**SCHEDULE OF DOCUMENTS**

| Doc No | Description of document | Decision |
|---|---|---|
| 1 | *Backpocket Brief*<br>Additional Estimates 2018-19 | *Release in full* |
| 2 | *Discussion paper*<br>Gender Inequality and Violence against Women – April 2018 | *Release in part*<br>Section 22 – Irrelevant (personal) information |
| 3 | *Email*<br>Media release for Stop it at the Start campaign - 8 October 2018 | *Release in part*<br>Section 22 – Irrelevant (personal) information |
| 3a | *Attachment*<br>Media release – October 2018 | *Release in full* |
| 4 | *Email*<br>Draft - Is gender inequality the root cause of violence against women and what about men? | *Release in part*<br>Section 22 – Irrelevant (personal) information |
| 5 | *Briefing*<br>Does gender inequality cause violence against women? | *Release in full* |
| 6 | *Briefing*<br>Does gender inequality cause violence against women? | *Release in full* |
| 7 | *Research Paper*<br>The Stereotyped Offender: Domestic Violence and the Failure of Intervention | *Release in full* |
| 8 | *Comments on Discussion paper*<br>Gender Inequality and Violence against Women – April 2018 | *Release in part*<br>Section 22 – Irrelevant (personal) information |

DSS - FOI LEX 56983 - Document 1



# ADDITIONAL ESTIMATES 2018-19

***Policy brief providing background around the significance in relation to why Domestic and Family Violence is a gendered form of abuse.***

## ~~TOPIC:~~ MEN'S RIGHTS ADVOCACY GROUPS AND INVOLUNTARY CELIBACY

~~**WITNESS:** Chantelle Stratford, Branch Manager, Families and Communitie~~**TALKING POINTS**~~s~~

~~**MEN'S RIGHTS ADVOCACY GROUPS AND INVOLUNTARY CELIBACY**~~

- **Involuntary Celibates or Incels** are men who blame women, social norms or their own inadequacies for being unable to form sexual or romantic relationships.

- Incels are anti-feminist and often co-align with misogynist groups, male supremacy groups, conservative men's rights activists and male supremacist groups. Incels self-describe as "beta" or socially inferior and often share ideas of how to degrade or punish women physically and sexually.

- **Men's Rights Advocates/Advocacy groups** believe that the feminist/women's rights movements have caused an imbalance between men and women, leading to discrimination against men. Accordingly, Men's Rights Advocates/Advocacy Groups aim to 'promote equal rights and an equal playing field for men'.

- In Australia, these groups criticise state and territory, and Commonwealth Governments of:

  - Providing a disproportionate amount of government assistance to women over men; and

  - Passing legislation that favours women over men.



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 1



- Further, Men's Rights Advocates suggest that gender inequality is not the cause of domestic and family violence. Arguing that men and women are affected equally as victims of family and domestic violence. However, this position is not supported by research conducted by various government agencies, universities and international researchers.

## PROGRAMS UNDER THE THIRD ACTION PLAN FOR MALE VICTIMS OF VIOLENCE

- The National Plan funds a number of services that support men experiencing family, domestic or sexual violence:
  - MensLine: funded under Family and Relationship Services (FaRS), MensLine provides a national telephone and online support, information and referral service for men with family and relationship concerns, including men who are either victims of, use, or are at risk of using family and domestic violence.
  - 1800RESPECT: 1800RESPECT is the national sexual assault, domestic and family violence service. The service is available to all victims of domestic violence, family and sexual violence including men, women and children.
  - Families and Children Activity:
    - Family Relationship Centres provide information, support and referral services and provide family dispute resolution and access to some legal assistance for separating or separated families.
    - Family Law Services provide alternatives to formal legal processes for families who are separated, separating or

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 1



in dispute, including those with family violence issues, to improve their relationships, resolve their disputes and make arrangements in the best interests of their children.

**RECENT MEDIA**

- **22 November, 2018** - Coverage in The New Matilda claims Education Minister, Dan Tehan, was motivated by men's rights activists to shelve a taskforce to scrutinise university responses to sexual assault and harassment on campus.

- **31 October, 2018** - Fans of controversial alt-right commentator and men's rights activists Milo Yiannopoulos are demanding a refund after his 2018 Australian tour was cancelled by promotors due to 'unforeseen circumstances'.

- **5 October, 2018** - the 'Men's Rights Agency' has criticised the recent theme of phase two of the *Stop it at the Start* campaign. Stating that the campaign is 'disgustingly biased' and does not acknowledge 'significant numbers of males who are victims of female violence'.

- **5 October, 2018** - the 'Men's Rights Agency' reposted questioning conducted by Senator Leyonhjelm at Budget Estimates, 2018. Within the line of questioning, Senator Leyonhjelm questions the relevance of gender inequality and violence against women and their children.

- **September and October, 2018** - The recent US Senate hearings investigating Brett Kavanaugh have developed a support base within men's advocacy groups. Kavanaugh has faced multiple allegations of sexual misconduct from Christine Blasey Ford and other women. Men's advocacy groups across the world have publically supported Kavanaugh, alleging that he is a victim of

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 1



harassment and sabotage by progressive and feminist political movements.

- **1 June, 2018** - Incel groups and some Men's Advocacy Groups have supported a new dating website for 'Incels'. The website encourages women to date Incels in order to create societal change and reduce mass shootings perpetrated by men who are involuntarily celibate.

- **3 January, 2018** – The article written by a female psychologist titled '*Stop asking me what about men?*' points out that men's groups always respond when articles/research are about violence against women, rape statistics and murders of women. Often the social media commentary is derogatory. However, women never comment 'what about women' when articles focus on men.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 1



## BACKGROUND

- As gender-based violence is the primary driver in the development and implementation of the *National Plan to Reduce Violence Against Women and their Children 2010-2022*, the topics of toxic masculinity and incels are increasingly explored in policy development.

Statistics on gender and domestic and family violence in Australia

In Australia, results from the 2016 Personal Safety Survey indicate that women are far more likely than men to have experienced partner violence.[1] Since the age of 15:

- one in four women has experienced physical or sexual violence from a current or former partner, boyfriend, girlfriend or date compared to one in 13 men
- one in six women has experienced physical or sexual violence from a cohabiting partner compared to one in 16 men
- one in five women has experienced sexual violence compared to one in 21 men.

- Although partner violence against males in Australia increased between 2005 and 2016 (from 0.4 per cent to 0.8 per cent respectively),[2] women continue to experience higher rates (1.5 per cent in 2005 to 1.7 per cent in 2016).

## INCELS

[1] Partner refers to a current or former cohabiting partner (de facto or married)
[2] Within the last 12 months, violence by a current or former cohabiting partner



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 1



- Incels often fit the trope of white, hetero-normative men from Western cultures. Incels perceive the rise of feminism and equal rights movements as the reason they cannot find intimacy and often speak about violent acts against women as retribution.

- There have been international examples of murders committed by men who identify as Incels:

  - Elliot Rodger killed six people and injured 14 in 2014. Rodger issued a 141 page manifesto, launching a "War on Women", blaming women for depriving him of sex before committing suicide after the violent attack.

  - Christopher Harper-Mercer killed nine in 2015. Harper-Mercer lamented his own virginity and referenced Rodger's manifesto.

  - Alek Minassian killed 10 and injured 16 in 2018. Prior to the event Minassian wrote "The Incel Rebellion has already begun" on his personal Facebook.

  - Scott Beierle killed two and injured five in November 2018 before killing himself. In 2014 he posted several YouTube videos of himself espousing extreme hatred for women and expressing anger over not having a girlfriend.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 2

Australian Government
Department of Social Services

# Gender Inequality and Violence against Women

## What does the evidence say?

April 2018



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

# Contents

**Purpose and Objectives** ..... 3
*Intended audience* ..... 3
*What this paper is not* ..... 3
**Key messages** ..... 4
**Our policy frameworks and initiatives** ..... 4
From 'Change the Story: A shared framework for the primary prevention of violence against women and their children in Australia', Our Watch, 2015 ..... 4
From 'Reducing Violence against Women and their Children, Research informing the development of a national campaign', commissioned by DSS, 2015 ..... 4
From the 'National Plan to Reduce Violence against Women and their Children 2010-2022', Council of Australian Governments, 2010 ..... 5
*So what is the issue with targeting gender inequality as a key factor?* ..... 6
**Tracking attitudinal change and violence rates** ..... 7
*National Community Attitudes towards Violence against Women Survey* ..... 7
*Personal Safety Survey* ..... 7
**The results are in:** ..... 8
**The dilemma for policymakers** ..... 9
**Data from the European Union** ..... 10
**Data from the Asia-Pacific** ..... 12
**Other inconsistencies** ..... 13
*Hearing the voice of victims of VAW* ..... 13
*Case Study* ..... 13
*Recognising the socioeconomic dimensions of VAW* ..... 13
**Questions for policymakers** ..... 14
**Where to from here?** ..... 16
**References** ..... 18
**Contacts** ..... 18
**Attachment A: What drives and reinforces violence against women? From Our Watch's Change the Story** ..... 2
**Attachment B: Factors in addition to gender inequality that are associated with, or contribute to, family and domestic violence** ..... 3

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

# Purpose and Objectives

This paper was requested by s 22 in April 2018.

This paper will provide recent and reliable data insights that question the prevailing logic that gender inequality (GI) is a 'key' or 'causal' factor driving violence against women (VAW) perpetration (henceforth referred to as 'the position').

The objectives of this paper are to:

1. inform mid to senior level policymakers of the potential pitfalls of the position
2. improve senior DSS policymakers' capacity to respond to critics of the position
3. provide frank advice in the spirit of impartial policy debate and improvement.

## *Intended audience*

Policymakers with a commitment to evidence-based policy and a good background knowledge of related initiatives including the *National Plan to Reduce Violence Against Women and their Children 2010-2022* (National Plan), managed by Family Safety Branch, the National Campaign to Reduce Violence Against Women (National Campaign), managed by Communication Services Branch, and the work of Our Watch and Australia's National Research Organisation for Women's Safety (ANROWS).

## *What this paper is not*

This discussion paper is deliberately brief and due to timing and resource limitations:

- is not a systematic review of the evidence that originally supported the position in 2010, but rather a scan of more recent (~within last five years) evidence that has come to the attention of the Department in the course of the National Plan's implementation
- is not intended to attack the position maliciously, nor to dismiss GI as a legitimate factor correlated with VAW perpetration
- is not intended to address another associated policy debate about whether male and female victims of violence are being supported equally by our initiatives
- is not recommended for readers new to the subject matter, as little background information is provided.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

# Key messages

- No single factor alone causes VAW. VAW is a complex social phenomenon occurring as a result of various contributing factors.
- Gender inequality, including gender inequitable attitudes, does not cause VAW. However, it has been consistently identified by reputable studies to be correlated with VAW.
- Based on recent data from international studies, it does not appear gender inequality is significantly more correlated with VAW than other contributing factors.
- In Australia, attitudes towards VAW are improving at the same time as the prevalence of VAW is increasing.
- More research is needed, from the Australian setting, to inform anti-VAW policies into the future.

# Our policy frameworks and initiatives

Since at least 2010, the prevailing logic underpinning the Department's anti-VAW initiatives, including the National Plan, is that GI is a key factor driving VAW perpetration in Australia.

This position is found throughout various Government policy documents and in those produced by Government-funded researchers:

From 'Change the Story: A shared framework for the primary prevention of violence against women and their children in Australia', Our Watch, 2015

- "What this framework makes clear is that gender inequality is the core of the problem and it is the heart of the solution." (Foreword)

From 'Reducing Violence against Women and their Children, Research informing the development of a national campaign', commissioned by DSS, 2015

- "There is strong community support for the cessation of extreme violence against women. A significant barrier to achieving this change, however, is low recognition of the heart of the issue and where it begins. There is a clear link between violence towards women, and attitudes of disrespect and gender inequality. These attitudes are unconscious, yet firmly entrenched, among many Australian adults and children. And as adults we are allowing young people to develop these attitudes from an early age. Often unknowingly, we are perpetuating the problem." (Executive Summary)

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

## From the 'National Plan to Reduce Violence against Women and their Children 2010-2022', Council of Australian Governments, 2010

- "By working together and challenging the attitudes and behaviours that allow violence to occur, all Australian governments are saying a very loud "no" to violence." (Foreword)
- "Evidence shows that key predictors of violence against women relate to how individuals, communities and society as a whole view the roles of men and women." (Page 14)
- "At every level of society, gender inequalities have a profound influence on violence against women and their children. Building greater equality and respect between men and women can reduce the development of attitudes that support or justify violence." (Page 15)
- "Broader social policy initiatives that address gender inequality and improve the status of women are critical to reducing violence against women. The strategy will use the link between gender equality and violence to create better outcomes." (Page 15)

In particular, the link between gender inequitable attitudes and VAW is presumed to have a strong association and that by improving attitudes towards VAW – and towards women more generally – a reduction in actual VAW will be achieved. This is the theory of change underpinning the National Plan and it is one that many of our funded projects depend on being right in order for the National Plan to succeed.

The National Plan was endorsed by the Council of Australian Governments (COAG) under the former Labor Government and released in 2011. While the National Plan recognises that 'all forms of violence against women are unacceptable', it explicitly targets two main types of violence: domestic and family violence and sexual assault (Page 1, Introduction, National Plan).

The rationale provided for targeting these two forms of violence is that these crimes are 'gendered' crimes. That is, they have an unequal impact on women, whereas physical violence is more likely to be directed towards men, most often by other men (COAG 2010; ABS 2016).

To this day, sexual assault and violence at the hands of a partner (henceforth 'partner violence') continue to have an unequal impact on women.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

## *So what is the issue with targeting gender inequality as a key factor?*

Improving equality of opportunity between men and women is an admirable policy goal, it is an ideal the vast majority of Australians support and – in line with the evidence – should be recognised as one factor, among many, contributing to VAW in Australia.



*Still from 'stop it at the start' advertisement, funded by the Department of Social Services*

The issue with the position today is that it appears to be over-emphasising the predictive relationship between GI, including gender inequitable attitudes, and VAW perpetration relative to other factors. This over-emphasis can be found throughout the individual actions of all of the Action Plans under the National Plan, the scenarios depicted by the 'stop it at the start' National Campaign, and across the research and advocacy work of Our Watch and ANROWS. In particular, readers are encouraged to see **Attachment A: Our Watch's explanation for 'what drives and reinforces violence against women?'**




The trouble with over-emphasising the relative associative strength of two factors is that is has implications. Most importantly, it detracts energy and investment away from factors that have been found to be as much, if not more, correlated with VAW perpetration. The unintended result being the Department's initiatives may be disproportionately focussed on what is in reality just one part of the problem.

In the end, poorly targeted policies produce suboptimal results, and the ones who are affected most by these results are victims of violence across Australia.

On 12 April 2018, the Department received the results of the latest wave of the National Community Attitudes towards Violence against Women Survey (NCAS). These results follow those of the Personal Safety Survey (PSS) submitted to the Department by the Australian Bureau of Statistics in November 2017.

Among the findings of both surveys, it is becoming increasingly evident that national VAW prevalence rates **are not following improved attitudes towards VAW**.

Additional information on both the NCAS and PSS can be found on the next page.



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

# Tracking attitudinal change and violence rates

## *National Community Attitudes towards Violence against Women Survey*

The NCAS was developed by VicHealth in partnership with The University of Melbourne, the Social Research Centre and experts across Australia, and supported by the Australian Government Department of Social Services as part of the National Plan.

