the victim to do certain things; or
 - The children's pets or loved objects are damaged, or are threatened with damage (e.g., attacks against pets or loved objects are particularly traumatic for young children who often do not make a distinction between their own bodies and the pet or loved object). An attack against the pet is experienced by the child as an attack against the child.

¹⁰⁷ L. Bowker, M. Arbetel and J. McFerron, "On the Relationship Between Wife Beating and Child Abuse," in *Feminist Perspectives on Wife Abuse*, ed. K. Yllo and M. Bograd (1988).

¹⁰⁸ *Resident Survey* (Seattle, WA: New Beginnings Shelter, 1990).

¹⁰⁹ N. Z. Hilton, "Battered Women's Concerns About Their Children Witnessing Wife Assault," *Journal of Interpersonal Violence* 7 (1992): 77-86.

¹¹⁰ In a 1993 study, the Oregon Department of Human Resources (*Task Force Report on Child Fatalities and Critical Injuries Due to Abuse and Neglect*, 1993) reported that domestic violence was present in 41 percent of the families experiencing critical injuries or deaths due to child abuse and neglect. Of the 67 child fatalities in Massachusetts in 1992, twenty-nine (43 percent) were in families where the mother was identified as a victim of domestic violence. (Felix and McCarthy). The Massachusetts Department of Social Services notes that, "in 20 of the cases, the report of the domestic violence was noted in the case record with no further explanation or intervention." Source of reports: S. Schechter and J. Edleson, *In The Best Interests of Women and Children: A Call For Collaboration Between Child Welfare and Domestic Violence Constituencies* (briefing paper prepared for the Conference Domestic Violence and Child Welfare: Integrating Policy and Practice for Families, 1994, available through the National Council of Family and Juvenile Court Judges, Reno, NV).

2. DV perpetrator unintentionally physically injures the children during the perpetrator’s attack on the adult victim.

- When the child gets caught in the fray (e.g., an infant injured when mother is thrown while holding the infant); or
- When the child attempts to intervene (e.g., a small child is injured when trying to stop the perpetrator’s attack against the victim).⁴³

3. The perpetrator uses the children to coercively control the adult victim:

- Isolating the child along with the abused parent (e.g., not allowing the child to enter peer activities or friendships);
- Engaging the children in the abuse of the other parent (e.g., making the child participate in the physical or emotional assaults against the adult);
- Forcing children to watch the abuse against the victim;
- Interrogating the children about mother’s activities;
- Forcing the victim to always be accompanied by a child or children in order to set up surveillance of the mother’s activities;
- Taking the child away after each violent episode to ensure that the abused party will not flee the abuser, etc.; and
- Asserting that the children’s “bad” behavior is the reason for the assault on the intimate partner.

4. Assaulting the abused parent in front of the children.

- In spite of what parents say, children have often either directly witnessed the acts of physical and psychological assaults, or have indirectly witnessed them by overhearing the episodes or by seeing the aftermath of the injuries and property damage.
- Research reveals that children who “merely” witness domestic violence may be affected in the same way as children who are physically and sexually abused.¹¹¹
- Men who witness their father’s abuse their mothers were three times more likely to abuse their wives than men who had not.¹¹²

¹¹¹ G. Goodman and M. Rosenberg, “The Child Witness to Family Violence: Clinical and Legal Considerations,” in *Domestic Violence on Trial: Psychological and Legal Dimensions of Family Violence*, ed. D. Sonkin (1986), Russell, D., Springer, K., & Greenfield, E. (2010) *Witnessing domestic violence in childhood as an independent risk factor for depressive symptoms in young adulthood*, **Child Abuse and Neglect** 34(6), 448-453.

¹¹² Howard Davidson, [*The Impact of Domestic Violence on Children*](#), AMERICAN BAR ASSOCIATION CENTER ON CHILDREN AND THE LAW, 1994, available at

5. **Even after separation, batterers use the children as pawns to control the abused party.**

When the abused party and perpetrator are separated, the perpetrator's main vehicle for continued contact and control of the adult victim is through the children (whether they are the legal parents of the children or not). Consequently batterers often seek out legal control of the children in order to maintain control over the adult victims. And courts are often reluctant to set limits on parental access to children by the domestic violence perpetrator. When adult victims have separated from batterers without the batterers being held accountable for their abusive tactics, the batterers focus their control of the adult victims through the children. In these cases, the intent is to continue the abuse of the adult victim, with little regard for the damage to the children resulting from this controlling behavior.¹¹³ Consequently, separation may increase, rather than decrease, the children's exposure to abusive tactics. Examples include:

- **Using lengthy custody battles as a way to continue control over the other parent** (repeated challenges to parenting plans, visitation schedules, court-ordered parenting evaluations, domestic violence evaluations, etc.).
- **Making or threatening false reports against the adult victim to Child Protective Services**, ordering children not to tell the adult victim what is happening during visitation, etc.
- **Holding children hostage or abducting** the children in an effort to punish the abused party or to gain the abused party's compliance.
- Some **visitation periods become nightmares** for the children because of physical abuse by the perpetrator, or because of the psychological abuse that results when the abuser interrogates the children about the activities of the victim, repeatedly disparages the victim, etc. During visitation, some perpetrators will go into tirades about the abused party's behaviors, or will repeatedly break into sobbing because the abused party is "causing" the separation or exposing children to their abusive conduct toward new partners.
- **Insisting that the children take care of all perpetrator's emotional needs**, or expecting unlimited visitation or access by telephone/email/school visits/etc. in order to avoid being alone (e.g., one perpetrator persuaded the court to order each of his two adolescent sons to stay alternate nights with him after the separation, ignoring the children's needs for time with each other or with their friends).

¹¹³ E. A. Walker and G. Edwall, "Domestic Violence and Determination of Visitation and Custody in Divorce," in *Domestic Violence on Trial: Psychological and Legal Dimensions of Family Violence*, ed. D. Sonkin (1986); J. L. Edleson, "The Overlap Between Child Maltreatment and Woman Battering," *Violence Against Women* 5 (February 1999): 134-54.

- **Actively undermining the parenting of the adult victim by setting up expectations of the child to directly contradict the parenting of the adult victim** (e.g., bedtimes, school work schedules, social activities, excessive indulgences). Sometimes this takes the form of intervening in their relationships with step-siblings or other family members.

C. Effects of Domestic Violence on Children

1. Consequences of the perpetrator’s abuse vary according to the age and developmental stage of the child.¹¹⁴

a) Infants

During this stage, one crucial developmental task for the very young child is the development of emotional attachments to others. Being able to make attachments to others provides a foundation for the healthy development of the individual. This attachment and appropriate stimulation increases infant brain development. Domestic violence not only interrupts the infant’s attachment to the abuser, but also can interrupt the child’s attachment to the abused party. The perpetrator often interferes with the abused party’s care of the young child. The violence may not permit the bonding between parent and the child. This results in the child having difficulty forming future relationships and can block the development of other cognitive, emotional, and relational skills and abilities.

b) Toddlers 2 to 4 years old

At these ages, toddlers are developing a separate sense of self and agency (“No” and “Me do.”). The perpetrator’s abuse of the adult victim may interfere with the toddler’s separation and contribute to anxious attachment to either parent or interrupt learning to do tasks for oneself.

c) Children 5 to 10 years old

The primary tasks of children at this age are problem-solving development and cognitive development. The perpetrator’s violence and pattern of control can impede or derail both of these tasks. For example, a child may have difficulty learning basic concepts in school because of her anxieties about what is happening at home.

d) Teenagers

The central developmental task of teenagers is becoming autonomous and developing relationships. These partly occur as teens separate from their relationships with parents and establish

¹¹⁴ P. Jaffe, D. Wolfe and S. Wilson, *Children of Battered Women* (1990); J. L. Edleson, “Children’s Witnessing of Adult Domestic Violence,” *Journal of Interpersonal Violence* 14 (August 1999): 839-70.

peer relationships. Often, the learning from family relationships is duplicated in peer relationships. For teens who are coping with the domestic violence perpetrator's abuse against the other parent, there are no positive models within the family for learning the relationship skills necessary for establishing mutuality in healthy adult relationships (listening, support, non-violent problem-solving, compromise, respect for the other, acceptance of differences, etc.).

2. The negative effects of the perpetrator's abuse in interrupting childhood development may be seen immediately in cognitive, psychological, and physical symptoms, such as:¹¹⁵

- Eating/sleeping disorders;
- Mood-related disorders, such as depression or emotional neediness;
- Over-compliance, clinging, withdrawal;
- Aggressive acting out, destructive behavior;
- Detachment, avoidance, a fantasy family life;
- Somatic complaints, finger biting, restlessness, shaking, stuttering;
- School problems; and
- Suicidal ideation.

