

**Women’s Use of Force –  
A Prosecutor’s Perspective**

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**Women & Domestic Violence**

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- ❑ Across Michigan women are being arrested for Domestic Violence anywhere from 10% – 30% of the time.
- ❑ Domestic Violence Experts Report that, in Heterosexual Relationships, the Incidence of Women Battering Men is 3-5%.
- ❑ **Differentiating DV Defendants from Batterers:**
  - Legal Definition
  - Relationship Abuse Definition

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**What IS “Domestic Violence”?**

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| <p><b>Legal Definition:</b></p> <ul style="list-style-type: none"> <li>❖ A <b>SINGLE ACT</b> of Assault &amp;/or Battery</li> <li>❖ Perpetrated by a suspect who is <b>related</b> to Victim:           <ul style="list-style-type: none"> <li>- Spouse/Fmr. Spouse</li> <li>- Child in Common</li> <li>- Dating/Fmr Dating Rel</li> <li>- Resident/Fmr Resident of Household</li> </ul> </li> </ul> | <p><b>Relationship Dynamic Definition:</b></p> <ul style="list-style-type: none"> <li>❖ A <b>PATTERN</b> of abusive <b>behavior</b> which includes:           <ul style="list-style-type: none"> <li>- physical &amp; sexual abuse</li> <li>- verbal &amp; emotional abuse</li> </ul> </li> <li>❖ Perpetrated for <b>the purpose</b> of <b>obtaining &amp; maintaining control</b> over an intimate or formerly intimate partner</li> </ul> |
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**Gender should NOT be the Focus**

- ❑ **What about Abuse in Same-Sex Relationships?**
  - If we rely on Gender to determine Victim / Perpetrator Identity we get stuck when the Victim and the Perpetrator are the same gender.
- ❑ **Relationship Abuse Dynamics are incredibly similar – regardless of the gender of the perpetrator and the recipient.**

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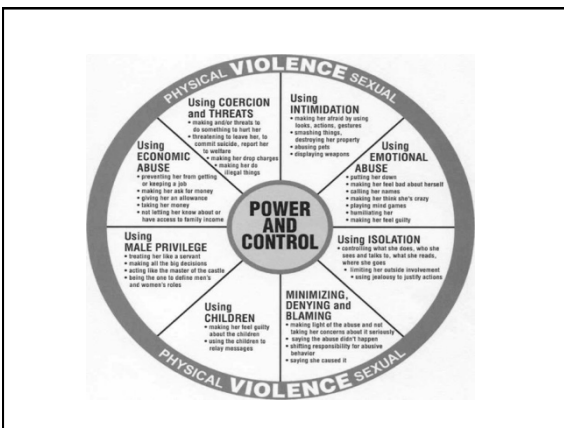
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**All DV Defendants are NOT “Batterers”**

- ❑ **Men & Women can both use Physical Force/ Violence in Relationships. Use of Force in an isolated incident does not Equate to “Battering.”**
  - Use of Force could be isolated or it could be part of a larger pattern within the relationship.
- ❑ **To Determine if a Defendant is also a Batterer**
  - You have to look at the larger history and dynamics of the relationship as well as the Intent, Motivation and Effect of Use of Force. Dasgupta 2002

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| <b>Why Does this Matter?</b>   |  |
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| <ul style="list-style-type: none"><li><input type="checkbox"/> You Need to Discern Who's Who &amp; What's What or you may be empowering batterers and further victimizing battered women.</li><li><input type="checkbox"/> Charging and Convictions send messages to batterers and battered women about whether the legal system is their "Ally" and can/will protect them.</li><li><input type="checkbox"/> Bond and Probation Conditions can have powerful affects – positive and negative – on future abuse and safety.</li></ul> |  |

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| <b>What are our Goals as Prosecutors?</b>  |  |
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| <ul style="list-style-type: none"><li><input type="checkbox"/> To Prosecute Cases and "Get Convictions"?</li><li><input type="checkbox"/> To Simply Uphold the Laws or to Uphold the Spirit of the Laws?</li><li><input type="checkbox"/> To Deliver Justice and Protect those that Need our Protection?</li></ul> |  |

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| <b><u>Context</u></b>   |  |
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| <ul style="list-style-type: none"><li><input type="checkbox"/> <b>Use of Force could be isolated, or could be part of a larger pattern within the relationship.</b></li><li><input type="checkbox"/> You need assess the isolated act within the context of the entire relationship in order to get the complete picture.<ul style="list-style-type: none"><li><input type="checkbox"/> <b>Are there DV dynamics in the relationship?</b><ul style="list-style-type: none"><li><input type="checkbox"/> If so, who is the one with the Power &amp; Control?</li></ul></li><li><input type="checkbox"/> <b>What has happened in the past?</b><ul style="list-style-type: none"><li><input type="checkbox"/> Who has done what to who?</li></ul></li><li><input type="checkbox"/> <b>What was going on at the time the "assault" was perpetrated?</b></li><li><input type="checkbox"/> <b>What happened before and after?</b></li></ul></li></ul> |  |