The NCAS tracks Australians' attitudes towards VAW over time (2009, 2013, 2017) to gauge whether attitudes about a number of different topics have improved, including attitudes towards:

- Gender equality
- Sexual harassment
- Sexual violence including rape
- Gender roles

## *Personal Safety Survey*

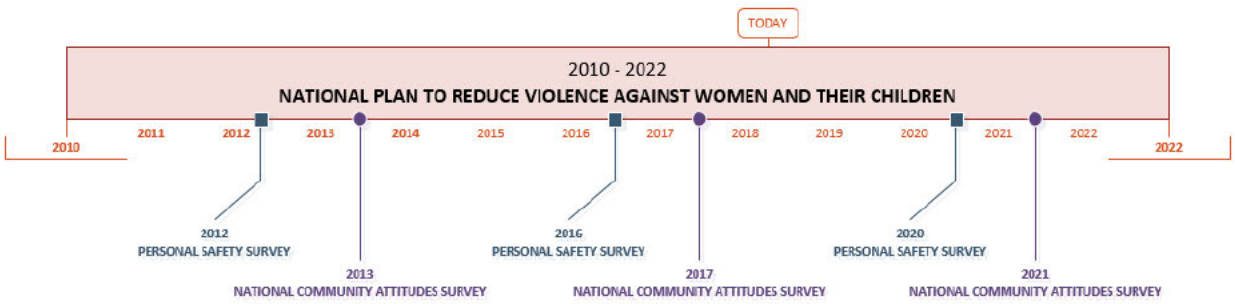
The PSS collects national information from men and women aged 18 years and over about the nature and extent of violence experienced since the age of 15. It also collects detailed information about men's and women's experience of:

- current and previous partner violence and emotional abuse since the age of 15
- stalking since the age of 15
- physical and sexual abuse before the age of 15
- witnessing violence between a parent and partner before the age of 15
- lifetime experience of sexual harassment
- general feelings of safety.

**Figure 1: Funding**[1]

| Survey Wave | | | | | |
|---|---|---|---|---|---|
| *PSS 2012* | *NCAS 2013* | *PSS 2016* | *NCAS 2017* | *PSS 2020* | *NCAS 2021* |
| $11.4 million | $3.1 million | $12.3 million | $3.1 million | TBC | TBC |

**Figure 2: Timing**[2]




[1] Approximate
[2] Approximate



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 2

# The results are in:

## Figure 3: Australian attitudes towards violence against women over time

## Assessment of attitudinal change

- **Australian attitudes towards violence against women, including more general attitudes towards women, have overwhelmingly improved under the National Plan (2009-2017)**

| ***Proportion of respondents who disagree with the below statements*** | **2009** | **2013** | **2017** |
|---|---|---|---|
| It's a woman's duty to stay in a violent relationship in order to keep the family together | 93.48 | 91.41 | 96.86 |
| Domestic violence can be excused if THE OFFENDER is heavily affected by alcohol | 94.37 | 91.99 | 95.47 |
| Domestic violence can be excused if THE VICTIM is heavily affected by alcohol | 92.82 | 90.17 | 95.31 |
| A woman has to have children to be fulfilled | 89.4 | 88.26 | 92.65 |
| Women who are sexually harassed should sort it out themselves rather than report it | 87.61 | 88.12 | 92.59 |
| A man is less responsible for rape if he is drunk or affected by drugs at the time | 93.14 | 91.75 | 91.92 |
| Discrimination against women is no longer a problem in the workplace in Australia | 90.18 | 86.79 | 90.43 |
| DV excused if results from getting so angry they temporarily lose control | 82.05 | 79.25 | 88.8 |
| Domestic violence is a private matter to be handled in the family | 87.88 | 83.99 | 88.21 |
| Women often say no when they mean yes. | 85.03 | 82.37 | 86.95 |
| If a woman is raped while she is drunk or affected by drugs she is at least partly responsible | 82.61 | 80.75 | 86.55 |
| Domestic violence can be excused if, afterwards, the violent person genuinely regrets what they have done | 77.54 | 79.02 | 86.39 |
| I don't believe it's as hard as people say it is for women to leave an abusive relationship* | 47.73 | 49.87 | 84.63 |
| On the whole, men make better political leaders than women | 77.06 | 71.73 | 84.43 |
| Men should take control in relationships and be the head of the household | 83.7 | 81.62 | 84.15 |
| MANY allegations of sexual assault made by women are false* | 69.41 | 69.91 | 81.3 |
| Women prefer a man to be in charge of the relationship | 72.9 | 69.57 | 73.94 |
| Rape results from men not being able to control their need for sex | 62.95 | 54.72 | 63.27 |
| Women going through custody battles OFTEN make up or exaggerate claims of domestic violence in order to improve their case | 35.03 | 33.83 | 47.28 |
| ***Proportion of respondents who agree with the below statements*** | **2009** | **2013** | **2017** |
| In domestic situations where one partner is physically violent towards the other it is entirely reasonable for the violent person to be made to leave the family home | 92.49 | 91.32 | 89.12 |
| It is a serious problem when a man tries to control his partner by refusing her access to their money | 81.35 | 79.21 | 83.55 |
| Women are more likely to be raped by someone they know than by a stranger | 83.75 | 78.07 | 79.47 |
| If I needed to get outside advice or support for someone about a domestic violence issue, I would know where to go | 66.73 | 60.08 | 61.09 |
| ***Proportion of respondents who recognise the below behaviours are a form of domestic violence*** | **2009** | **2013** | **2017** |
| Tries to scare or control by threatening to hurt other family members - a form of domestic violence? | 98.68 | 98.15 | 98.88 |
| Forces the other partner to have sex - a form of domestic violence? | 98.74 | 97.85 | 98.33 |
| Slaps or pushes to cause harm or fear - a form of domestic violence? | 98.38 | 98 | 98.25 |
| Throws or smashes objects to frighten or threaten - a form of domestic violence? | 98.15 | 97.56 | 97.14 |
| Stalking - a form of violence against women? | 93.41 | 90.88 | 94.19 |
| Controls the social life by preventing them from seeing family and friends - a form of domestic violence? | 87.25 | 87.94 | 93.42 |
| Repeatedly criticises to make partner feel bad or useless - a form of domestic violence? | 88.03 | 87.35 | 92.78 |
| Harassment via repeated emails, text messages and the like - a form of violence against women? | 88.94 | 86.85 | 92.48 |
| Controls the other partner by denying them money - a form of domestic violence? | 77.21 | 75.17 | 84.56 |

**question phrasing differed between surveys, question intent remained the same*
*Note: **Not for further distribution** until validated by a second analyst and authorised by the Social Research Centre*
*Source: NCAS 1995, 2009, 2013, 2017, funded by DSS*
*Data Analyst: Jacob Siddall, Research and Data Section, Family Safety Branch, 02 6146 6514, jacob.siddall@dss.gov.au*

*Key: The colour scale is benchmarked in line with the values and colour below. Movements towards green are improvements. Movements towards red are deteriorations.*

33.83 | 40 | 50 | 60 | 70 | 80 | 98.88

*Bad* ← → *Good*

Interpretation key to the left



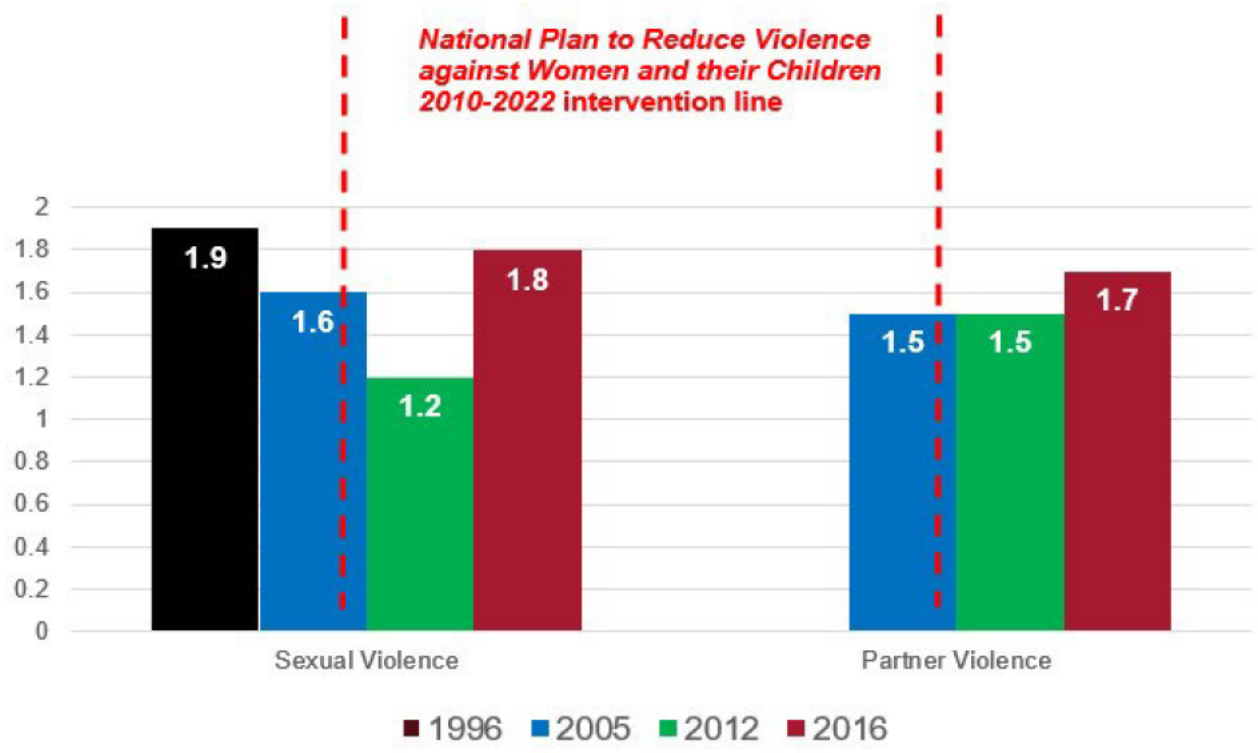
**FOR OFFICIAL USE ONLY**

Document released under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

**Figure 4: Violence against Australian women over time, proportion (%) of women who experienced sexual violence and partner violence, during the last 12 months, 1996, 2005, 2012, 2016, Australia**

## Assessment of violence change

- **Sexual violence and partner violence against Australian women has increased under the National Plan (2005-2016)**




*Source: Australian Bureau of Statistics Personal Safety Survey, funded by DSS*

## Conclusions

- **In Australia, attitudes towards violence against women have <u>improved</u> while the prevalence of sexual and partner violence against women has <u>increased</u>.**
- **It appears, based on the latest available evidence, that the theory of change underpinning the National Plan may be incorrect.**



Taking the above information into account, it would be prudent for policymakers to at least be doubtful of an overt causal link between attitudes and VAW.

In fact, this was precisely the suggestion alluded to by researchers from the University of Melbourne, VicHealth and the Social Research Centre in the 2013 NCAS Full Technical Report:

***"The data [above] suggests that it is possible that reduction in blatant normative support for violence against women has not been matched by reductions in violence itself."***

Page 227, 2013 NCAS Full Technical Report

Puzzlingly, this message does not appear to be getting through to the overseers of the National Plan. As part of the evaluation of the Second Action Plan (2013-2016), KPMG found that most National Plan stakeholders considered 'that the various actions under this priority [National Plan Priority 1 – Driving whole of community action] were effective in driving cultural and attitudinal change to prevent violence against women and children' (KPMG 2017). This finding, unfortunately, is illustrative of an apparent disconnect between what officials, academics and sector representatives have theorised about the causes of VAW in the past and what our data tells us is actually happening in the community today.

## The dilemma for policymakers

You are now are aware of credible evidence contradicting the position.

A frequent response to this evidence is 'won't it take time for the violence rates to catch up with improvements in attitudes'. While this may well be the case, without any valid national comparisons it's essentially a strategic gamble. At stake? The safety of female victims of violence across Australia.

In the next section, this paper will present data from both Europe and the Asia-Pacific region that indicates it is more likely than not that violence rates will not follow attitudinal improvements. The real dilemma, then, especially for senior policymakers is: 'is it ethical to push forward with the narrow focus of the position, knowing what we now know?'



Document released under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 2



# Data from the European Union

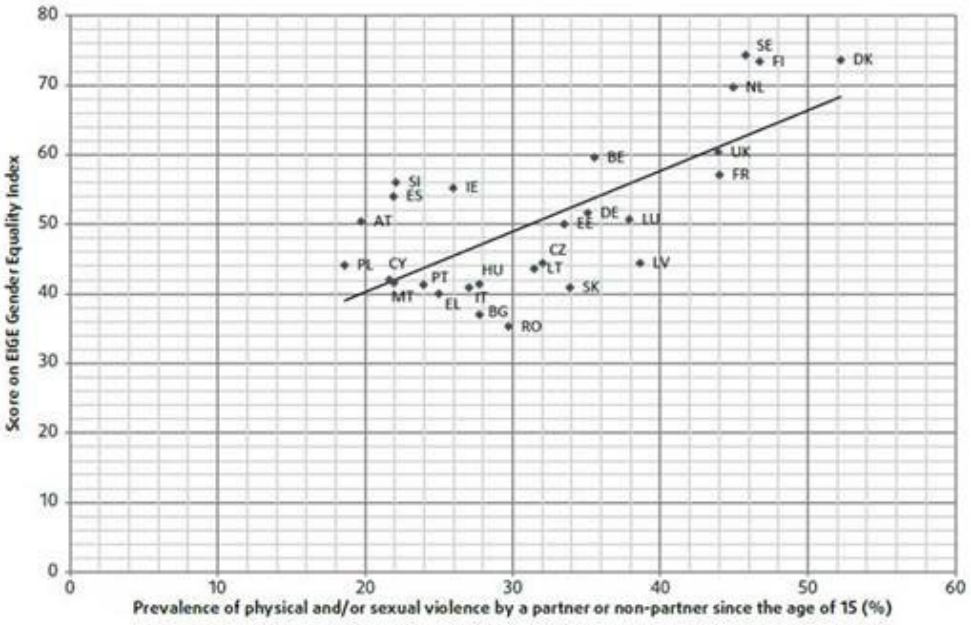
*Question for consideration:* If GI is the key factor driving VAW in Australia, why does data from similar regions of the world suggest the exact opposite is the case – that gender equality is actually positively correlated with an increased prevalence of VAW?

Below are the findings from a 2014 European Union (EU)-wide survey of women about their experiences of violence. The below scatter plot matrix displays the relationship between women's experience of physical and/or sexual violence since the age of 15, by a partner and/or non-partner (%), and each EU Member State's score on the European Institute for Gender Equality (EIGE) 'Gender Equality Index'.

The finding, as can be observed, is that those countries with higher Gender Equality Index scores also have a higher prevalence of VAW.

**Figure 5: Comparison of Gender Equality (GE) Score and violence, EU**

Figure 2.4: Relationship between women's experiences of physical and/or sexual violence since the age of 15, by a partner and/or a non-partner (%), and EU Member States' scores on the EIGE Gender Equality Index [a,b]




*Notes: a Correlation coefficient 0.714, $R^2$ = 0.510.*
*b Croatia is not included in EIGE's Gender Equality Index, so Croatia is excluded from this analysis.*
*Sources: FRA gender-based violence against women survey dataset, 2012; EIGE Gender Equality Index 2013*

*Source: 'Violence against women: an EU-wide survey' (2014), European Union (EU) Agency for Fundamental Rights*

Particularly troubling is that it appears the highest rates of VAW co-occur in those countries with higher gender equality (Norway, Sweden, Finland, and Denmark).

This is also known as the 'Nordic Paradox'.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 2



The relationship between the prevalence of VAW and Gender Equality Scores across the EU can be more clearly observed in Figure 6 below, where the lack of any clear pattern supporting the position can be seen.

Note that the 'GE Score' column provides the baseline visualisation, sorted from highest to lowest GE Score. Were gender inequality a causal factor for VAW across the EU, the two columns would presumably look much similar.

The aggregate GE Score and VAW Prevalence rate for the EU is outlined in the middle.

