

# *Considerations for Responding to Cases Involving Women Arrested on Domestic Violence Charges*

Oregon Attorney General's Batterer Intervention Program Standards Advisory Committee

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# *Considerations for Responding to Cases Involving Women Arrested on Domestic Violence Charges*

## *Introduction and Overview*

Criminal Justice statistics consistently find that the vast majority of domestic violence is perpetrated by males. However, while in the minority, women can and do engage in domestic violence, both in opposite sex and same sex relationships. Because women commit a much smaller percentage of domestic violence relative to men, those who are arrested are at greater risk of being misidentified as the primary aggressor in the relationship when they may actually be the secondary aggressor—defending themselves in the moment to their partner’s larger, more severe, and more enduring pattern of abusive behavior. Throughout our legal history, self-defense has been a legal justification for otherwise illegal abusive behaviors. However, self-defense within the context of being an abused romantic partner is often overlooked or not fully understood, leading to victims, primarily female victims, being mistakenly arrested and prosecuted for domestic violence. This has been the observation and experience of many programs that work with women who have been arrested for domestic violence. We believe that with greater diligence by local law enforcement and criminal justice responses, the number of women who are mistakenly arrested and prosecuted for defending themselves within an abusive relationship can be significantly reduced. The following recommendations are intended to provide local communities with guidelines to assist in reducing the number of battered women mistakenly arrested for domestic violence perpetration.

## *Summary of Recommendations for Responding to Cases Involving Women Arrested on Domestic Violence Charges*

### *Women Arrested for IPV Perpetration Toward Men*

- Ask both the suspect and the victim if this sort of behavior, or similar behavior, has occurred in the past, and to what extent has this been an on-going issue. Keep in mind that the most extreme abusive behaviors, such as physical abuse, may be far less common, or even one-time events, while there may be a more extensive and on-going pattern of verbal or emotional abuse reflecting a *pattern* of coercion and/or control.
- Make sure to gather additional information from the suspect on to what extent she has experienced domestic violence, both immediately prior to the arresting incident and in the days preceding it. Typically women who have used force will not self-identify as “victims” or “survivors” of IPV therefore it is important to ask about specific forms of abuse the person may have experienced.
- Make sure to discern the level of intimidation or dread the alleged victim experienced in this incident as well as at other times with the suspect. Consider who was endangered or might have felt threatened or intimidated.
- Determine what caused the suspect to be abusive in the incident. In particular, rule out that it was done in self-defense.

### *Women Arrested for IPV Perpetration toward Women*

- Recognize IPV cases involving female same-sex couples as legitimate, and respond to such cases with the same level of attention given to cases involving heterosexual and male same-sex couples.
- Be attentive to evidence of a pattern of controlling and manipulative behaviors. This may manifest uniquely as an abuser excusing and/or justifying her behavior as a response to experiencing discrimination or stigmatization.
- When considering possible intervention options for Female Same-sex Intimate Partner Violence (FSSIPV) abusive partners, be cognizant of the surrounding social and political context and relatively limited services available for IPV perpetration among female same-sex couples.
- When possible, refer to violence intervention programs demonstrating the capacity for addressing the unique needs of this population (e.g., programs offering intervention groups for specifically for women).
- Avoid assumptions that a Lesbian, Gay, Bisexual, Transgender (LGBT) individual's mental health concerns relate mostly or entirely to past childhood trauma and/or substance abuse issues.
- For situations where the alleged abuser and/or victim’s gender identities are other than cis gendered female/male (e.g. gender non-conforming, trans, etc.), avoid assumptions, use their preferred pronouns, and focus on determining who applies power and control and who experiences intimidation and dread. As with same sex couples, be mindful of the surrounding social and political context and scant services available for IPV perpetration among those who do not fit a male/female gender binary.

## *Considerations for Responding to Cases Involving Women Arrested on Domestic Violence Charges*

Context is critical when understanding and appropriately intervening in the lives of women who have been arrested for using force. The points below are intended to frame evolving interventions for women arrested for intimate partner violence (IPV). First, we briefly review the overarching considerations for responding to cases involving women arrested for IPV perpetration. We then review the contexts surrounding situations when a woman is arrested for IPV against a man, and when a woman is arrested for IPV against another woman. In each of the latter two sections we describe considerations to be taken and then offer recommendations based upon these considerations.

### *Women Arrested for IPV Perpetration*

IPV (also commonly referred to as "*Domestic violence*", or *DV*) is a pattern of coercive behavior used by one person to control and subordinate another in an intimate relationship.<sup>1</sup> Under this definition, IPV "includes physical violence, sexual violence, stalking and psychological aggression (including coercive tactics) by a current or former intimate partner (i.e., spouse, boyfriend/girlfriend, dating partner, or ongoing sexual partner)."<sup>2</sup> That pattern is often not clearly understood at the time of arrest. It is critically important to assess the motivation, intent, and impact behind the actions used.