3. The children's experience of domestic violence also may result in changes in perceptions and problem-solving skills, such as:

- Young children incorrectly see themselves as the cause of the perpetrator's violence against the intimate partner.
- Children using either passive behaviors (withdrawal, compliance, etc.) or aggressive behaviors (verbal and/or physical striking out, etc.) rather than assertive problem-solving skills.

4. There also may be long-term effects as these children become adults.

- Since important developmental tasks are interrupted, these children may carry these deficits into adulthood. They may never recover from getting behind in certain academic tasks or in interpersonal skills. These deficits impact their abilities to maintain jobs and relationships.
- Recent research indicates there are long-term health effects from experiences of family violence during childhood.¹¹⁶
- Male children in particular are affected and have a high likelihood

¹¹⁵ *Id.*

¹¹⁶ A. L. Coker, P. H. Smith, L. Bethea, M. King, R. E. McKeiwn, "Physical Health Consequences of Physical and Psychological Intimate Partner Violence," *Archives of Family Medicine* 9, no. 5 (2000): 451-57.

of battering intimates in their adult relationships.¹¹⁷

5. Sometimes, the children do not wait to become adults before using violence themselves (against the victim, the abuser, their peers, other adults, etc.). The following cases illustrate the influence of domestic violence on children's violence.

- Two sons witness long-term violence of father against mother. One son attacks mother; second son kills his brother, defending mother from brother's attack.
- Child attacks mother while they are residing in shelter for battered women.
- Child kills father as he attacks mother.

D. Routine Screening for Domestic Violence in Court Cases Involving Children^{118 119}

1. Given the prevalence of domestic violence and its potential impact on both children and the legal issues before the court, all legal cases involving children should be screened for domestic violence.
2. If domestic violence is identified, then screening should also identify the domestic violence perpetrator and the adult victim in the case.
3. Given that domestic violence is potentially lethal and is an issue of power and control, unidentified domestic violence in court cases involving children often results in the court having inadequate information to decide the issues before it that are vital to the children (e.g., protective orders, parenting plans, and dependency issues). Consequently, routine screening for domestic violence increases the likelihood that domestic violence will be identified in a timely manner, and the issues before the court can be considered in light of the domestic violence (as well as other co-occurring issues).

¹¹⁷ C. T. Hotaling and D.B. Sugarman, "An Analysis of Risk Markers in Husband to Wife Violence: The Current State of Knowledge," *Violence and Victims* 1, no. 2 (1986): 101-24.

¹¹⁸ H. L. Bragg, *Child Protection in Families Experiencing Domestic Violence* (US Department of Health and Human Services, Administration for Children and Families, Children's Bureau, Office on Child Abuse and Neglect, 2003).

¹¹⁹ In the State of Washington, Domestic Violence is one of the issues that must be taken into consideration when determining parenting plans. Child Welfare includes questions regarding history of domestic violence in its risk assessments. Routine screening for domestic violence is becoming standard practice in health care. As of 2009, WA CA has policies regarding protocols for routine screening for DV or all cases and Specialized DV Assessments for those cases with identified DV. A. Ganley & M Hobart, *Social Worker's Practice Guide to Domestic Violence* (2010, R 2012), Children's Administration, Washington State Department of Social and Health Services; A, Ganley, *Domestic Violence, Parenting Evaluations and Parenting Plans*, 2009./ King County Coalition Against Domestic Violence

4. **All personnel involved in these cases (Attorneys General, Prosecutors, Family Court Personnel, Family Law Attorneys, Guardians ad Litem (GALS), Court Appointed Special Advocates (CASA), Custody Evaluators, Child Welfare workers) should have specialized training in screening protocols in order to carry out screening in a way that promotes safety for the children and for the adult victim.**¹²⁰

E. Assessment of the Specific Risks to Children Posed by the Domestic Violence Perpetrator (See Appendix A, Assessment Protocol)

Once domestic violence is identified in court cases involving children, a specific assessment should be conducted to assess the risks posed to children by the domestic violence. There is too much variance in impact of domestic violence on children to attempt to render findings without knowing the specifics of the domestic violence pattern, its impact on the children, its impact on the adult victim, the lethality assessment, the co-occurring issues (substance abuse, mental health, and poverty) and the protective factors in the individual case. This assessment should include information about, and a consideration of, the following:

1. Detailed description of the pattern of abusive conduct.

Risk to children cannot be determined without gathering information about the entire pattern:

- Physical assaults,
- Sexual assaults,
- Psychological assaults,
- Economic coercion, and
- Use of children to control the adult victim.