**Figure 6: EU Countries, comparison of Gender Equality (GE) Score and prevalence of VAW, since the age of 15**

| Country | GE Score | VAW Prevalence (%) |
|---|---|---|
| SE | 82.6 | 29.7 |
| DK | 76.8 | 32.6 |
| FI | 73.0 | 32.4 |
| NL | 72.9 | 31.5 |
| FR | 72.6 | 29.1 |
| UK | 71.5 | 29 |
| BE | 70.5 | 29.7 |
| IE | 69.5 | 25.6 |
| LU | 69.0 | 32.3 |
| SI | 68.4 | 22.4 |
| ES | 68.3 | 25.2 |
| **EU-28** | **66.2** | **27.5** |
| DE | 65.5 | 26.9 |
| AT | 63.3 | 25.6 |
| IT | 62.1 | 26.8 |
| MT | 60.1 | 25.2 |
| BG | 58.0 | 44.2 |
| LV | 57.9 | 38.2 |
| LT | 56.8 | 25 |
| PL | 56.8 | 22.1 |
| EE | 56.7 | 25.8 |
| PT | 56.0 | 24.5 |
| CY | 55.1 | 24.7 |
| CZ | 53.6 | 28 |
| HR | 53.1 | 23.2 |
| SK | 52.4 | 30 |
| RO | 52.4 | 25 |
| HU | 50.8 | 26.7 |
| EL | 50.0 | 27.4 |

*Data source: European Institute for Gender Equality, 2015*

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 2

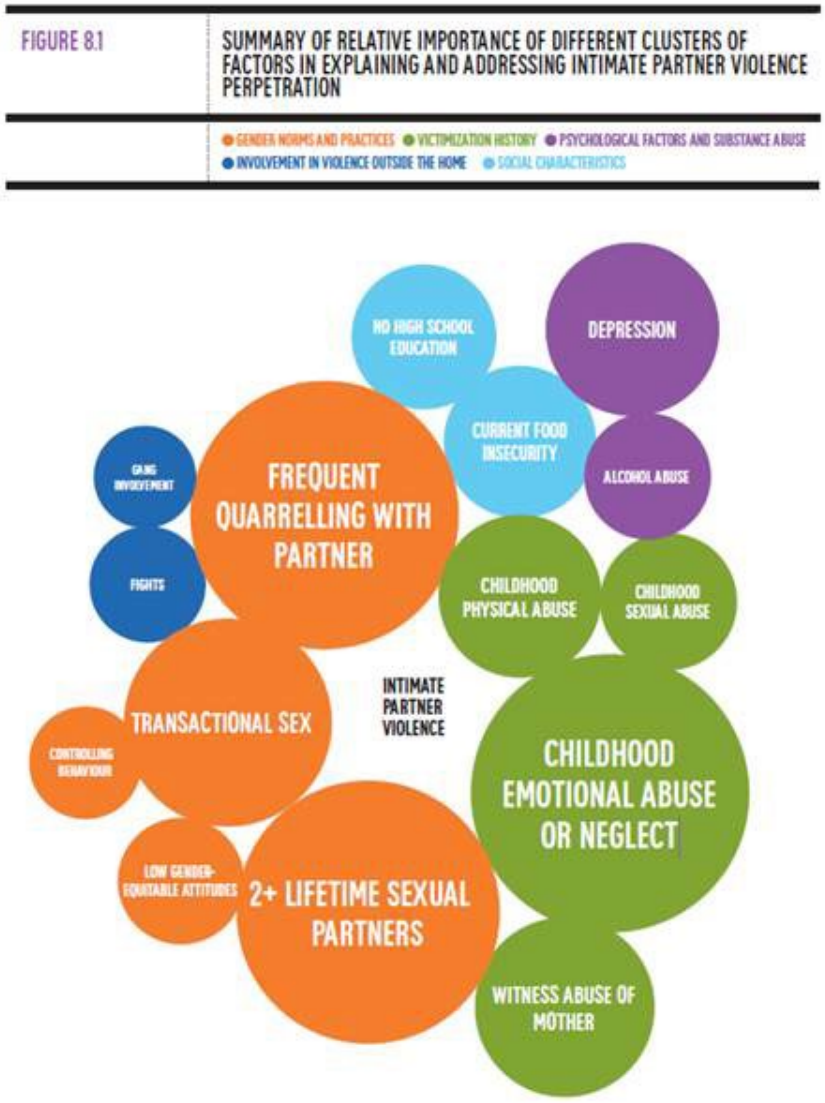


# Data from the Asia-Pacific

*Question for consideration:* If GI is the key factor driving VAW in Australia, why have United Nations-funded studies examining VAW across the Asia-Pacific determined that 'gender inequitable attitudes' are not significantly more correlated with intimate partner violence than other factors (factors such as childhood emotional abuse or neglect and alcohol abuse).

And if this is the finding across the Asia-Pacific, where gender equitable attitudes are less developed, what basis is there to claim that GI is driving VAW in a more socially progressive country like Australia?

**Figure 7: Summary of relative importance of different clusters of factors in explaining and addressing intimate partner violence perpetration**




*Source: 'Why do some men use violence against women and how can we prevent it? Quantitative findings from the United Nations Multi-Country Study on Men and Violence in Asia and the Pacific' (2013) report*



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 2



*Note: 'Low Gender Equitable Attitudes' can be observed in the bottom-left hand corner.*

# Other inconsistencies

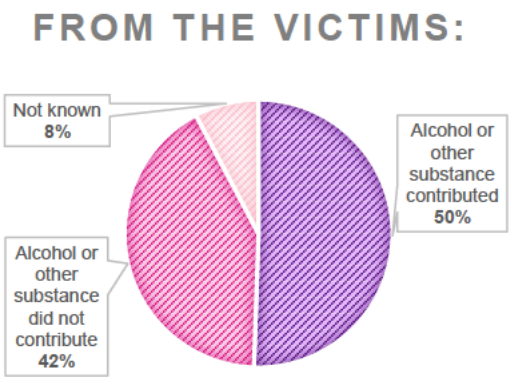
In addition to the National Plan's own tracking data suggesting flawed initial assumptions, other inconsistencies have been identified by the Research and Data Section, Family Safety Branch – inconsistencies sourced from our own datasets developed by the Australian Bureau of Statistics.

## *Hearing the voice of victims of VAW*

*Question for consideration:* If GI is the key factor driving VAW in Australia, why are the victims of VAW telling us there are other key factors at play?

The results of the 2016 PSS, conducted by the ABS and funded by DSS estimates that:

- ***50.3 per cent*** of female victims of sexual assault by a male perpetrator, in Australia, identify that alcohol or other substances contributed to their most recent incident of sexual assault (in the last 10 years). For physical assault by a male perpetrator, the same figure was ***48.8 per cent***.




*Case Study*

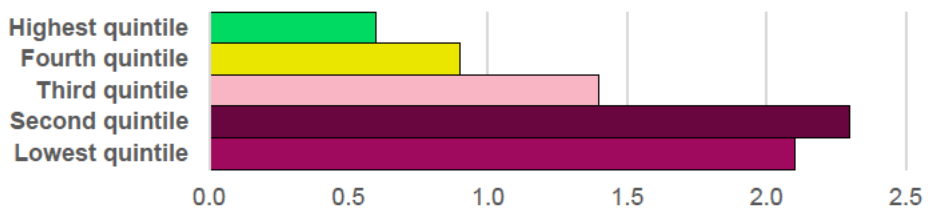
How many actions were dedicated to addressing alcohol and other drugs (AOD), as a contributing factor to VAW, under the Third Action Plan (2016-2019) under the National Plan?

*Answer: None*

## *Recognising the socioeconomic dimensions of VAW*

Furthermore, contrary to the popular opinion that VAW affects women regardless of their socioeconomic status are the findings of the 2016 PSS, which indicate that at least some forms of victimisation cluster towards the lower end of socioeconomic groupings.

**Figure 8: Experiences of sexual violence in the last 12 months, by household weekly income, proportion of females**



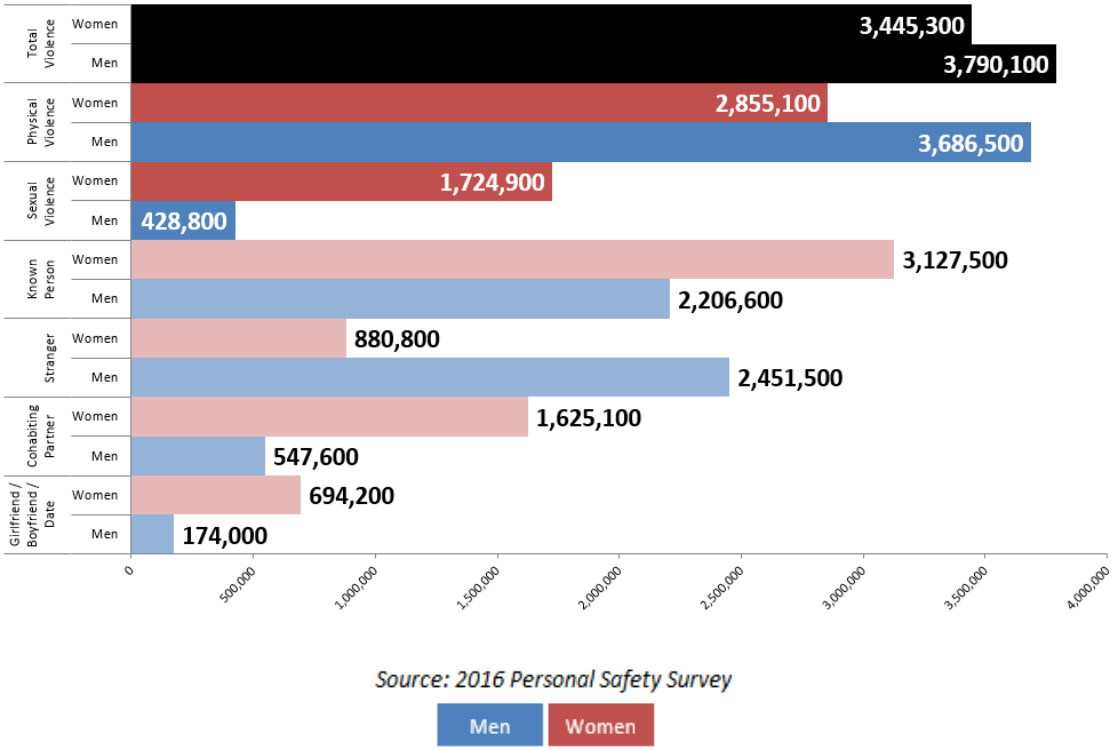



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

*Source: Australian Bureau of Statistics Personal Safety Survey 2016*

*An additional consideration:* If GI is the key factor driving sexual and partner violence against women in Australia, what is the key factor driving physical violence against men? And if another factor can be identified as driving the most prevalent form of violence in Australia, male on male physical violence, why is this factor relegated to second-tier status when conceptualising the potential causes of VAW?

**Figure 9: Victims of violence since the age of 15, by gender, broken down by selected perpetrator types**




*Note: Physical Violence and Sexual Violence counts are included in 'Total Violence', other bars are included within Physical Violence and Sexual Violence counts. Do not add figures together.*

# Questions for policymakers

Given that attitudes towards VAW and VAW perpetration might not be as intimately linked as previously thought:

- was the allocation of $30 million towards media advertisements under the National Campaign to Reduce Violence against Women, managed by the Communication Services Branch, worth it?
- should we not redirect funds away from awareness raising activities towards programs that are more likely to make a difference?
- how do we strike the right balance between continuing to support GI-focussed actions while simultaneously broadening out our scope to target other factors associated with VAW?

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 2



- do you, as a policymaker, place more value on rigorous evidence-based policy development or pleasing stakeholders with a firmly entrenched view that GI causes VAW?

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 2



# Where to from here?

A sensible approach to evidence-based policy development is one that continuously looks to the latest available research findings and data insights for guidance.

In fact, this is formalised as a legislative requirement for all Commonwealth public servants under Section 10 of the *Public Service Act 1999*:

> "the APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence"
>
> (APS Values, under Impartial)

At the inception of the National Plan in 2010, the best available evidence suggested a unique relationship between attitudes towards VAW and VAW perpetration. Nearly a decade later, the evidence available has improved and as a result our capacity for better judgement has been lifted.

As raised earlier in the paper, the intention of this analysis is not to suggest that GI is unimportant, nor that it is disconnected from VAW. This paper instead aims to convey the message that if we genuinely want to reduce VAW in Australia, a more balanced and multi-disciplinary approach will likely achieve more than the 'gendered' approach has to date.

Based on the evidence presented in this paper, and informed by the intent of the APS Values, it is recommended:

| Recommendations | |
|---|---|
| 1 | DSS lead a strategic reconsideration of the relative strength of the link between GI and VAW. |
| 2 | As part of the suite of actions put forward under the the Fourth Action Plan (2016-2019) under the National Plan, which is currently being developed, GI focussed actions should be given no more priority than actions associated with other contributing factors referred to throughout this paper **(in particular those at Attachment B)**. |
| 3 | DSS provide a copy of this paper to the Minister's Office, in line with its legislated responsibility to provide Government with advice that is based on the best available evidence |
| 4 | DSS commission primary research, at the highest practicable standard of evidence by a cross-disciplinary university research team, to explore the relationship between VAW perpetration and factors including:<br>• Gender inequitable attitudes<br>• Alcohol and other drugs<br>• Mental health issues<br>• Childhood exposure to abuse and neglect |



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 2



| | |
|---|---|
| | • Family stability<br>• Employment status<br>• Low socioeconomic status<br>• Indigenous status<br>• Religion<br>• Demographic status (including age, country of birth, primary language spoken at home, gender identity, biological sex, sexual orientation, and relationship status) |
| **5** | The National Plan Implementation Executive Group commit to improving the standard of evidence supporting National Plan actions and projects into the future. |

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 2



# References

Australian Bureau of Statistics (2012, 2016), Personal Safety Survey, funded by the Department of Social Services

Council of Australian Governments (2010), National Plan to Reduce Violence against Women and their Children 2010-2022'

European Institute for Gender Equality (2015), data accessible at eige.europa.eu/gender-equality-index/2015/

European Union Agency for Fundamental Rights (2014), 'Violence against women: an EU-wide survey'

Fulu et al (2013), 'Why do some men use violence against women and how can we prevent it? Quantitative findings from the United Nations Multi-Country Study on Men and Violence in Asia and the Pacific'

KPMG (2017), Evaluation of the Second Action Plan of the National Plan to Reduce Violence against Women and their Children 2010-2022, Final Evaluation Report, Overall Assessment.