### *Women arrested for IPV Perpetration Toward Men*

Frequency of the abuse. Additional information should be gathered about the abusive history in the relationship to determine to what extent the arresting incident reflects or is indicative of an on-going pattern of abusive behavior by either party. If it is clear that the incident is truly a one time or highly isolated event then there may be less need for sanctions or other interventions to stop the behavior. For example, women arrested in Duluth, MN as first offenders are sent to a diversion program (*the Crossroads program*<sup>3</sup> is available online and is an outstanding resource for this).

**RECOMMENDATION: Ask both the suspect and the victim if this sort of behavior, or similar behaviors, has occurred in the past, and to what extent has this been an on-going issue. Keep in mind that the most extreme abusive behaviors, such as physical abuse, may be far less common, or even one-time events, while there may be a more extensive and on-going pattern of verbal or emotional abuse reflecting a *pattern* of coercion and/or control.**

Context in which the use of force was perpetrated First responders need to determine to what extent the woman's actions were in response to abuse from her partner. Her abusive behavior might have happened immediately after him being abusive towards her or there might have been some delay. While her partner may have visible injuries, it is important to look more closely at the larger context. This is akin to walking upon a school fight between two students where one is clearly a bully. While both were fighting, only one, the bully, was wanting to fight in the first place. Furthermore, in the future the bully is likely to initiate further abuse while the victim is

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<sup>1</sup> (Black et al., 2011)

<sup>2</sup> (Breiding, Basile, Smith, Black, & Mahendra, 2015, p. 11)

<sup>3</sup> <http://www.crossroadstreatment.co/html/>

not, even if, in that moment, it is the bully who was injured and the apparent “victim”. It needs to be determined who most typically is the one being abusive and controlling and to what extent the woman may have been responding in self-defense from her partner’s abusive behavior.

**RECOMMENDATION: Make sure to gather additional information from the suspect regarding the extent to which she has been a victim of domestic violence perpetrated by the alleged victim, both immediately prior to the arresting incident and in the days preceding it.**

*Impact of the abuse.* All abusive behavior is not the same, for example, it varies in severity, duration, and frequency, and therefore can have varying levels of impact. This is akin to different shooting victims having different outcomes depending on where on their body they are shot. Likewise, the shooter may receive different charges depending on where the victim is shot. Of greatest concern is when the abusive behavior causes significant fear and intimidation in the victim. If the victim in this situation reports little fear or concern about what the suspect did in the incident then it may be that this behavior is not part of a larger pattern of abuse and control.

**RECOMMENDATION: Make sure to discern the level of intimidation or dread the alleged victim experienced in this incident as well as at other times with the suspect. Consider who was endangered or might have felt threatened or intimidated.**

*Intent of the abusive behavior.* There are many reasons why, in a single moment, a person might be abusive to a romantic partner. In domestically violent relationships the intent is usually to control the other, not only in the moment, but repeatedly over time. The abusive behavior is reflective of a larger belief system in which power and control are viewed as necessary to be happy within the relationship. Part of that belief system is typically viewing the victim as being against the abuser and therefore it becomes necessary to dominate and control them. That is quite different from defending oneself in the moment.

**RECOMMENDATION: Determine what caused the suspect to be abusive in the incident. In particular, determine whether it was done in self-defense.**

## *Women arrested for IPV Perpetration toward Women*

The existence of female same-sex IPV (FSSIPV) is not new, rather its existence is increasingly recognized as (a) real and (b) in need of attention. The previously described prevalence of FSSIPV indicates that the need for intervention services does in fact exist in Oregon, but that the individuals in need of these services are not being recognized by the overall domestic violence response system.

Based on 2010 estimates from the National Intimate Partner and Sexual Violence Survey (NISVS)<sup>4</sup> 40% of lesbian women and 57% of bisexual women experience rape, stalking, and/or physical abuse by an intimate partner at least once in their lifetime. Among lesbian women who reported experiencing intimate partner violence (IPV) victimization, 67% reported being victimized only by females. These NISVS findings indicate that FSSIPV occurs at rates comparable to those found among women in heterosexual relationships, and provide evidence that the prevalence of FSSIPV is much higher than expected by IPV-specific researchers and service providers<sup>5</sup>. Combining these nation-level prevalence findings with state-level IPV victimization estimates from the same national survey<sup>6</sup>, *these percentages translate to an estimated 21,174 women who abuse a female intimate partner in Oregon each year.*

*Barriers to Help-Seeking among Sexual Minority Women.* When asked why they do not provide services specific to sexual minority women, multiple batterer intervention providers in Oregon have stated that their organizations have yet to experience the demand for such specificity in their services to warrant providing them. There remains a lack of recognition of incidents of FSSIPV within the criminal justice and mental health systems, and the knowledge of this can be both a barrier to a current victim seeking help through these systems, as well as a tool for an abuser to use against the victim to prevent reporting<sup>7</sup>.