2. Detailed description of the impact on the adult victim:

- Medical and mental health,
- Resources: funds, health insurance, transportation,
- Employment,
- Housing, and
- Family/social relationships.

¹²⁰ Models for routine screening can be found on the American Bar Association's website at <http://www.abanet.org/domviol/screening%20tool%20final%20version%20sept.%202005.pdf>, and for health care and child welfare workers in the *National Consensus Guidelines on Identifying and Responding to Domestic Violence Victimization in Health Care Settings* (Family Violence Prevention Fund, 2001), and *Identifying and Responding to Domestic Violence: Consensus Recommendations for Child and Adolescent Health* (Family Violence Prevention Fund, 2002), also available at www.endabuse.org, and A. Ganley & M Hobart, **Social Worker's Practice Guide to Domestic Violence** (2010, R 2012), Children's Administration, Washington State Department of Social and Health Services.

3. Detailed description of the impact on the child:

- Medical and mental health,
- Child care
- Health insurance
- Housing,
- Schooling,
- Access to resources (nutrition, etc.),
- Social/family relationships,
- Parenting by adult victim, and
- Parenting by the perpetrator.

4. Lethality assessment (See previous section on lethality factors to consider)

A lethality assessment should also be conducted as part of the comprehensive assessment of risks posed to children by the domestic violence. When there is a history of domestic violence, some children are at risk of injury, death, or psychological harm. Some even become at greater risk during legal proceedings or post-separation of the perpetrator and the adult victim.

5. Co-occurring Issues:

- Substance Abuse
- Mental health Issues
- Poverty

6. Description of protective factors¹²¹ found in

- **The adult victim**

Battered parents go to great lengths to protect children, only to have their efforts labeled as “failure to protect” (e.g., when complying with batterers in order to protect their children, or when heeding the divorce attorney’s advice not to report their concerns to CPS), or as “making false accusations to get a better deal in divorce proceedings” when calling the police after being attacked by their abuser following separation. Battered parents demonstrated a wide range of protective strategies: teaching children to hide during the violence, sending children to stay with friends, fleeing communities, getting protection orders, etc. These often go unrecognized as protective factors by evaluators, or they are misidentified as poor parenting or as “failure to protect.” Too often, evaluators use the batterer’s continued abuse of the adult victim as evidence of failure to protect the children, when in fact the continued contact may indicate the failure of the community to

¹²¹ See Appendix B for detailed description of protective factors from A. Ganley and S. Schechter, *National Curriculum for Children’s Protective Services* (San Francisco, CA: The Family Violence Prevention Fund, 1996) (currently out of print).

protect the adult victim and the children. Evaluators need to carefully assess adult victims for help-seeking behaviors and for protective factors, both formal and informal, and give appropriate weight to the multiple ways battered parents nurture and protect children in the midst of domestic violence.¹²²

- **The children themselves**

The children, because of age and skill may be able to engage in self-protection, and they may have relationships with the adult victim or others that promotes their resiliency.

- **The DV perpetrator**

When batterers accept full responsibility for their conduct and for changing it, and can understand the damage to the children, they have the basis for rebuilding healthy relationships with the children. They may have employment, willingly respect court orders, support the parenting of the adult victim, and participate in programs for batterers. All of these would be considered protective factors.

- **The community**

Does the community have adequate child care services, support programs for abused parties, intervention programs for batterers, prompt law enforcement response to violations of court orders, etc.? All of these community services are protective factors for children in homes where there is domestic violence.

F. Need for Specialized Training on Domestic Violence and Children: Identification and Assessment

1. The issues related to children and domestic violence are complex, and the expertise and research about these issues are emerging. The courts often rely on the input of professionals to make decisions in these complex cases. Unfortunately, few Family Court Services staff, Guardians ad Litem (GALS), Court Appointed Special Advocates (CASA), Child Protective Services (CPS) Social Workers, or even professional custody evaluators have the specialized training necessary for identifying domestic violence and evaluating its impact on parenting and on children. Too often, these professionals are relying on concepts and research based on families without identified domestic violence.