Our Watch (2015), Change the Story: A shared framework for the primary prevention of violence against women and their children in Australia'

TNS (2015), Reducing Violence against Women and their Children, Research informing the development of a national campaign', commissioned by the Department of Social Services

VicHealth (2009, 2013), National Community Attitudes towards Violence Against Women Survey, 2009 and 2012, funded by the Department of Social Services

# Contacts

If you have any questions or feedback please contact:

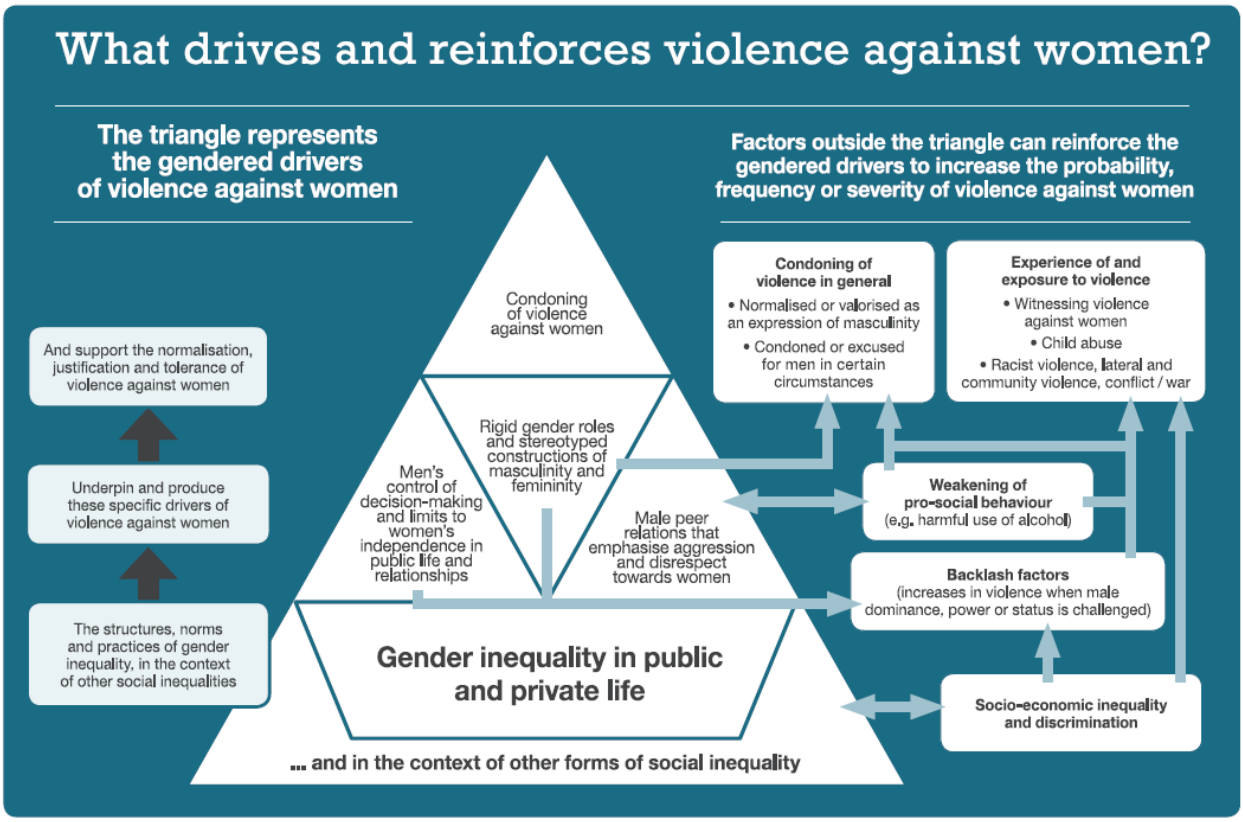
s 22 | Data Analyst, Research and Data Section
Family Safety Branch, Families and Communities Reform Group
**Australian Government Department of Social Services**
s 22 | s 22 @dss.gov.au

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 2



# Attachment A: What drives and reinforces violence against women? From Our Watch's Change the Story




Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 2



# Attachment B: Factors in addition to gender inequality that are associated with, or contribute to, family and domestic violence

| *Factor* | *Evidence* | *Source* |
|---|---|---|
| *Alcohol* | • Alcohol consumption, by either the offender or the victim, preceded over a third (n=179; 37 per cent) of all homicide events from 2010-11 to 2011-12.<br>• Alcohol consumption by an offender was recorded for more than a third of all domestic homicides (n=44; 38 per cent), including intimate partner homicides. | Homicide in Australia: 2010–11 to 2011–12: National Homicide Monitoring Program report, *Australian Institute of Criminology* |
| | • Australians were asked in 2017 if they perceived a link between alcohol and family and domestic violence. An overwhelming majority (92 per cent) of Australians believe there is a link, with 80 per cent of these Australians indicating that governments should be doing more to address the role alcohol plays in family and domestic violence.<br>• One in five (21 per cent) parents or guardians with children under the age of 18 years report that their child has been harmed or put at risk of harm because of someone else's drinking. | Foundation for Alcohol Research and Education, Annual Alcohol Poll, 2017 |
| | • Findings from the panel survey show that alcohol was involved in 34 percent of intimate partner violence (IPV) incidents, and 29 percent of family violence (FV) incidents.<br>• Alcohol-related IPV incidents were more likely to result in either a physical (34.4 per cent) or psychological injury (20.6 per cent) compared with those that did not involve alcohol (19.6 per cent physical; 13 per cent psychological). | Alcohol/Drug-Involved Family Violence in Australia (ADIVA): Final Report, National Drug Law Enforcement Research Fund |
| *Other Drugs* | • Thirteen percent of Intimate Partner Violence (IPV) and 12 percent of Family Violence (FV) incidents were drug-related (i.e. consumed by someone involved in the incident).<br>• Physical violence occurred at more than 57 percent of alcohol-related IPV and 52 percent of FV incidents; and at 60 percent of drug-related IPV incidents, and half of drug-related FV incidents.<br>• Almost double the proportion of drug-related IPV incidents resulted in a physical injury (43 | Alcohol/Drug-Involved Family Violence in Australia (ADIVA): Final Report, National Drug Law Enforcement Research Fund |

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

| | | |
|---|---|---|
| | per cent) compared with drug-unrelated incidents (22 per cent). | |
| | • Research has shown that abusive males with alcohol or drug problems inflict violence against their partners more frequently, are more likely to inflict serious injuries, are more likely to be sexually assaultive and are more likely to be violent outside the home than abusers without a history of substance abuse. | Parliamentary Library: Parliament of Australia, *Domestic, Family and Sexual Violence in Australia - An Overview of the Issues*, 2014 |
| *Gambling* | • Research by the Australian National University and Southern Cross University suggests a link between the number of poker machines in an area and levels of domestic violence.<br>• The research, published in October 2016, found a statistically significant correlation between poker machine density and police-recorded domestic violence rates among postcodes. This relationship existed even after accounting for the contextual factors listed above.<br>• In terms of relative risk, the police recorded 20 per cent fewer family violence incidents and 30 per cent fewer domestic violence assaults when postcodes with no poker machines were compared with postcodes with at least 75 poker machines per 10,000 people.<br>• Similar patterns were evident when the number of poker machine venues was analysed instead of the number of poker machines. | 'The relationship between electronic gaming machine accessibility and police-recorded domestic violence: A spatio-temporal analysis of 654 postcodes in Victoria, Australia, 2005–2014', Francis Markham, Bruce Doran, Martin Young, 2016 |
| | • Meta-analyses revealed that over one third of problem gamblers report being victims of physical IPV (38.1 per cent) or perpetrators of physical IPV (36.5 per cent) and that the prevalence of problem gambling in IPV perpetrators is 11.3 per cent.<br>• Although the exact nature of the relationships between problem gambling and IPV is yet to be determined, the findings suggest that less than full employment and clinical anger problems are implicated in the relationship between problem gambling and IPV victimization and that younger age, less than | Problem Gambling and Intimate Partner Violence: A Systematic Review and Meta-Analysis, Dowling et. al., 2016 |

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 2



| | | |
|---|---|---|
| | full employment, clinical anger problems, impulsivity, and alcohol and substance use are implicated in the relationship between problem gambling and IPV perpetration. | |
| *Family Breakdown* | • 60 per cent of separated parents reported a history of emotional abuse and/or physical violence before/during separation, and this continued for a slightly lower proportion after separation, with a longer term insight suggesting that problematic dynamics continue for 25 per cent of separated parents, up to five years after their separation. | Australian Institute of Family Studies, *Experienced of Separated Parents Study*, October 2015 |
| *Separation* | • For women who are experiencing family and domestic violence (FDV), the high risk periods include immediately prior to taking action, and during the initial stages of or immediately after separation.<br>• Victims who stay with the perpetrator because they are afraid to leave often accurately anticipate that leaving would increase the risk of lethal assault.<br>• The data on time-since-separation suggests that women are particularly at risk within the first two months. | Fact Sheet 5: Key Risk Factors (Family and Domestic Violence), Western Australia Department of Child Protection, |
| *Life Transition - Pregnancy* | • The 2012 Personal Safety Survey identified that of women who had experienced partner violence since the age of 15:<br>○ 21.7 per cent of women had experienced violence perpetrated by their current partner while pregnant (78.3 per cent had not); and<br>○ 53.9 per cent of women had experienced violence perpetrated by their previous partner while pregnant (46.1 per cent had not). | 2012 ABS Personal Safety Survey |
| *Childhood Trauma* | • Women who have experienced abuse during childhood are one and a half times more likely to experience violence in adulthood than those who did not. | *Mouzos, J & Makkai, T., Women's experiences of male violence: findings from the Australian component of the International Violence Against* |

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 2



| | | |
|---|---|---|
| | | *Women Survey (IVAWS), 2004* |
| *Non-Fatal Strangulation* | • This study identifies and quantifies Non-fatal strangulation (NFS) risk factors in female sexual assault and highlights the strong association with intimate partner sexual assault.<br>• Of women assaulted by an intimate partner, 22.5 per cent gave a history of NFS compared to less than 6 per cent of women assaulted by other assailant types.<br>• Of all sexual assaults with NFS, intimate partners were the assailant in 58.2 per cent of cases, whereas in sexual assault cases without NFS, intimate partners were the assailant in 15.9 per cent of cases.<br>• The likelihood of NFS was 8.4 times higher in women sexually assaulted by an intimate partner than women assaulted by an acquaintance/friend and 4.9 times higher than women assaulted by a stranger. | Zilkins, R.R, et al., *Non-fatal strangulation in sexual assault: A study of clinical and assault characteristics highlighting the role of intimate partner violence*, 2016. |
| | • Research indicates that women who have experienced NFS by a perpetrator in the last year were twice as likely to be killed as women who had not. | Block, C., *Reducing Intimate Partner Homicide Rates: What are the Risk Factors for Death when a Woman is being Abused?*, 2009. |
| *Socioeconomic Disadvantage* | • In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture. The low social and economic status of women can be both a cause and a consequence of this violence. | Chapter 6: Violence against women, The World's Women 2010, *United Nations, 2010* |
| | • The risk of IPV varies greatly across the community. Factors associated with a higher risk of IPV included being younger, Australian-born, having a long-term health condition, lacking social support, experiencing financial stress, having previously been a victim of child abuse, and having experienced emotional abuse by an intimate partner.<br>• The associations with domestic violence have been the subject of extensive research. The | Intimate partner violence against women in Australia: related factors and help-seeking behaviours, NSW bureau of Crime Statistics and |



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 2



| | |
|---|---|
| available evidence strongly suggests that women are more likely to be subjected to assaults if they experienced violence as a child, if they are sole parents, if they live in a relationship where alcohol is a problem, if they have a current partner who is domineering or controlling, or if their partner witnessed IPV perpetrated by their fathers (ABS, 2006; Coumarelos & Allen, 1998; Ferrante, Morgan, Indermaur, & Harding, 1996; Johnson, 2006; Johnson et al., 2010; Mouzos & Makkai, 2004).<br>• A number of studies have also found that the risk of physical and sexual violence is higher among women experiencing economic and personal stress (Benson, Fox, DeMaris, & Van Wyk, 2003; Cunradi, Caetano, & Schafer, 2002; Lauritsen & Schaum, 2004; Smith & Weatherburn, 2013; Van Wyk, Benson, Fox, & DeMaris, 2003; Weatherburn, 2011) and lower among women who can call on others for practical and emotional support (Smith & Weatherburn, 2013; Van Wyk et al. 2003; Weatherburn, 2011). | Research: Stavrou, E., Poynton, S. & Weatherburn, D, November 2016 |
| • Women were more likely to have experienced physical violence if they reported personal or financial stress, poor social networks or heavy alcohol consumption or were not married (or widowed) or were young. These associations were true both cross-sectionally and longitudinally. Changes in personal stress, financial stress and partner status were also found to be associated with changes in the risk of experiencing physical violence.<br>• Financial stress is not the only form of stress known to be associated with a higher risk of violence against women, though it has attracted the lion's share of attention. Cano and Vivian (2001) reviewed 17 studies that examined the relationship between life stressors (e.g. divorce or separation, death of a family member/close friend, serious illness, serious accident, mental illness, serious disability, inability to get a job, involuntary loss of job and gambling problems) and husband-to-wife violence. Thirteen of the studies found a strong relationship between these stressors and husband-to-wife violence. In his analysis of the GSS, Weatherburn (2011) also found a strong positive relationship between the number of personal stressors experienced by a | Personal stress, financial stress, social support and women's experiences of physical violence: A longitudinal analysis, NSW bureau of Crime Statistics and Research: Nadine Smith and Don Weatherburn, Contemporary Issues in Crime and Justice, Number 168, March 2013 |

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 2



| | | |
|---|---|---|
| | woman in the previous 12 months and the risk of violent victimisation. | |
| *Natural Disasters* | • In this research [about relationships following the 2009 'Black Saturday' bushfires in Victoria, Australia], family violence was present for 16 women.<br>• For nine women, it was a new experience since Black Saturday and for six, the violence had escalated or had been an isolated incident many years earlier.<br>• Of the 16 women who experienced violence since the fires, 15 women stated they were afraid of their partner. | 'The way he tells it…' Relationships after Black Saturday, Women's Health Goulburn North East: Parkinson, D |
| | • Two years after Hurricane Katrina, rates of lifetime intimate partner violence increased by 21 per cent compared to a decline in lifetime experiences of non-intimate partner sexual violence (Anastario, Lawry & Shehab 2009). | Domestic violence and natural disasters, Australian Domestic & Family Violence Clearinghouse: Sety, M. |
| *Age* | • Research suggests that inexperience, age differences in relationships, and lack of access to services exacerbate younger women's vulnerability to violence. | Flood, M and Fergus, L, *An assault on our future: the impact of violence on young people and their relationships*, 2008 |
| | • 13 per cent of women aged 18 to 24 years had experienced violence in the 12 months prior to the 2012 ABS Personal Safety Survey, a rate decreasing with age to less than 2 per cent of women aged 55 years and over. | Australian Bureau of Statistics, *4906.0 Personal Safety Survey*, Australia, 2012 |
| *LGBTI* | • While drug and alcohol misuse, mental disorders and intimate partner violence are associated with both opposite-sex and same-sex intimate partner homicide, sexual stigma, discrimination and marginalisation may be associated with an increased risk of such issues among same-sex attracted persons | *Gannoni, A and Cussen, T., Same-sex intimate partner homicide in Australia, 2014* (see Carvalho et al. 2011; House et al. 2011; GLBTI MAC 2009; Ritter, |



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

| | | |
|---|---|---|
| | | Matthew-Simmons & Carragher 2012). |
| | • A high proportion of same-sex attracted persons had experienced intimate partner violence (33%). This was most commonly reported among female same-sex attracted persons (41% *cf* 28% of male same-sex attracted persons. | Pitts M, Smith A, Mitchell A & Patel S., *Private lives—A report on the health and wellbeing of GLBTI Australians,* 2006, Monograph series no. 57. Melbourne: Australian Research Centre in Sex, Health and Society |
| | • Of the 1,536 intimate partner homicide incidents recorded from 1989–90 to 2009–10 in Australia, approximately two per cent were classified as same-sex intimate partner homicides (n=31).. 97.9% (n=1,505) were classified as opposite-sex intimate partner homicides. | Same-sex intimate partner homicide in Australia, Trends & issues in crime and criminal justice no. 469, *Australian Institute of Criminology, March 2014* |
| *Poor Mental Health* | • Studies suggest a strong link between mental health conditions and the perpetration of family violence. In Moracco's study, 40 per cent of interviewees reported that their partners had a mental health condition.[3]<br>• Research by Shorey showed high rates of post-traumatic stress disorder, generalised anxiety disorder, panic disorder and social phobia in men arrested for family violence.[4]<br>• Further the research indicated that increased depressive symptoms were strongly related to increases in rates of perpetration of family violence by men.[5]<br>• The most predominant type of disability reported in Victoria Legal Aid (VLA) data was a mental health issue. This was similar across all categories of clients (Duty lawyer/legal advice, | Characteristics of respondents charged with breach of family violence intervention orders, *Victoria Legal Aid, November 2015* |

[3] Moracco, K., et al, p. 1211
[4] Shorey, R., et al , p. 741
[5] Ibid , p. 742



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 2



| | | |
|---|---|---|
| | single grants and multiple grants of assistance).<br>○ Of the 25 per cent of duty lawyer/legal advice clients who reported a disability, 61 per cent reported having a mental health issue.<br>○ Of the 26 per cent of single grant clients, 59 per cent reported having a mental health issue.<br>○ Of the 27 per cent of multiple grant clients, 57 per cent reported having a mental health issue. | |
| *Education Levels* | • The risk to pregnant women has found to be greatest among those women with lower levels of education, from disadvantaged communities and with unintended or unwanted pregnancies (Taft 2002). | Key issues in domestic violence, Research in Practice no. 7, *Anthony Morgan and Hannah Chadwick, Canberra: Australian Institute of Criminology, December 2009* |
| *Indigenous Status* | • In 2014-15, hospitalisation rates for Aboriginal and Torres Strait Islander family violence-related assaults were 530 females per 100 000 female population and 191 males per 100 000 male population. After adjusting for differences in population age structures, this was 32 times the rate for non-Indigenous females and 23 times the rate for non-Indigenous males. | Productivity Commissions: Steering Committee for the Review of Government Services, *Overcoming Indigenous Disadvantage: Key Indicators*, 2016 |
| | *Financial Stress*<br>• In 2013, 19.5 per cent of families experiencing multiple financial hardship also experienced partner violence compared to 11.2 per cent of families experiencing little or no financial hardship.<br>*Education Levels*<br>• Although there was no relationship between mother's education level and experience of | Partner violence in the Longitudinal Study of Indigenous Children (LSIC), *National Centre for Longitudinal Data, Department of* |



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 2



partner violence, there was a significant relationship between father's education level and partner violence.