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| <b><u>Motivation</u></b>   |  |
| <ul style="list-style-type: none"> <li>□ What was the <b><i>Purpose, Intent, Goal and/or Intended outcome</i></b> of the use of force?             <ul style="list-style-type: none"> <li>■ Assaultive Defendants use force to blow off steam, because they were drunk, because they have an anger management problem.</li> <li>■ Batterers use force to: Control, Intimidate, Enforce Rules, Gain Compliance/Punish Disobedience, Discourage Resistance</li> <li>■ Battered Women use force to: Defend, Resist, Retaliate, Induce the inevitable</li> </ul> </li> </ul> |  |

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| <b><u>Impact</u></b>  |  |
| <ul style="list-style-type: none"> <li>□ <b>What is the Impact of the Use of Force <u>Within the Relationship</u>?</b> <ul style="list-style-type: none"> <li>■ What effect does the act have on the actor, recipient and the relationship dynamic as a whole?</li> <li>■ Has the Actor gained Power and Control within the relationship by this use of Force?</li> <li>■ Whose behavior is most likely to change / submit in the future as a result of this incident?</li> </ul> </li> <li>□ <b>What is the Impact of Arrest and/or Charging?</b> <ul style="list-style-type: none"> <li>■ How does the Arrest and/or Charge change the power status of either/ both parties in the relationship?</li> <li>■ Is the person Arrested and/or Charged the Batterer?</li> <li>■ How likely is Arrest and/or Charging going to prevent future abuse within the home?</li> </ul> </li> </ul> |  |

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| <b>What Factors Lead to Battered Women Being to be Arrested?</b>  |  |
| <ul style="list-style-type: none"> <li>□ <b>More likely to leave immediately visible signs of injury/ assault --</b> <ul style="list-style-type: none"> <li>■ Defensive wounds (like scratching &amp; biting) are typically more immediately visible than offensive wounds.</li> </ul> </li> <li>□ <b>More likely to use an object as a weapon</b> <ul style="list-style-type: none"> <li>■ Unequal size &amp; strength puts Battered Women at a disadvantage when defending themselves.</li> <li>■ Use of weapon may lead to more immediately apparent injuries and more serious injuries</li> <li>■ Use of weapon may make the Battered Women look <u>more</u> violent b/c she "upped" the stakes by introducing a weapon when he was "only" using his hands</li> </ul> </li> <li>□ <b>More likely to Admit / Confess (<i>and plead</i>)</b></li> </ul> |  |

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| <p><b>Prosecutors should consider the Intent &amp; Purpose of the law when making charging decisions</b></p> <ul style="list-style-type: none"><li>■ Is this the kind of person that the law was intended to protect?</li><li>■ Is this they type of behavior the law was intended to prohibit?</li><li>■ Will the purpose of the law be accomplished by charging/prosecuting this person?</li><li>■ How will charging affect the future safety of the parties, the power dynamics in the relationship and future litigation.</li></ul> |
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| <p><b>How do I figure out WHO's Who?</b></p> <ul style="list-style-type: none"><li>□ From Report<ul style="list-style-type: none"><li>■ On Scene Behavior</li><li>■ Specifics of the Incident</li><li>■ Injuries</li></ul></li><li>□ From Criminal History</li><li>□ From Other Known History (uncharged cases, dismissed cases, PPOs, etc)</li><li>□ From Post-Incident Behavior</li><li>□ From PAO Interview</li><li>□ From DV Agency</li></ul> |
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| <p><b>Evaluating Post-Incident Behavior to Determine Who's Who:</b></p> <ul style="list-style-type: none"><li>□ Who are they concerned about?</li><li>□ What are they concerned about?</li><li>□ What action do they take?</li><br/><li>□ Are they responding like a "typical DV Victim"?<ul style="list-style-type: none"><li>■ Wanting NCO lifted or charges dropped- if yes, what are the reasons he/she is giving?</li></ul></li></ul> |
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| <p><b>Gathering Information from DV Agency to Determine Who's Who:</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> Importance of a Good Foundational Relationship</li><li><input type="checkbox"/> Call the Agency, Explain the Situation, Ask if they can talk to the Suspect/Defendant and then provide you with information</li><li><input type="checkbox"/> Confidentiality Issues<ul style="list-style-type: none"><li>■ Agency will need to get a release</li><li>■ ** If Suspect/Defendant has an attorney – Attorney must be involved in making this decision.</li></ul></li></ul> |
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| <p><b>Charging Considerations</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> Was she/he acting in Self-Defense?</li><li><input type="checkbox"/> In light of the <u>relationship history</u>, was her/his behavior reasonable?</li><li><input type="checkbox"/> What will be the effect of prosecution on the current relationship &amp; future safety?</li><li><input type="checkbox"/> Her future Criminal History – should it look the same as a batterer?</li></ul> |
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| <p><b>Charging Options:</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> <b>What to charge?</b><ul style="list-style-type: none"><li>■ DV</li><li>■ A&amp;B</li><li>■ Disturbing the Peace</li><li>■ Drunk &amp; Disorderly</li></ul></li><li><input type="checkbox"/> <b>Consider Reviewing Office Protocol/Policies for Charging DVs:</b><ul style="list-style-type: none"><li>■ Can you charge something other than DV?</li><li>■ No Drop Polices</li><li>■ No Deferrals</li><li>■ No Reductions</li><li>■ Offers of Proof</li></ul></li></ul> |
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| <p><b>What is the Risk of Charging the Wrong Person?</b></p>  |
| <ul style="list-style-type: none"> <li><input type="checkbox"/> <b>Emboldens and Empowers the Batterer</b> <ul style="list-style-type: none"> <li>■ He gains Allies in his Efforts to Control her</li> <li>■ He is Reinforced in his “<i>Minimizing, Denying &amp; Blaming</i>”           <ul style="list-style-type: none"> <li><input type="checkbox"/> You are equally the “problem” in our relationship</li> <li><input type="checkbox"/> You are abusing me</li> </ul> </li> </ul> </li> <li><input type="checkbox"/> <b>Further Dis-empowers the Battered Woman</b> <ul style="list-style-type: none"> <li>■ She is further Isolated – no longer sees the police as a source of protection, may not feel &amp;/or may no longer be eligible for DV victim services</li> </ul> </li> </ul> |