Domestic violence has some unique effects on families and requires specialized assessment and interventions to be effective in maintaining the

¹²² J. L. Edleson, L. F. Mbilinyi and S. Shetty, *Parenting in the Context of Domestic Violence*, *supra* note 45.

safety and well-being of the children and the adult victim.¹²³ Consequently, applying “high conflict” family research, concepts of “parental alienation syndrome,” or “failure to protect” to families with domestic violence endangers the children, as well as the battered parent.

2. Specialized training should be required not only for judges and for commissioners, but also for lawyers and any professional providing evaluations to the courts in these cases. All personnel involved in these cases (Attorneys General, Prosecutors, Family Court Personnel, Family Law Attorneys, Guardians ad Litem (GALS), Court Appointed Special Advocates (CASA), Custody Evaluators, Child Welfare workers, Evaluators for child welfare) should have specialized training in what an appropriate domestic violence assessment of risks posed to children should contain. Those responsible for conducting the assessments should have additional training on domestic violence assessment protocols, in order to conduct assessments that promote safety for the children and for the adult victim.¹²⁴
3. The courts should work collaboratively with other community agencies to review policies and procedures, and ensure that they are keeping up with the current expertise in this field.

G. This Specialized Assessment of Identified DV Should Be the Basis for Recommendations for Court Orders Involving Domestic Violence Cases with Children, Parenting Plans, and Dependency Decisions¹²⁵

The safety and well-being of the children exposed to domestic violence are increased as the courts direct their efforts to:

1. Increasing the safety of the adult victim and the children

If the information indicates either the children or adult victim are in danger of physical harm, then the court should seek to increase the safety of both. It should not assume that the children are not in physical danger simply because there was no evidence of physical harm in the past. There have been a number of cases where children were killed or harmed for the first time during or immediately following legal proceedings. The violence had been directed at the adult victim in the past, but when it appears that the adult victim is no longer under their control, some batterers will direct

¹²³ J. L. Edleson, L. F. Mbilinyi and Sudha Shetty, *supra* note 45.

¹²⁴ See *supra* note 72.

¹²⁵ See [Promising Judicial Practices in Domestic Violence and Child Dependency Cases](#) (recommendations from the Rural Domestic Violence and Child Victimization dependency court team training in Washington State, 2005).

A. Ganley & M Hobart, *Social Worker’s Practice Guide to Domestic Violence* (2010, R 2012), Children’s Administration, Washington State Department of Social and Health Services.

their violence against the children.

2. Respecting the autonomy of the adult victim

Batterers want to maintain power and control over the victim even if separating or divorcing. They will often seek arrangements through the children, as a means of maintaining that power and control, by requesting certain parenting or custody arrangements. These arrangements are very detrimental to children because the perpetrator's focus remains on the control of the adult victim and not on the best interests of the children. Consequently, when there is a history of domestic violence, parenting plans should limit the batterer's ability to control the adult victim through the children (e.g., granting sole decision making to the adult victim, having clear visitation schedules where contact between the two parties is limited, clear child support expectations with payments going to support enforcement, etc.).

3. Holding the domestic violence perpetrator, not the victim, responsible for both the abuse and for stopping it

Domestic violence perpetrators harm children, either directly or indirectly, when battering the other parent. It is important for the children's safety and well-being that the perpetrator's responsibility for being abusive, and for changing the behavior, is made clear. Both parenting plans and child welfare service plans that require batterers to successfully complete a batterer's intervention or to follow other restrictions are useful in clarifying the batterer's accountability, not only for the batterer as a parent, but also for the children. It is a very confusing message to children to be placed in parenting plans which force contact with domestic violence perpetrators who take no responsibility for what they did to the other parent and for its impact on the children. It further complicates the matter for children when the parenting plans or service plans subtly, or not so subtly, place blame for the abuse on the non-offending parent.

X. The Who: The Community as Victim

A. Domestic Violence Ripples Out into the Community

Examples of the tragic consequences of domestic violence to the community can be seen on a daily basis in newspapers across the country as the reports recount the latest homicide of an ex-spouse, current partner, their children, innocent bystanders, as well as those who attempt to intervene in the violence. Although often not identified by the media as "domestic violence" homicides, these cases often have a history of abusive and controlling behavior by one party against the other. For example:

- In California, a DV perpetrator kills the victim, his daughters, and several of the victim's co-workers, as well as a police officer.