*Social Services, 2015*

- If fathers had an education level of year 10 or above (Wave 6), 11 per cent of mothers reported partner violence, but if fathers had a year 9 or below education, that percentage increased to 23 per cent.

*Employment*

- Partner violence was also significantly related to employment for both fathers and mothers. In 2013, mothers who were not employed were more likely to be victims of partner violence than mothers who were employed.
- Mothers whose partner was not employed were twice as likely to experience domestic violence as mothers whose partner was employed. This pattern was the same in 2010.

*Geographic Remoteness*

- Families living in remote areas were significantly more likely to rate family violence in the community as a big problem.
- For example, in very remote areas, 29.2 per cent of respondents said family violence was a big problem (happens all or a lot of the time); however, 17.5 per cent said it was a big problem in outer regional areas, and 7.5 per cent said it was a big problem in major cities.

*Socioeconomic Disadvantage*

- Perceptions of family violence in the community were also significantly related to the Socio-Economic Indexes for Areas (SEIFA) Index of Relative Socio-Economic Disadvantage.
- Among families living in the lowest SEIFA decile (where 43.4 per cent of LSIC families live), 23.5 per cent identified family violence as a big problem in their community, while only 8.8 per cent of families living in higher deciles (2–10) said the same.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

| | | |
|---|---|---|
| *Employment and Disability Status* |  | Characteristics of respondents charged with breach of family violence intervention orders, *Victoria Legal Aid, November 2015* |
| *CALD Status* | • Twenty-one per cent (21%) of respondents born overseas, including men and women, from a Non-Main English Speaking Background (NMESB), agreed with the statement 'A woman cannot be raped by someone she is in a relationship with'.<br>• For Australian-born respondents, five per cent (5%) agreed with this statement. | 2013 National Community Attitudes towards Violence Against Women Survey, *VicHealth* |
| | • Research has shown that women from CALD backgrounds are less likely to report domestic violence victimisation to police or to access mainstream services because of a perception that these services would not understand their particular situation and respond appropriately (WA Department for Communities 2006).<br>• Besides perceptions of being misunderstood, other factors may prevent victims from CALD backgrounds from accessing important services. The limited availability of culturally sensitive translator and interpreter support services can prevent victims with English as a second language from seeking help and removing themselves and their children from dangerous situations (Runner, Yoshihama & Novick 2009).<br>• Access to support services for refugees or newly emigrated persons can be further limited in instances where the victim is dependent on the perpetrator for residential or citizenship status (WCDFVS 2006). Insufficient knowledge of English is often used as a tool of power and control by perpetrators (NCRVWC 2009a).<br>• Recent research has indicated that the level of understanding and awareness of domestic violence in CALD communities has increased due to a combination of community education | Key issues in domestic violence, Research in Practice no. 7, *Anthony Morgan and Hannah Chadwick, Canberra: Australian Institute of Criminology, December 2009* |

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

| | | |
|---|---|---|
| | and generational change, but that further work is required (Marcus & Braaf 2007). | |
| *Prior Offending* | • Analysis of the final dataset showed that approximately two-thirds (69 per cent, n=1,369) of Family Violence Perpetrators (FVPs) had been reported to the police for family violence offending and/or other types of offending during the preceding six year period.<br>• A larger number of FVPs had been reported to the police for non-family violence-related offences than family violence offences.<br>• Almost two out of five FVPs (39 per cent, n=769) were reported to the police on at least one prior occasion during the preceding six year period for family violence offences (hereafter referred to as prior FVPs). Fifty-nine percent (n=1,166) of the sample had been apprehended by police on at least one prior occasion for a non-family violence-related offence (hereafter referred to as prior other offenders).<br>• Prior other offenders were most commonly apprehended for traffic offences (76 per cent), other violent offences (45 per cent), disorder offences (44 per cent) and drink driving offences (43 per cent). Less common offence types were breach of violence orders (16 per cent) and drug-related offences (23 per cent).<br>• Over a quarter of the sample (29 per cent, n=566) had been reported to the police for both family violence offences and other offences during the preceding six year period. | Prior offending among family violence perpetrators: a Tasmanian sample, *Australian Institute of Criminology: Boxall, H., Payne, J. & Rosevear, L.* |
| |  | Characteristics of respondents charged with breach of family violence intervention orders, *Victoria Legal Aid, November 2015* |

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

**From:** s 22
**To:** s 22
**Cc:** s 22 ; s 22 ; s 22
**Subject:** FW: ACTION 3pm Mon 8 October: Indigenous media release for Stop it at the Start campaign [SEC=UNCLASSIFIED]
**Date:** Monday, 8 October 2018 10:53:16 AM
**Attachments:** image001.jpg
image002.jpg
image003.jpg
FSB comments Stop it at the Start_Draft Indigenous media release_for approval.DOCX

---

Hi s 22

Please find attached for your clearance the Indigenous media release from CSB. Please note this is due to Coord by 3PM today.

I have made changes in track to the media release. I feel we should omit the line about violence being part of Indigenous culture- it goes against the messaging we have used in 4AP consults, as well as the COAG statement, and the ANROWS Warawarni-gu Guma Statement from earlier this year. We need to be conscious that while these are the views of an Indigenous man, we need to be very careful about how we position the quotes and the danger of it being perceived as representative of all (sic) Indigenous people.

This has been QA-ed by RAD.

s 22

---

**From:** s 22
**Sent:** Monday, 8 October 2018 10:35 AM
**To:** s 22 @dss.gov.au>
**Cc:** s 22 @dss.gov.au>; s 22 @dss.gov.au>
**Subject:** RE: ACTION 3pm Mon 8 October: Indigenous media release for Stop it at the Start campaign [SEC=UNCLASSIFIED]

Change study to report. Otherwise fine, thanks.

A recent ~~study~~report noted that they are 32 times more likely to be hospitalised as a result of family violence-related assault than non-Indigenous women in Australia [1].

s 22 | Data Analyst, Research and Data Section
Family Safety Branch, Families and Communities Group
**Australian Government Department of Social Services**
☐ s 22 | ☐ s 22 @dss.gov.au | ☐ linkedin.com s 22

---

**From:** s 22
**Sent:** Monday, 8 October 2018 10:25 AM
**To:** s 22 @dss.gov.au>
**Cc:** s 22 @dss.gov.au>; s 22 @dss.gov.au>
**Subject:** RE: ACTION 3pm Mon 8 October: Indigenous media release for Stop it at the Start campaign [SEC=UNCLASSIFIED]

Document release under the Freedom of Information Act 1982 (Cth)
by the Department of Social Services

Good morning s 22

CSB has provided us with a media release for clearance- could you please QA the stats for accuracy.

Sorry for the tight timeframe on this one, but if you could provide your feedback ASAP that would be great.

Thanks!

s 22

---

**From:** s 22
**Sent:** Monday, 8 October 2018 9:26 AM
**To:** s 22 @dss.gov.au>
**Cc:** s 22 @dss.gov.au>; s 22 s 22 @dss.gov.au>
**Subject:** ACTION 3pm Mon 8 October: Indigenous media release for Stop it at the Start campaign [SEC=UNCLASSIFIED]

Hi s 22

Please see attached an Indigenous related media release for SIATS campaign, requested for your review & clearance from Comms.

Can you please clear this by 3pm? Sorry for the short time frame.

Thanks

s 22

---

**From:** s 22
**Sent:** Friday, 5 October 2018 4:26 PM
**To:** s 22 @dss.gov.au>
**Cc:** s 22 @dss.gov.au>; s 22 @dss.gov.au>; s 22 @dss.gov.au>
**Subject:** For approval by COB Monday 8 October: Indigenous media release for Stop it at the Start campaign [SEC=UNCLASSIFIED]

Hi Family Safety

Could you please arrange the appropriate clearances for the attached media release?
Our Indigenous consultants for the campaign, 33Creative, intend to issue it to their media contacts early next week.

Please let me know if you have any questions.

Thanks

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

s 22

s 22
**Account Manager**
**Family Safety and Redress Scheme**
Communication Services
Department of Social Services
**P:** s 22 | **E:** s 22 @dss.gov.au

DSS acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to elders both past and present.

Document release under the Freedom of Information Act 1982 (Cth)
by the Department of Social Services

DSS - FOI LEX 56983 - Document 3a

xxxx October 2018

**NEXT PHASE OF STOP IT AT THE START CAMPAIGN LAUNCHED**

The next phase of the highly effective *Stop it at the Start* campaign to reduce violence against women and their children has started.

The first phase of the jointly-funded, award-winning campaign helped show the link between disrespect and violence. Phase two aims to move the conversation forward, to ask ourselves – could we be teaching our children disrespect?

The campaign encourages all adults – parents, family members, teachers, coaches, employers, community leaders and other role models – to think about the impact of what they say and do, and to talk to young people about respect.

As part of the campaign, key Aboriginal and Torres Strait Islander advocates and role models will continue the conversation through their stories of recognition and reflection.

Lani Brenan, Nyawaygi woman and domestic violence survivor, says:
"The *Stop it at the Start* campaign is targeting the disrespectful attitudes and behaviours that parents and other role models teach our young people, often without realising it. I think this message is so important because what we say to our kids and show them by our own actions shapes their attitudes and beliefs."

Violence against women and their children is a serious issue in Australia, with one in six women having experienced physical or sexual violence by a current or former partner since the age of 15.

For Aboriginal and Torres Strait Islander women, the statistics are even more shocking. A recent study noted that they are 32 times more likely to be hospitalised as a result of family violence-related assault than non-Indigenous women in Australia [1].

Kuku-Yalanji and Gumbaynggirr man, father and cultural mentor Jeremy Donovan says: "if we're all brave enough as adults to have the conversations with our kids about respect, we can make those small changes that all add up and ensure our young people are strong and can carry our future."
The $30 million *Stop it at the Start* campaign is an initiative under the *National Plan to Reduce Violence Against Women and their Children 2010-2022*.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

Suite 26, 20-28 Maddox Street
Alexandria NSW 2015
www.33creative.com.au
ABN 19 602 191 926
Phone
+61 2 9516 3466
Fax
+61 2 9516 3422

DSS - FOI LEX 56983 - Document 3a

To help continue the conversation, resources have been developed for the Aboriginal and Torres Strait Islander community, which can all be found on the campaign website.

Broadcast-quality television commercials and high resolution versions of other advertisements are available at https://www.respect.gov.au/the-campaign/media/

Watch this video to see Lani Brenan and Jeremy Donovan react to common phrases that can excuse disrespect, such as 'man up' and 'don't cry like a girl'.

Visit www.respect.gov.au for more information.

If you or someone you know is impacted by sexual assault, domestic or family violence, call 1800RESPECT on 1800 737 732 or visit www.1800RESPECT.org.au

For all media enquiries contact
Marguerite Barbara
PR & Communications Manager
33 Creative Pty Ltd
Marguerite@33creative.com.au
(02) 9516 3466.

[1] Productivity Commission, Overcoming Indigenous Disadvantage: Key Indicators 2016 (Steering Committee for the Review of Government Service Provision, 2016) 4.103.
At http://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2016/report-documents/oid-2016-overcoming-indigenous-disadvantage-key-indicators-2016-report.pdf(viewed 13 January 2017).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

s 22

**Subject:** FW: Gender equality research [SEC=UNCLASSIFIED]

**Is gender inequality the root cause of violence against women and what about men?**

Apologies for the length of this email.

I've broken down the below analysis into several sections based on various sources exploring both the connection between gender inequality and violence against women, and also later on male and female prevalence rates for violence and family and domestic violence (FDV).

Preamble notes: The research and data that the Department has on hand absolutely identifies that gender inequality is one factor among many contributing to the phenomenon. We just can't say definitively that it is the root cause of violence against women. I do not believe that any of the UN reports commonly referenced in this space are factually incorrect, only that they have either been misinterpreted or that new research has emerged that should prompt some reconsideration of commonly held beliefs.

The two key UN reports that have been referenced recently in Senate Estimates, namely by Senator David Leyonhjelm, about gender inequality as a variable contributing to violence against women, are the 'Why do some men use violence against women and how can we prevent it? Quantitative findings from the United Nations Multi-Country Study on Men and Violence in Asia and the Pacific' (2013) report and the 'Secretary-General's (UN) study on violence against women' (2006) papers. Observations on the findings of these reports, and others, are detailed below.

1. **'Why do some men use violence against women and how can we prevent it? Quantitative findings from the United Nations Multi-Country Study on Men and Violence in Asia and the Pacific' (2013) report**

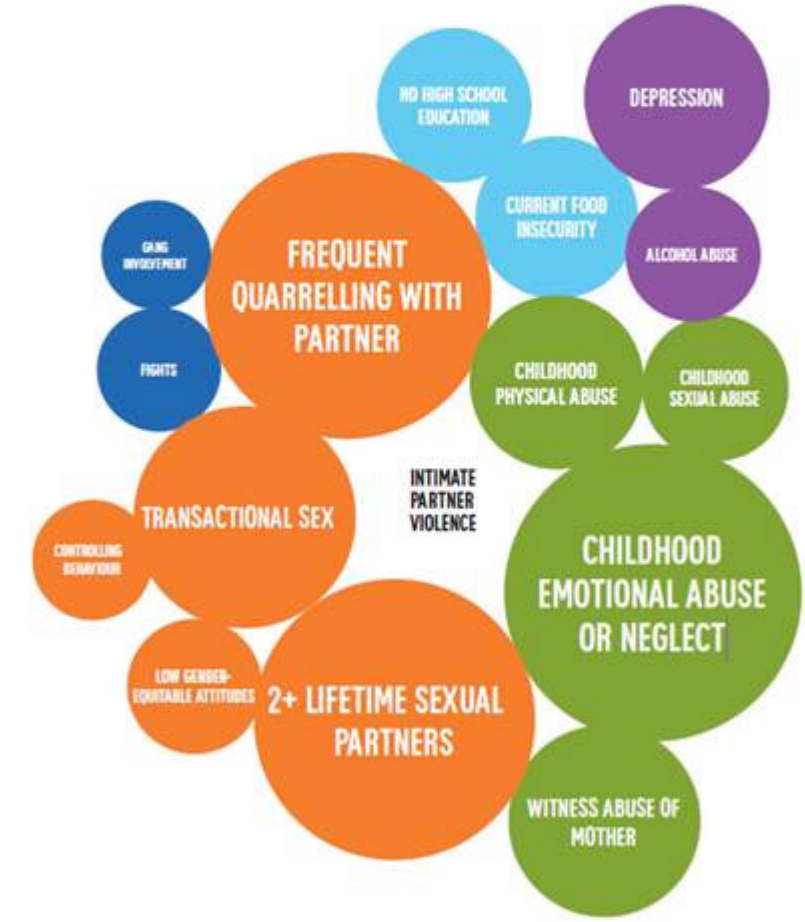
   The 2013 report makes a key reference to the following line, which has largely informed the narrative of the paper:

   - "The Commission affirms that violence against women and girls is rooted in historical and structural inequality in power relations between women and men, and persists in every country in the world as a pervasive violation of the enjoyment of human rights... Violence against women and girls is characterised by the use and abuse of power and control in public and private spheres, and is intrinsically linked with gender stereotypes that underlie and perpetuate such violence, as well as other factors that can increase women's and girls' vulnerability to such violence."