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| <p><b>When is Declining Not Appropriate?</b></p>  |
| <ul style="list-style-type: none"> <li><input type="checkbox"/> If the woman’s action has no lawful/reasonable justification – i.e. Battering, Non-DV related Violence</li> <li><input type="checkbox"/> When you wouldn’t do the same if the context/factual scenario was the same but the genders were reversed.       <ul style="list-style-type: none"> <li>■ <i>Example – Man walks in to bar, believes woman is cheating, pulls her outside and slaps her.</i></li> <li>■ <i>Example – Woman enters her Ex’s residence because she believes there is another woman there. She assaults one or both inside.</i></li> </ul> </li> </ul> |

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| <p><b>Plea Negotiations/Offers:</b></p>  |
| <ul style="list-style-type: none"> <li><input type="checkbox"/> Offer deferral?       <ul style="list-style-type: none"> <li>■ Will batterer be able to use probationary terms as a further means of control?</li> </ul> </li> <li><input type="checkbox"/> Offer A&amp;B?</li> <li><input type="checkbox"/> Offer a Delayed Sentence?</li> <li><input type="checkbox"/> Offer a Non-Assaultive offense?</li> <li><input type="checkbox"/> Offer an Out-right Dismissal?</li> <li><input type="checkbox"/> Offer “Double Secret” Probation?</li> </ul> |

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| <hr/> <hr/> <b>Sentencing Recommendations</b> <hr/> <ul style="list-style-type: none"><li><input type="checkbox"/> What conditions will be most likely to prevent future incidents?</li><li><input type="checkbox"/> What conditions could protect the battered woman?</li><li><input type="checkbox"/> What conditions could put the battered woman in more danger?</li><li><input type="checkbox"/> What conditions will empower the batterer?</li></ul> |
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| <hr/> <hr/> <b>Bond &amp; Probation Violations:</b> <hr/> <ul style="list-style-type: none"><li><input type="checkbox"/> Will the Conditions Empower the Batterer?</li><li><input type="checkbox"/> Will the Conditions Protect the "DV" Victim?</li><li><input type="checkbox"/> Will the Conditions Endanger/Dis-Empower the Battered Woman?</li><li><input type="checkbox"/> Was the Violation the Result of Battering?</li><li><input type="checkbox"/> What will the Impact of the Violation be?</li></ul> |
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| <hr/> <hr/> <b>Recap:</b> <hr/> <ul style="list-style-type: none"><li><input type="checkbox"/> You Need to Discern Who's Who &amp; What's What or you may be empowering batterers and further victimizing battered women.</li><li><input type="checkbox"/> You do this by:<ul style="list-style-type: none"><li>■ Assessing for Power &amp; Control Dynamics</li><li>■ Looking at Context, Motivation &amp; Impact</li><li>■ Then Adjusting your Approach</li></ul></li></ul> |
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| <hr/> <hr/> <p><b>In Summary:</b></p> <hr/> <ul style="list-style-type: none"><li>□ <b>Because Battering is an expression of a Belief System --</b><ul style="list-style-type: none"><li>■ Individuals can't "switch" roles w/in a relationship</li><li>■ Two BATTERERS can't/won't be in a relationship with each other</li></ul></li><br/><li>□ <b>Battering is a <u>Pattern of Behavior</u> NOT an <u>Isolated Act</u></b><ul style="list-style-type: none"><li>■ BATTERERS can be "victims" of crimes</li><li>■ Battered Women can "perpetrate crimes"</li><li>■ Battered Women can use force w/out perpetrating a crime</li></ul></li></ul> |
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| <hr/> <hr/> <p><b>In Summary:</b></p> <hr/> <ul style="list-style-type: none"><li>□ We can do our job ethically and in good conscience and still consider Context, Motivation, Impact and the Intent of the Law when we make decisions about how to handle DV cases.</li><br/><li>□ <i>If we are truly interested in protecting victims of battering and their children – we must make sure that we are prosecuting and protecting the "right" people.</i></li></ul> |
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