- In New York, a nightclub is burned down by the boyfriend of an employee, resulting in the deaths of numerous patrons inside.
- In Colorado, a lawyer is shot in court by a domestic violence defendant.
- In Washington, a child welfare worker attacked with ax by a DV perpetrator during home visit.
- In Washington, a lawyer is killed by the husband of a client he was defending in a custody case where domestic violence was alleged.
- In Washington, a domestically violent perpetrator kills his wife and her two female friends as they wait in the courthouse for the judge’s decision in an annulment hearing.
- In Washington, a police chief kills his wife and himself in front of their two children.

B. **Financial Cost of Domestic Violence to the Community**

Studies continue to document the mounting financial costs to the community in health care, the workplace, and in the courts.^{126 127}

Costs to the community in lost lives and resources are constant reminders that domestic violence is not a family affair and it is not a private affair. It is a community affair demanding a community response

XI. **Impact of Domestic Violence on Criminal and Civil Courts Proceedings**

A. **Domestic Violence in Criminal Court Proceedings**

Domestic Violence appears in criminal courts in a wide variety of ways.

1. The DV perpetrator is the defendant, and the victim is a witness. As cited previously in Section III, the perpetrator of domestic violence may commit a wide variety of crimes in the process of abusing and controlling the victim. These may be either felonies or misdemeanors. However, in understanding the DV perpetrator’s and victim’s behaviors, it is helpful to the court to consider the specific charges in light of what is known about the dynamics of domestic violence. For example, how a DV victim responds to the DV perpetrator’s arson is both the same and different than how a victim of arson responds to a stranger doing the same criminal act.

¹²⁶ H. Meyer, “The Billion Dollar Epidemic,” *American Medical News* (January 6, 1992). *Victims Costs and Consequences: A New Look* (Washington, DC: National Institute of Justice, 1996). Max, W, Rice, DP, Finkelstein, E, Bardwell, R, Leadbetter, S. 2004, *The economic toll of Intimate Partner Violence Against Women in the United States, Violence and Victims*, 19 (3) 259-272, Reeves, C.A & O’Leary-Kelly, A. (2009). *A Study of the Effects of Intimate Partner Violence on the Workplace*. University of Arkansas, Fayetteville, AS., Bonomi AE, Anderson, M Rivara, FP, Thompson RS, 2009 *Healthcare Utilization and Costs Associate with Physical and Nonphysical- Only Intimate Partner Violence*, Health Research, \$\$ (3):1052-67.

¹²⁷ Bonomi AE, Anderson ML, Rivara FP, Thompson RS. 2009. [Health Care Utilization and Costs Associated with Physical and Nonphysical-Only Intimate Partner Violence](#). Health Services Research, 44(3): 1052-67.

The DV perpetrator's coercive conduct is ongoing even through legal proceedings and has an ongoing impact on the DV victim/witness.

2. The DV victim may be the defendant in a criminal case.
 - Victims may be charged with crimes when they used physical force either (1) to defend themselves and the children or (2) in response to years of abuse by the DV perpetrator. Such self-defense or retaliatory use of physical force is not accompanied by a pattern of assaultive and coercive behaviors and does not fit the behavioral definition of domestic violence.
 - DV victims may be the defendants if they have been coerced into illegal behavior by the domestic violence perpetrator.¹²⁸
 - An understanding of domestic violence dynamics can assist the court in its decision-making regarding charges against a DV victim.
3. The children experiencing domestic violence may be victims, witnesses, or defendants in criminal cases. Children may have witnessed the domestic violence, may have been victimized by the violence, or may have used physical force to protect a family member from DV, or children may be DV perpetrators or victims in their own adolescent relationships. Once again, an understanding of the dynamics of domestic violence can assist the court in its proceedings.

B. Domestic Violence appears in a wide variety of civil court proceedings (family law, dependency, etc.) *with or without* concurrent criminal proceedings:

1. Abused party seeks dissolution of marriage and rehabilitative compensation.
2. Abused party seeks temporary protection order, protection order, or modification of a protection order, anti-harassment order, and or stalking protection order.
3. Abused party seeks restraining order during divorce proceedings due to continued harassment by the abuser at place of employment, at children's school, or at homes of family members or through manipulation of joint funds.

¹²⁸ B. E. Richie, *Compelled To Crime: The Gender Entrapment of Battered Black Women* (New York: Routledge Press, 1996).