   There are a number of quotes throughout the report along the same lines, and at first this quotation appears compelling. However, beyond the research narrative the actual results of the data analysis run by the researchers show the relative importance of different clusters of factors in explaining intimate partner and non-partner violence against women. A summary (Figure 8.1) of this analysis is displayed below and can be found on page 90 of the report:

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

FIGURE 8.1 SUMMARY OF RELATIVE IMPORTANCE OF DIFFERENT CLUSTERS OF FACTORS IN EXPLAINING AND ADDRESSING INTIMATE PARTNER VIOLENCE PERPETRATION




As is evident in Figure 8.1, the results of the data analysis identified a number of factors that contribute to violence against women, in this instance intimate partner violence against women, including the 'low gender-equitable attitudes' factor. This factor can be observed on the lower left-hand side of the diagram. As can be seen, the relative significance of 'low gender-equitable attitudes' towards intimate partner violence perpetration appears quite low.

The relative importance of the factors analysed is again captured in Figure 8.2 of the report (below), which relates to non-partner rape perpetration. Again, the 'gender norms and practices' (orange) cluster is significant, but is identified as a grouping in amongst a range of other complex factors, not as a root or underlying cause. As an additional criticism, it is difficult to see the connection between '2+ lifetime sexual partners' (within the orange cluster) and other more commonly understood 'gender norms and practices' variables such as 'controlling behaviour' and 'low gender-equitable attitudes'. Arguably, this factor has been wrongly clustered by the researchers, and this is significant because the basis of their argument that 'gender norms and practices' is the largest contributor towards violence against women rests mostly on the '2+ lifetime sexual partners' and 'frequent quarrelling with partner' variables (can frequent quarrelling with a partner really be classified as a 'gender norm and/or practice'?).

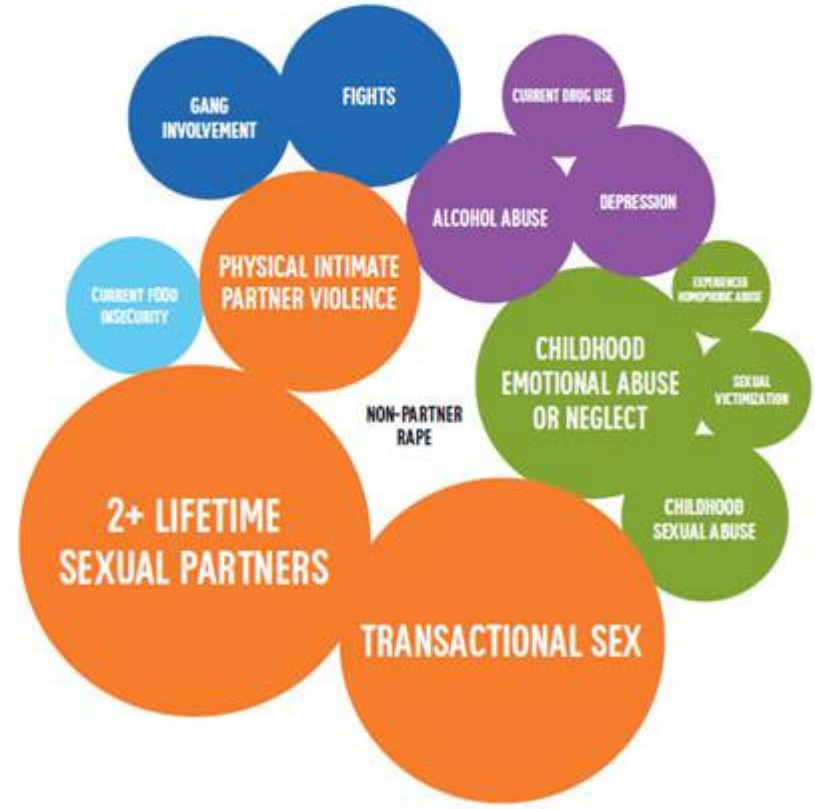
With regards to 'root' causes, generally speaking, any finding that a singular variable is the exclusive root cause of any issue would require a data analysis resulting in the attribution of perfect correlation or causation. This is a



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

technically complex process which is why most research relies on attribution of correlation, which generally rests on a correlation coefficient of close to 0.95 for strong confidence. This is why most studies rightly conclude that complex social phenomena are due to a variety of co-contributing factors, some with strong correlation, some with a weaker correlation. To conclude, as this study has mostly done in its recommendations, that one factor or clustering of factors is predominantly responsible for intimate partner violence is misleading at the very least.

FIGURE 8.2 SUMMARY OF RELATIVE IMPORTANCE OF DIFFERENT FACTORS IN EXPLAINING AND ADDRESSING NON-PARTNER RAPE PERPETRATION




It should also be noted that this study relates to violence across the Asia-Pacific not including Australia, so while this is a valuable quantitative study in itself we need to use caution when understanding it in the Australian context. Having said this, given that low gender-equitable attitudes have been found to be of a lower significance when compared to other factors in countries such as Papua New Guinea, where gender equitable attitudes are presumably worse than in Australia, claims that this variable is more significant in the Australian setting should be met with some scepticism (i.e. can it reasonably be assumed that gender inequitable attitudes are the underlying problem here in Australia, but not in PNG where attitudes are far worse?).

Further to this, readers of this report should be cognisant of the disconnect between the narrative the researchers have constructed and the findings of their statistical analysis.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

## 2. '[Secretary-General's (UN) study on violence against women]' (2006) papers

Regarding the 2006 paper, the 'Secretary-General's (UN) study on violence against women' report again identifies a number of concepts related the gender inequality theory, stating that:

- "The central premise of the analysis of violence against women within the human rights framework is that the specific causes of such violence and the factors that increase the risk of its occurrence are grounded in the broader context of systemic gender-based discrimination against women and other forms of subordination. Such violence is a manifestation of the historically unequal power relations between women and men reflected in both public and private life." (p. 27).

However, as this citation identifies – this is only one approach to inquiries into the issue. The report goes on to say that:

- "The causes of violence against women have been investigated from diverse perspectives, including feminism, criminology, development, human rights, public health and sociology. Various explanations have emerged from these empirical and theoretical inquiries. While they differ in the emphasis given to individual and societal factors in explaining violence against women, all have concluded that no single cause adequately accounts for violence against women. Such violence arises from the convergence of specific factors within the broad context of power inequalities at the individual, group, national and global levels." (p. 28)

This is similar to the 2013 report, in that the researchers feel confident enough to refer to the 'broader context' of power inequalities, a very vague claim in itself, but will stop short of attributing causation or claiming that gender inequality is the root cause of the issue. Context and correlation are not causation. I believe this is where much of the confusion on this topic has originated.

## 3. Our Watch's *Change the Story* publication

Now some points on the historical references used in the Our Watch's *Change the Story* publication.

One source used in *Change the Story* that links gender inequality to violence against women is the Progress of the World's Women report (2011). In this publication it is noted that there is a need to "subvert instead of reinforce pre-existing patterns of cross-cutting structural subordination, gender hierarchies, systemic marginalisation and structural inequalities that may be the root causes of the violence that women experience before, during and after [the] conflict" (p. 98). This is the only direct reference to root causes in the report, and it appears not to be emphasising violence against women in Australia but instead the experiences of women in conflict zones elsewhere in the world. It is important to keep in mind that with UN reports this is generally the case, and also important to remain level-headed before comparing the experiences of women in parts of Africa with the experiences of women in Australia.

Another source used by *Change the Story* is the 'Factors at play in the perpetration of violence against women, violence against children and sexual orientation violence: A Multi-level Interactive Model' (2010) study. This study touches on a range of contributing factors, including but not limited to 'Devaluing Women', 'Masculinity', 'Honour codes', 'Poverty pockets', 'Family stress', 'Early trauma', 'Poor parenting' etc. This is a fairly comprehensive list that identifies a range of factors alongside those generally associated with gender inequality. However again, the researchers have been very careful not to identify a root cause. Under the 'Limitations to the model' section found in the researchers' presentation (which requires some digging), it is stated that 'Comparison across areas of research is not possible; thus, the explanatory power of a factor is always to be seen relative to that field of research.'

So I've touched on some new research, as well as the weaknesses of some of the historical citations found in *Change the Story*, and the key point I'm trying to get at here is that researchers will regularly cite gender inequality as part of the broader 'context', or as one factor among the many, but they will not affirm it as the root



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

cause of the issue. What seems to have occurred with public debate on this issue is that less technically informed commentators and advocates have stretched the concept of correlation out to include causation (they've conflated the two).

**4. 'Violence against women: an EU-wide survey' (2014), European Union (EU) Agency for Fundamental Rights**

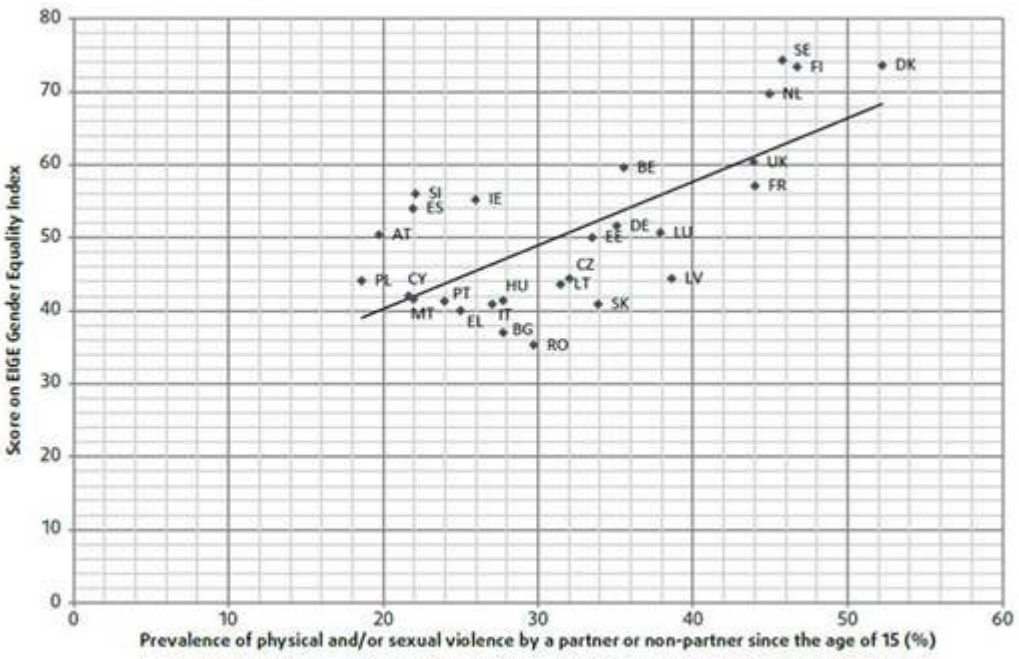
I'd like to raise one interesting statistical analysis out of Europe that might help in understanding this a bit further, the analysis is based on a 2014 study commissioned by the European Union Agency for Fundamental Rights.

Key points about the survey:

- In each EU Member State, a minimum of 1,500 women took part in the survey, with the exception of Luxembourg where 908 women were interviewed.
- The sample was representative of the female population aged 18 to 74 years living in each EU Member State.
- The sample was stratified by geographical region and urban/rural character to make it more representative.

Surprisingly, the results of their statistical analysis found 'a close correlation [between] Member States scoring higher on the Gender Equality Index [and] a higher prevalence of physical and/or sexual violence against women since the age of 15' (p. 31-32). This correlation can be observed in Figure 2.4.

Figure 2.4: Relationship between women's experiences of physical and/or sexual violence since the age of 15, by a partner and/or a non-partner (%), and EU Member States' scores on the EIGE Gender Equality Index [a,b]




Notes: a Correlation coefficient 0.714, $R^2 = 0.510$.
b Croatia is not included in EIGE's Gender Equality Index, so Croatia is excluded from this analysis.
Sources: FRA gender-based violence against women survey dataset, 2012; EIGE Gender Equality Index 2013

Arguably, it could be the case that increased gender equality is leading to increased reporting across the EU. This seems like a rational conclusion but is unfortunately only an educated guess. All that can be deduced from the above analysis is that there does appear to be a correlation between higher scores on the EU Gender Equality Index and a higher prevalence of physical and/or sexual violence against women since the age of 15. In this circumstance too, it would be incorrect to attribute causation.