**RECOMMENDATION: Recognize IPV cases involving female same-sex couples as legitimate, and respond to such cases with the same level of attention given to cases involving heterosexual and male same-sex couples.**

*Characteristics of FSSIPV Perpetration.* FSSIPV-specific research has shown that power and control are key characteristics of FSSIPV perpetration. However, power and control dynamics within female same-sex relationships are likely to be qualitatively distinct from those in abusive heterosexual relationships. For instance, an alleged victim's account of the situation might include descriptions of the alleged abuser threatening to "out" the victim to her boss, co-workers, family, and/or friends, while the alleged abuser might justify her behaviors as responses to her own experiences of discrimination. Another important consideration of the abusive control tactics potentially involved in FSSIPV perpetration is the social exclusivity characteristic of many tightly knit LGBT communities. FSSIPV abusers can use this to their advantage by limiting victims' access to their LGBT community, or threatening to do so as retribution for victims reaching out to members of their LGBT community about the abuse. These tactics specifically serve to further isolate victims from possible sources of help and support.

**RECOMMENDATION: Be attentive to evidence of a pattern of controlling and manipulative behaviors.**

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<sup>4</sup> (NISVS; Black et al., 2011)

<sup>5</sup> (Walters, Chen, & Breiding, 2013)

<sup>6</sup> (Black et al., 2014)

<sup>7</sup> (i.e., "No one is going to believe you")

### *Minority Stress & IPV among Sexual Minority Women*

Minority stress encompasses a range of experiences related to an individual or group's status as not being a member of the dominant culture<sup>8</sup>. Recent evidence provided by Portland State University researchers<sup>9</sup> indicates that LGBT women experience intersecting minority stressors related to their sexual orientations and gender identities, as well as their race, ethnicity, and class identities. Practitioners working with LGBT women who have perpetrated and/or experienced victimization of intimate partner abuse should acknowledge and integrate this complexity in the services they provide to members of this population. Importantly, however, marginalized identity characteristics related to race, economic class, and sexual orientation should not be considered as key risk factors for women's perpetration of same-sex IPV. Rather, experiences of minority stressors related to these identity characteristics can impact the effectiveness of IPV interventions among female abusers.

**RECOMMENDATION: When considering possible intervention options for FSSIPV abusers, be cognizant of the surrounding social and political context and relatively limited services available for IPV perpetration among female same-sex couples. When possible, refer to violence intervention programs demonstrating the capacity for addressing the unique needs of this population.**

### *Criminal Justice and Mental Health Systems' Responses to FSSIPV*

Research evidence indicates that biases exist in criminal justice responses to FSSIPV<sup>10</sup>. While same-sex intimate relationships have become legally recognized as legitimate by the US Supreme Court<sup>11</sup>, recognition of abusive behaviors among female same-sex couples often remains evasive for those with little exposure to or knowledge of LGBT women and their experiences. Reliance on stereotypes about female same-sex romantic relationships is a key barrier to understanding, recognizing, and appropriately responding to female same-sex IPV. For example, a growing body of research examining causes of IPV among sexual minority women focuses on substance abuse and anger as primary explanations for women's IPV perpetration. An emphasis on substance abuse uniquely among LGBT people, and in particular among sexual minority women, distracts from the likelihood that minority stressors may be the underlying causal factors for both substance abuse and IPV perpetration among members of this population. Similarly, LGBT identities have historically been classified as forms of mental illness. This classification continues to have negative consequences on LGBT individuals' experiences within the criminal justice and mental health systems, including experiences of stigmatization and discrimination within these systems.

**RECOMMENDATION: Avoid assumptions that an LGBT individual's mental health concerns relate mostly or entirely to past childhood trauma and/or substance abuse issues.**

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<sup>8</sup> (Allison, 1998; Link & Phelan, 2001; Meyer, 2003)

<sup>9</sup> (R. M. Smith, 2016)

<sup>10</sup> (Mallory, Hasenbush, & Sears, 2015; Mogul, Ritchie, & Whitlock, 2011)

<sup>11</sup> (ACLU et al., 2015; Liptak, 2015)



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