4. Abused party seeks compensation for physical and psychological damage caused by abuser in lengthy marriage.
5. Abused party seeks supervised and limited visitation until abuser successfully completes specialized treatment programs for batterers.
6. Abused party seeks change in marital property settlement entered under coercion of the perpetrator.
7. Abused party seeks sole decision-making and primary residential custody of children in order to reduce control of the batterer, and as way to improve batterer's responsible parenting.
8. DV abuser seeks changes in parenting plan as way to maintain access to and control over the abused party.
9. DV abuser seeks visitation in dependency court proceedings as means to maintain access to the DV victim.
10. Termination of the DV abuser's parental rights is sought as a result of physical abuse of the children.
11. Termination of the abused party's parental rights is sought as a result of failure to protect the children from the perpetrator's abuse.

Once again, an understanding of the dynamics of domestic violence can assist the court in its proceedings.

C. DV Perpetrator's Controlling Behavior during Criminal and Civil Court Proceedings

DV perpetrators often attempt to control the court process as a means of showing the abused party that the perpetrator, not the judicial officer, is in control of the legal process. DV perpetrators become very adept at using the legal system as one more tactic of coercive control against the victim.

1. Physical assaults or threats of violence against the abused party and others inside or outside the courtroom, threats of suicide, threats to take the children, etc., in order to coerce the abused party to change the petition or to recant previously given testimony.
2. Following the abused party in or out of court.
3. Sending the abused party notes or "looks" during proceedings.
4. Bringing family or friends to the courtroom to intimidate the abused party.

5. Long speeches about all the abused party's behaviors that "made" the perpetrator do it.
6. Statements of profound devotion or remorse to the abused party and to the court.
7. Requesting repeated delays in proceedings; e.g., dragging out parenting plan proceedings over two to three years.
8. Requesting changes of counsel, or not following through with appointments with counsel.
9. Intervening in the delivery of information from the courts to the abused party, so that the abused party will be unaware of when to appear in court.
10. Requesting mutual orders of protection as a way to continue control over the abused party and to manipulate the court.
11. Continually testing limits of visitation/support agreements (e.g., arriving late or not showing up at appointed times and then, if the abused party refuses to allow a following visit, threatening court action).
12. Threatening or implementing custody fights to gain leverage in negotiations over financial issues.
13. Enlisting the aid of parent rights groups to verbally harass abused party (and sometimes courts or other professionals involved with case) into compliance. Reporting professionals to state licensing board or to professional organizations to maintain control over the victim.
14. Using any evidence of damage resulting from the abuse as evidence that the abused party is an unfit parent (abused party's counseling records, etc.).

D. Courts Can Intercede in the Perpetrator's Controlling Behaviors in the Courthouse and in Proceedings

Below are examples of procedures that courts have instituted to address the ongoing security issues for DV victims and the court as well as to address the DV perpetrators ongoing abusive conduct during proceedings. The list is not exhaustive. Judicial officers have found it helpful to periodically review court procedures in light of domestic violence cases.

1. Ensuring that a safe place is available in the courthouse for abused parties to wait until their case is called; having courthouse security procedures,

such as metal detectors, etc.

2. Calling domestic violence cases as early as possible on the court calendar or having a calendar that is solely for domestic violence cases.
3. Ensuring that any statements made from the bench indicate that the court takes evidence of domestic violence seriously in the cases before it.
4. Using court policy to assure the safety of the abused party by ordering the alleged abuser to remain in the courtroom until the abused party has left the building.
5. Ordering the court security person, if requested, to accompany the abused party to transportation.
6. Intervening where appropriate on the economic coercion of the batterers.
7. Intervening where appropriate when batterers use the children to control and abuse the adult victim.
8. Holding the batterer, not the victim, responsible for following the court orders.

XII. Conclusion

Domestic violence cases present unique challenges for the courts. These cases can be handled more effectively and efficiently if fact-finding and decision-making are based on:

- an understanding of both the behavioral and legal definitions of domestic violence, as well as
- an understanding of both the societal and familial context in which domestic violence occurs and is too often reinforced.

The criminal and civil court systems' response to domestic violence must be part of a coordinated community effort to end the devastating consequences of violence within the family. Criminal and civil court judges can play a powerful role in a coordinated response by:

- Considering both the short-term and long-term damaging effects of the perpetrator's abuse in their decision-making.
- Holding DV perpetrators, not victims, of accountable for stopping their abusive conduct;
- Ensuring that DV victims have access to the justice and protection of the courts; and
- Developing court practices that increase safety for all.