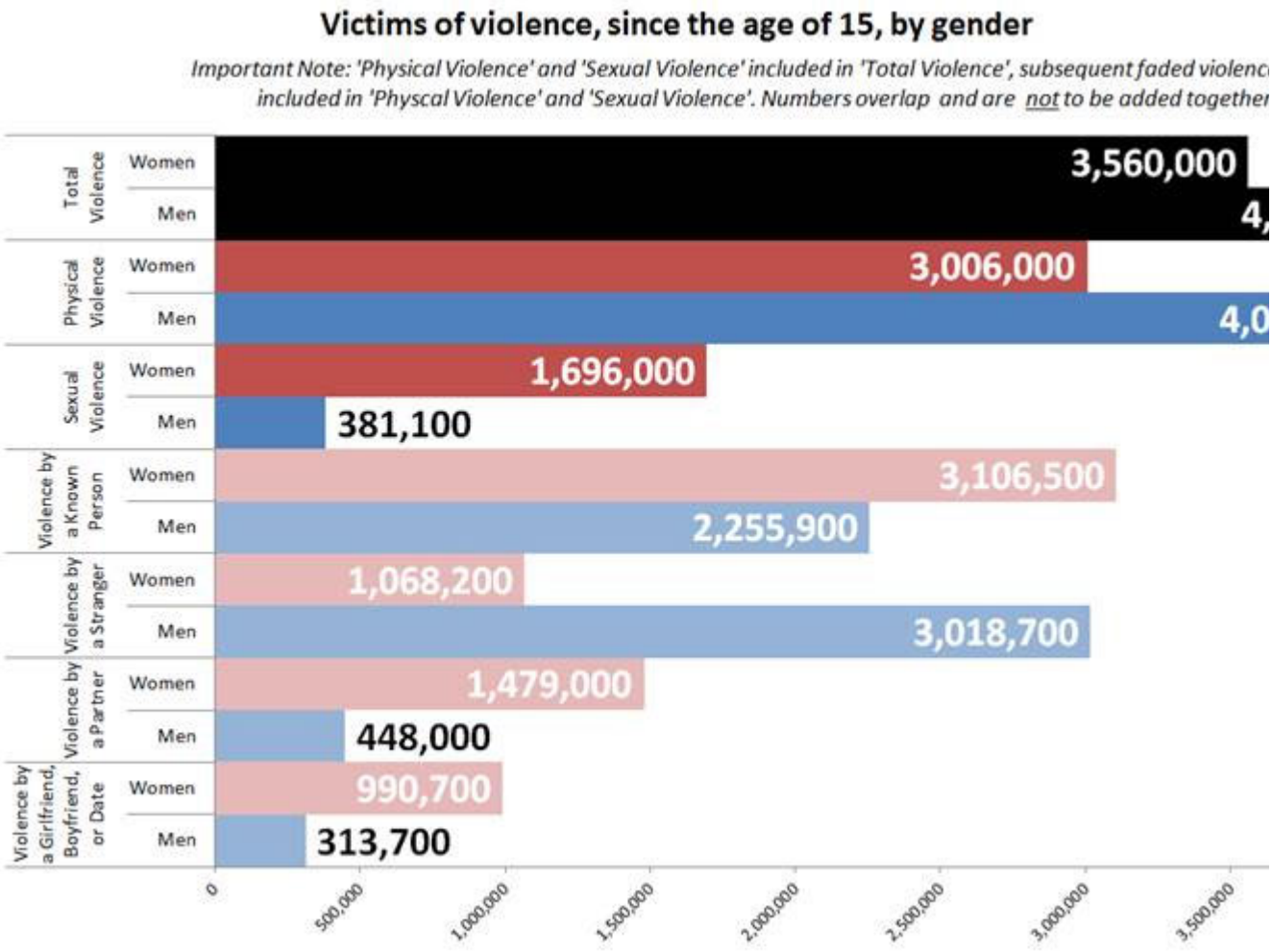


Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

**5. Australian Bureau of Statistics Personal Safety Survey (2012), funded by the Department of Social Services**

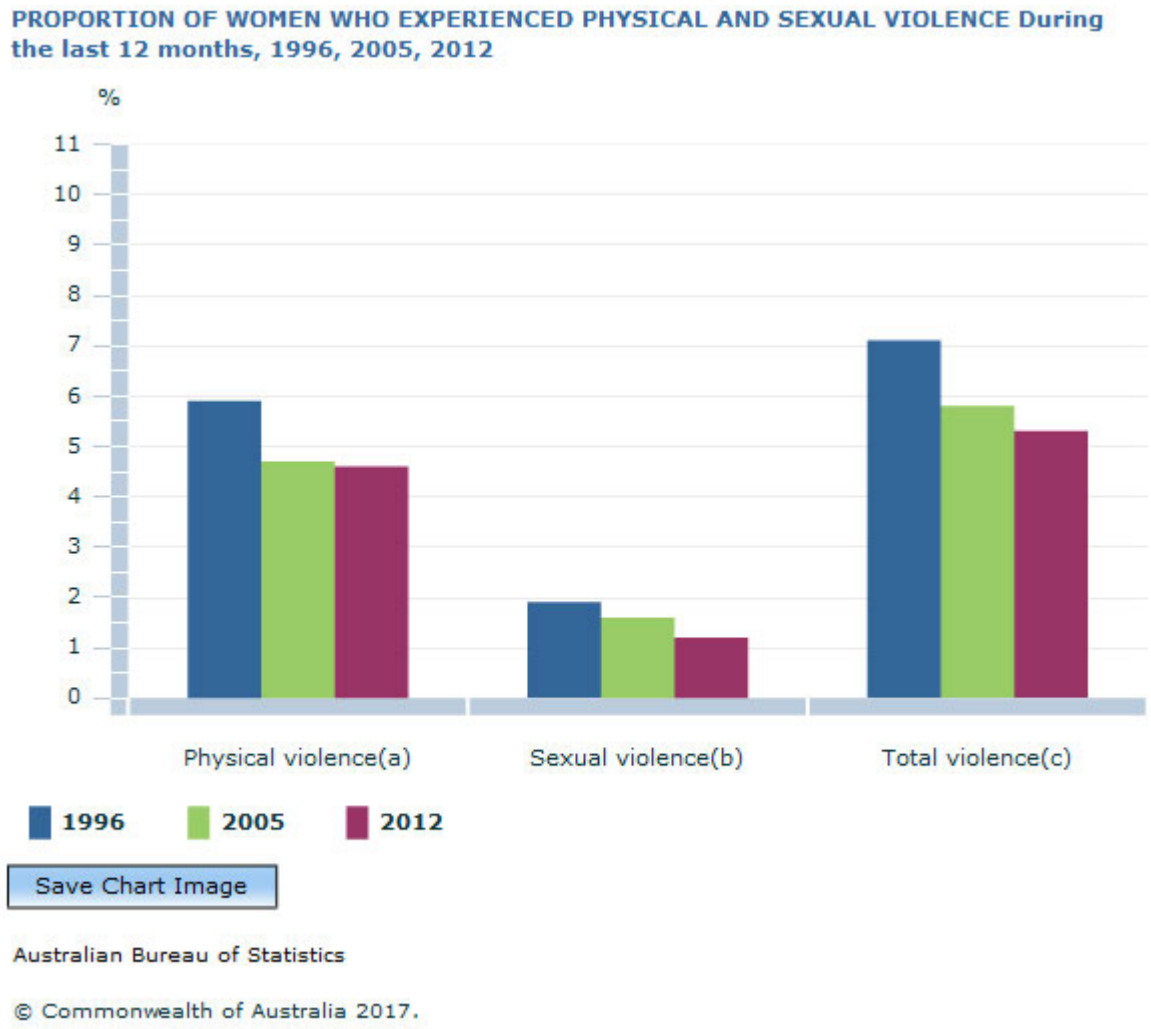
In addition to all of the above, the argument that gender inequality is the root cause of violence against women is complicated by the fact that violence against men in Australia is more prevalent than violence against women (see below, 'Total Violence').

Of course, this isn't true for all forms of violence, as can be observed in the subsequent victim counts.




Further complicating matters, should violence against women decrease beyond the implementation of the National Plan and National Campaign it will be very difficult for the Department to credit these initiatives with leading to such a reduction in violence against women as this violence type has been falling since at least 1996 (see below).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services




It's also important to note that the Personal Safety Survey findings above rely on self-reported experiences of violence which include experiences not reported to the police. They are the best national prevalence statistics Australia has.

**6. Other ABS data – *Recorded Crime, Victims (2016) dataset, Offenders (2015-16) dataset*, and *Personal Safety Survey (2012) data*, funded by the Department of Social Services**

Lastly, I'd like to draw your attention towards some of the latest statistics collated and published by the Australian Bureau of Statistics. These paint a very mixed picture when seen together and not in isolation, both in regards to the 'men/women issue' and the 'gender inequality as the root cause' issue.

- Since the age of 15, 1 in 3 Australian women have experienced physical or sexual violence by a known person, compared to 1 in 4 Australian men.
    - This statistic is of particular importance, as the '1 in 3 women' statistic is almost always published without the comparative data for men.
- Since the age of 15, 1 in 6 Australian women have experienced physical or sexual violence from a current or former partner, compared to 1 in 19 Australian men.
- Since the age of 15, 1 in 3 Australian women have experienced physical violence, compared to 1 in 2 Australian men.
- Since the age of 15, 1 in 5 Australian women have experienced sexual violence, compared to 1 in 22 Australian men.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

- Since the age of 15, 1 in 4 Australian women have experienced emotional abuse by a current or former partner, compared to 1 in 7 Australian men.
- 17% of all women and 5.3% of all men in Australia have experienced violence by a partner since the age of 15.
- In a given year, it is estimated that 1.5% of women and 0.6% of men in Australia experience violence at the hands of a partner.
    - Again, this is important, because the statistics used by advocates almost always relate to experiences 'since the age of 15' that include experiences perpetrated in 1960's (etc.) Australia. While these statistics are important, the 'within the last 12 months' measures paint a far more accurate picture of violence against women in Australia today.
- In 2016, there were 82 male and 94 female victims of FDV-related homicide (homicide includes murder and attempted murder).
    - In 2016, there were 43 male and 52 female victims of FDV-related murder.
- Men were almost three times more likely to be the perpetrator of FDV-related homicide in 2015-16 (28 female perpetrators, compared with 83 male perpetrators).
- In 2016, for homicides not limited to FDV-related offences, there were 285 male and 164 female victims.
- 53% of women who have experienced violence since the age of 15 reported that alcohol or drugs had contributed to their most recent incident of physical assault by a male. For female on male physical assaults the same figure is 46%.
- 14% of women who have experienced assault since the age of 15 had taken time off work during the 12 months after their most recent incident of physical assault by a male. For female on male physical assaults the same figure is 6.5%.
- 62% of women who have experienced assault since the age of 15 reported that the location of their most recent incident of physical assault by a male was in their own home. For female on male physical assaults, the same figure was 54%.
- Since the age of 15, 114,900 women and 33,300 men have been the victims of violence perpetrated by their mothers.
- Since the age of 15, 232,500 women and 161,700 men have been the victims of violence perpetrated by their fathers.
- Since the age of 15, 981,300 female and 295,100 male victims have experienced violence perpetrated by an opposite-sex boyfriend/girlfriend/date
    - For violence perpetrated by a same-sex boyfriend/girlfriend/date, the figures are 15,100 female and 18,700 male victims.

**Conclusions**

1. **Issue:** Looking back at the statistics above, it can be tempting to cherry-pick numbers that help to execute a predetermined policy case. But in reality, violence against women and men, including FDV, is a far more complex social issue that does not exclusively affect one gender or another. It is therefore rational that our policy frameworks reflect this, proportionate to the issues we are addressing.

    *Solutions*

    - For example, our prevention measures that aim to reduce partner violence should for good reason focus on female victimisation, but ought to allocate resources in line with the reality that nearly 1 in 3 new victims of partner violence each year are male and approximately 2 in 3 female. This would be proportionate to the nature of the problem we are seeking to address, as would the continued focus on targeting men as the most likely perpetrators.
    - A short-term alternative to abrupt resource reallocation would be a step away from terminology such as 'Men's Behaviour Change Programs' and towards de-gendered terminology such as 'Perpetrator Behaviour Change Programs'. Again, this would be sensible in that it would recognise that both male and female perpetrators should be referred to evidence-based behaviour change programs.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

2. **Issue:** Violence affects people in different ways, with sexual and partner violence affecting women far more than men but with physical violence affecting men far more than women. No form of violence should be dismissed as irrelevant. Victims' experiences should not be minimised or ignored on the basis of their gender or any other identifying characteristic.

   *Solutions*

   - Our principal policy framework for reducing violence is the *'National Plan to Reduce Violence against Women and their Children 2010-2020'*. However, given that violence against men is more prevalent than violence against women, this title is out of step with the evidence. Alternative titles that would more accurately reflect the true policy landscape relating to violence in Australia would include the:
     - *National Plan to Reduce Violence*, which would arguably be outside of our remit and better left to the criminal justice agencies.
     - *National Plan to Reduce Family and Domestic Violence*, with a broad focus on female victimisation to reflect the data but with National Priority Areas and Actions also focussed on men as victims, children as victims, and contemporary issues such as elder abuse, LGBTI partner violence etc. This would constitute a positive step towards more inclusivity for all victims as well as a step towards a more evidence-based policy response.
     - *National Plan to Reduce Men's Violence against Men and Women*, which would take an inverse approach to strategies that focus on victims – focussing on the perpetrators of most violence (FDV or otherwise).

3. **Issue:** There is a significant lack of Australian Government-funded research on the variables that cause or aggravate violence and/or FDV. Although, it is telling that half of all victims (men and women) of assault report that alcohol or drugs contributed to their most incident.

   *Solutions*

   - There is scope to address the weaknesses of previous multi-factor analyses funded by the UN by commissioning an Australian Government supported multi-factor research project that:
     - Takes an open approach to exploring the many factors that may contribute to violence or FDV (gender inequality, alcohol, other drugs, family breakdown, disadvantage etc.),
     - Bases its findings on the results of the data analysis produced by the research (multiple linear regressions, bivariate comparisons etc.) and not the leanings of the researchers, and
     - Looks at violence in the Australian setting (not a multi-country study).

I think in summarising all of this, it's important to reiterate that nobody is arguing that gender inequality is a non-issue, nor that it is not a factor contributing to violence against women. Equally, nobody is arguing that women are not overwhelming the victims of FDV. However in taking into account all of the research and data above, I believe our underlying assumptions and application of the gendered-lens policy approach require further exploration and balance.

We need to take a step back and rely more so on inductive reasoning – less so on stakeholder- and advocate-driven policy reactions – and base our policy direction on the evidence we have.

Happy to chat further.

Cheers

s 22

s 22 | Policy Officer
Research and Data Section,
Family Safety Branch, Families Group
**Australian Government Department of Social Services**
**P:** s 22 | **E:** s 22 @dss.gov.au



Document release under the Freedom of Information Act 1982 (Cth)
by the Department of Social Services

# Does gender inequality cause violence against women?

This briefing is a short, plain-English defensive response to questions Family Safety Branch receives about the gendered nature of the *National Plan to Reduce Violence against Women and their Children 2010-2022* at Senate Estimates hearings.

The **first issue** generally raised is whether or not gender inequality causes violence against women.

Recommended Position

- The Department is committed to an evidence-based approach to policy development.
- Based on the best available evidence, we acknowledge there is no single cause of violence against women. Violence against women is a complex social phenomenon that can result from a number of contributing factors, including:
    - Alcohol and other drugs
    - Gender inequitable attitudes
    - Childhood exposure to abuse and neglect
    - Socio-economic disadvantage, and
    - Mental health problems.[1]
- While our initiatives emphasise the correlation between gender inequality and violence against women, we are beginning to learn more about this relationship as time progresses.
    - For instance, the latest results from our national survey data are providing us with insights we simply did not have access to even 12 months ago.
    - Specifically, it may not be the case that as attitudes towards women improve gendered violence in Australia decreases.
    - We will know more about this when the results of the 2017 National Community Attitudes towards Violence against Women Survey (2017 NCAS) are released in November 2018.

The **second issue** normally raised is concerned with our focus on female victims of violence, instead of a focus on both men and women.

Recommended Position

- The data paints a clear picture of the need for the National Plan to focus on women.
    - **Prevalence:** One in six Australian women has experienced physical or sexual violence by a cohabiting partner, compared to one in 17 men.[2]
    - **Hospitalisations:** In 2012-13 it was recorded that, of admissions due to assault cases where the perpetrator was identified as a spouse or domestic partner, 2,816 were female and 521 were male.[3]
    - **Anxiety or fear:** 45.9 per cent of women and 31.5 per cent of men who have experienced current partner violence have experienced anxiety or fear for their personal safety due to their experience. Where a previous partner was the perpetrator, the figure is 64.7 per cent for women and 29.2 per cent for men.[4]
    - **Time off work:** 11.5 per cent of women who have experienced physical assault by a male perpetrator reported taking time off work in the 12 months after their most recent experience. This is compared to 5.9 per cent of men who have experienced physical assault by a female perpetrator.[5]

[1] United Nations 2013, 'Why do some men use violence against women and how can we prevent it? Quantitative findings from the United Nations Multi-Country Study on Mena and Violence in Asia and the Pacific'.
[2] Australian Bureau of Statistics 2017, 2016 Personal Safety Survey, released November 2017.
[3] Australian Institute of Health and Welfare, National Hospital Morbidity Database, 2012-13.
[4] Australian Bureau of Statistics 2017, 2016 Personal Safety Survey, released November 2017.
[5] Australian Bureau of Statistics 2017, 2016 Personal Safety Survey, released November 2017.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

# *Does gender inequality cause violence against women (VAW)?*

**Short Answer**

- No. No single factor alone causes VAW.
- There are, however, a number of correlated factors which, either separately or together, can increase the risk of VAW occurring (such as alcohol and other drugs, lower socio-economic status, relationship breakdown, and gender inequitable attitudes).

**Technical Answer**

- The attribution of causation between different social factors requires the application of technically complex statistical analysis procedures (methods including multiple linear regression analysis) using quality information derived from data collection methods that produce a representative picture of a given population of interest (e.g. national surveys).
- Even with the best studies, such as randomised controlled trials, most research can only accurately inform us of factors that are correlated with one another. While the measurement of correlative power goes beyond this and can inform us of *how much* one factor is associated with another, very few studies in the social sciences will claim proof of causal attribution.
- The Research and Data Section, Family Safety Branch, is not aware of any published study that concludes gender inequality is the root cause of VAW. Rather, the research consistently identifies it as one of many factors associated with VAW perpetration.

**Our Watch and the National Plan's gendered approach to VAW**

- Our Watch publications frame the drivers of VAW as either 'gendered' drivers or 'reinforcing' drivers, but don't seem to clarify why gendered drivers are distinguished from, and elevated above, reinforcing drivers. The decision to emphasise gendered drivers is particularly confusing given the Department has reliable, quantitative, and nationally representative data drawn from the Australian Bureau of Statistics Personal Safety Survey (2016) that finds:

  *50.3 per cent of female victims of sexual assault by a male perpetrator, in Australia, identify that alcohol or other substances contributed to their most recent incident. For physical assault by a male perpetrator, the same figure was 48.8 per cent.*

- Despite this evidence, Our Watch, the National Campaign and the *National Plan to Reduce Violence against Women and their Children 2010-2022* all underplay the significance of AOD in VAW perpetration. In fact, in the 46 pages of the Third Action Plan (2016-2019) of the National Plan (3AP), alcohol as a contributing factor is afforded zero actions and just one mention:

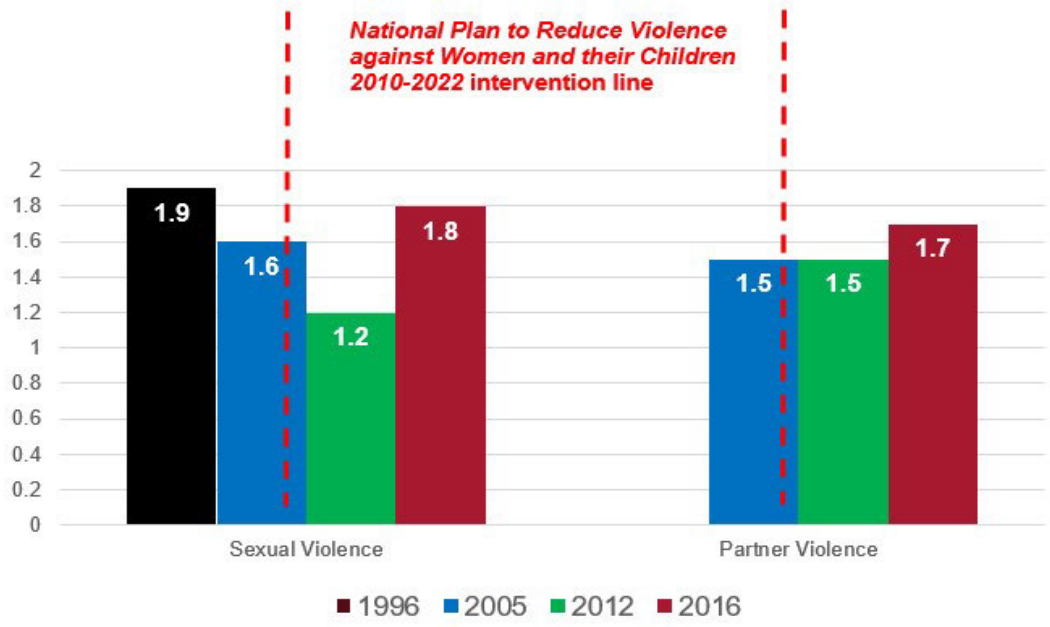
  "While alcohol, substance abuse, mental health issues and poverty can be contributing factors to violence, they are not the causal factors. Most people who consume alcohol or drugs, or who have mental health issues, do not commit acts of domestic or family violence" (page 44, 3AP).

- What is particularly troubling about this is that the underlined statistic above is coming via the ABS in the form of survey data directly from female victims of male violence across Australia, a voice (in aggregate) that for some reason is being drowned out of our responses by an Our Watch hypothesis.
- In all frankness, the inherent disconnect between the evidence identifying the problems contributing to VAW and the Department's response to VAW to date should be necessitating a degree of ethical reflection by the senior policymakers responsible for the strategic direction of the National Plan.
- And if the ethical dilemma isn't enough to facilitate this reflection, the results should: Eight years into a national policy approach that has disproportionately emphasised gender inequality as a key driver of VAW, *partner violence against Australian women is up (1.2% in 2012 to 1.8% in 2016)* and *sexual violence against Australian women is up (1.5% in 2012 to 1.7% in 2016).*
- Bottom line: The gendered approach to reducing VAW is not producing the originally intended outcomes of the National Plan (see figure on next page), the trend data suggests it is not helping Australian victims of VAW and on this basis the approach ought to be reconsidered.



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

**Figure 1: Proportion of women who experienced sexual violence and partner violence, during the last 12 months, 1996, 2005, 2012, 2016, changes over time, Australia**




*Source: Australian Bureau of Statistics Personal Safety Survey, funded by the Department of Social Services*

**Additional Information: On citations from Our Watch publications**

- From Our Watch's *Change the Story* publication:
  - "Although there is no single cause of violence against women and their children, the latest international evidence shows there are certain factors that consistently predict - or drive - higher levels of violence against women. These include beliefs and behaviours reflecting disrespect for women, low support for gender equality and adherence to rigid or stereotypical gender roles, relations and identities."

  *Explanation:* This is true, these factors are correlated with VAW. However Our Watch does not go on provide the same platform for non-gendered drivers that have been identified as having an equal or greater effect on VAW by studies such as '*Why do some men use violence against women and how can we prevent it? Quantitative findings from the United Nations Multi-Country Study on Men and Violence in Asia and the Pacific'* (Fulu et al 2013).

- One source used in Our Watch's *Change the Story* publication, linking gender inequality to violence against women, is the Progress of the World's Women report (2011). In this publication it is noted that there is a need to "subvert instead of reinforce pre-existing patterns of cross-cutting structural subordination, gender hierarchies, systemic marginalisation and structural inequalities that may be the root causes of the violence that women experience before, during and after [the] conflict" (p. 98).

  *Explanation:* Outside of the fact that this publication does not produce modelling that identifies gender inequality as a root cause of VAW, it is important to keep in mind that the emphasis of the report pertains to women in third world countries where the oppression of women is incomparable to the experience of women in Australia.

- Another source used by *Change the Story* is the 'Factors at play in the perpetration of violence against women, violence against children and sexual orientation violence: A Multi-level Interactive Model' (2010) study. This study touches on a range of contributing factors, including but not limited to 'Devaluing Women', 'Masculinity', 'Honour codes', 'Poverty pockets', 'Family stress', 'Early trauma', 'Poor parenting' etc.

  *Explanation:* In interpreting the findings of this study readers ought to dig a little deeper and note the 'Limitations to the model' section found in the researchers' presentation: 'Comparison across areas of research is not possible; thus, the explanatory power of a factor is always to be seen relative to that field of research.'



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

"Most of the sources in this paper used internationally accepted methodologies for selecting and assessing evidence. While increasingly sophisticated research designs are being used to study violence against women, many findings are based on cross sectional study designs. Cross sectional studies look at the relationship between violence against women and a given factor, such as education, at a particular point in time. Where these show a correlation between violence against women and the factor concerned, it cannot be said from cross sectional studies alone that factors are causally related with violence against women." (from 'Strengths and limitations of the existing research', *A review of the evidence on correlates of violence against women and what works to prevent it*, Change the story)

"At the population level there is unlikely to be a direct causal relationship between economic deprivation and violence against women." (Challenges to existing gender hierarchies, *A review of the evidence on correlates of violence against women and what works to prevent it*, Change the story)

"There appears to be a high level of confusion about what it means to claim that violence is gendered and caused by gendered inequality (Dragiewicz, 2011). Also, many non-feminist commentators seem unconvinced by feminist claims about gender inequality as a major causal factor of violence." (Page 61, *Critical gender theory, gender inequality and men's violence against women: An Our Watch think piece paper*, Bob Pease)

"The data above suggests that it is possible that reduction in blatant normative support for violence against women has not been matched by reductions in violence itself." (Page 227, *2013 NCAS Full Technical Report*)

"Some criticisms of the ecological model suggest that it fails to incorporate a coherent theory of causation in relation to violence against women (Pease 2015) and is thus merely descriptive rather than explanatory (Salter 2014). As a result, it is argued, it can be used in ways that are antithetical to the notion that violence against women is rooted in gender inequality, by suggesting that it is rather the result of a 'grab-bag' of factors at the different levels of the social ecology (Pease 2015)… However, the socio-ecological model is not best understood as a theory of causation in itself (beyond the assumption that individual behaviours are the product of interrelated levels of influence). Rather it is best treated as a scaffold to be populated using a process guided by theory and other forms of evidence… On this view, the model is compatible with a theory of causation that highlights gender inequality as the key driver, in that it provides a useful map across which the different dimensions (norms, structures and practices) of gender inequality can be plotted. Furthermore it can help demonstrate how these dimensions interact with each other in complex and mutually reinforcing ways by making clear the ways in which they are manifested at multiple levels of the social ecology." (extract from OurWatch submission to the Victorian Royal Commission into Family Violence)

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7




**LEGAL STUDIES RESEARCH PAPER SERIES**

**Paper Number 16-7**

**August 29, 2016**

# The Stereotyped Offender: Domestic Violence and the Failure of Intervention

**Carolyn B. Ramsey**
University of Colorado Law School

120 Penn. St. L. Rev. 337 (2015)

This paper can be downloaded without charge from
the Social Science Research Network electronic library
at: http://ssrn.com/abstract=2831789

Document release under the Freedom of Information Act 1982 (Cth)
by the Department of Social Services

DSS - FOI LEX 56983 - Document 7

# Articles

# The Stereotyped Offender: Domestic Violence and the Failure of Intervention

Carolyn B. Ramsey*

**Abstract**

Scholars and battered women's advocates now recognize that many facets of the legal response to intimate-partner abuse stereotype victims and harm abuse survivors who do not fit commonly accepted paradigms. However, it is less often acknowledged that the feminist analysis of domestic violence also tends to stereotype offenders and that state action, including court-mandated batterer intervention, is premised on these offender stereotypes. The feminist approach can be faulted for minimizing

* Professor of Law, University of Colorado Law School. B.A., University of California, Irvine; M.A., Stanford University (History); J.D. Stanford Law School. I would like to thank Jamie Abrams, Alexia Brunet Marks, Kristen Carpenter, Caroline Forell, Leigh Goodmark, Ann McGinley, the Hon. Doug Miles (El Paso County, CO), Helen Norton, Mariela Olivares, and Ahmed White for insightful comments at conferences, workshops, and elsewhere. I appreciated the opportunity to present my research at the 2015 Law and Society Annual Meeting (on a panel organized by the Feminist Legal Theory CRN); the 2015 AALS Mid-year Workshop on Next Generation Issues on Sex, Gender, and the Law; the University of Colorado Law School Summer 2015 Works-in-Progress series; and the Ninth Annual Feminist Legal Theory Conference on "Applied Feminism Today" at the University of Baltimore School of Law. I am indebted to a colleague in Sociology, Devon Thacker Thomas, who suggested many sources on batterer intervention programs and allowed me to read and cite her Ph.D. thesis. Thomas Balmat, Stephanie Bonnes, Jennifer Sisk, Jordan Underhill, and the staff of the University of Colorado Law Library provided helpful research assistance.



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



or denying the role of substance abuse, mental illness, childhood trauma, race, culture, and poverty in intimate-partner abuse. Moreover, those arrested for domestic violence crimes now include heterosexual women, lesbians, and gay men; abuse is as common in same-sex relationships as in their heterosexual counterparts. Failure to take such factors into account perpetuates a one-dimensional image of the batterer as a controlling, heterosexual, male villain—a stereotype that impedes efforts to coordinate effective responses to domestic violence and entrenches gendered hierarchies that affect men, as well as women.

This Article begins by placing the feminist paradigm of the batterer in historical context. Although feminists transformed the dialogue about domestic violence by locating it in patriarchy and gender inequality, the offender stereotype that the Battered Women's Movement used to spur a vigorous state response and that still drives domestic violence policy shares some limitations with earlier paradigms of the wife beater—the hot-headed sinner in Puritan New England or the drunken brute of Temperance discourse. Like these earlier stereotypes, the image of the coercive, controlling male batterer is too one-dimensional and too closely tied to other sociopolitical agendas to yield a practical approach to prevent domestic violence and change the behavior of its perpetrators.

Drawing on historical, sociological, and psychological materials, as well as insights from masculinities studies, this Article suggests limits to our understanding of those who commit intimate-partner abuse and to the laws and policies—especially court-mandated batterer intervention programs ("BIPs")—currently in place. It presents an original analysis of 46 sets of state and local standards for BIPs to show that, although these standards are starting to be more inclusive, they still tend to impose a "one-size-fits-all" formula designed for heterosexual male offenders. The "one-size-fits-all" approach ignores crucial differences—not only in intimate-partner violence committed by women, as opposed to men, and homosexuals, as opposed to heterosexuals—but also between heterosexual male offenders and the types of abuse they inflict. Recognizing these differences would facilitate the effective tailoring of BIPs to achieve long-term behavioral change in a variety of participants. The Article concludes by offering preliminary suggestions for transforming profeminist interventions to encourage accountability and rehabilitation and to reduce recidivism without stereotyping domestic violence offenders.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



## Table of Contents

INTRODUCTION ..... 339
I. THE HISTORY OF DOMESTIC VIOLENCE OFFENDER STEREOTYPES ..... 342
A. Wicked and Abusive Carriage: The Wife Beater in Puritan New England ..... 344
B. Drunkenness and Domestic Violence: The Brutish Man in Nineteenth-Century Temperance Ideology ..... 349
C. Feminist Campaigns Against Domestic Violence: Patriarchy as the Root of the Problem ..... 356
1. The Nineteenth-Century Women's Rights Movement ..... 356
2. The Battered Women's Movement ..... 358
II. COURT-MANDATED BATTERER INTERVENTION PROGRAMS: A "ONE-SIZE-FITS-ALL APPROACH" TO DOMESTIC VIOLENCE OFFENDERS? ..... 361
A. Feminism, Anti-Feminism, and the Polarized Debate about Batterer Intervention ..... 362
1. The Duluth Domestic Abuse Intervention Project and its Impact in the United States ..... 363
2. The Limited Achievements of the Duluth Model ..... 368
3. The Duluth Model's Critics ..... 370
B. A Systematic Analysis of Modern Batterer Intervention Program Standards ..... 374
III. THE PATH AWAY FROM OFFENDER STEREOTYPES ..... 379
A. "Incorrigible" Male Offenders: The Role of Categories and Contextual Factors ..... 381
1. Substance Abuse ..... 385
2. Mental Disorders ..... 388
3. Family History of Abuse ..... 389
4. Race, Ethnicity, National Origin, Class, and Culture ..... 391
B. Women Who Use Force ..... 396
C. Same-Sex Abuse ..... 406
1. Lesbian Partner Violence and the Feminist Paradigm of the Batterer ..... 409
2. Intimate-Partner Abuse by Gay Men ..... 413
CONCLUSION ..... 415
APPENDIX A ..... 418

## INTRODUCTION

For more than two centuries, the government has failed to prevent and punish domestic violence adequately, not because it has refused to intervene in violent intimate relationships, but because it has not engaged in *effective* intervention. Batterers reoffend because the laws and pro-

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



grams designed to hold them accountable rely on offender stereotypes that provide only a partial picture of who perpetrates domestic violence and why.

Scholars and battered women's advocates now recognize that many facets of the legal response to intimate-partner abuse stereotype victims and harm abuse survivors who do not fit commonly accepted paradigms.[1] However, it is less often acknowledged that the feminist analysis of domestic violence also tends to stereotype offenders and that state action, including court-mandated batterer intervention, is premised on these offender stereotypes. Although feminism provided an important theory and dedicated leadership that spurred government protection of victims and punishment of batterers, the feminist approach can be faulted for minimizing or denying the role of substance abuse, mental illness, childhood trauma, race, culture, and poverty in intimate-partner abuse. These variables do not *cause* men to become batterers, but they may *contribute* to batterers' use of gendered violence and their tendency to recidivate, even after being arrested and ordered to participate in batterer intervention programs ("BIPs"). Moreover, those arrested for domestic violence

1. *See, e.g.,* Leigh Goodmark, *When is a Battered Woman Not a Battered Woman? When She Fights Back*. 20 YALE J. L. & FEMINISM 75, 76 (2008) (The stereotypical domestic violence victim is "a passive, middle-class, white woman cowering in the corner as her enraged husband prepares to beat her again. This woman never fights back . . . . The battered woman who fights back simply is not a victim in the eyes of many in the legal system."); Aya Gruber, *The Feminist War on Crime*, 92 IOWA L. REV. 741, 797 (2007) ("[D]omestic-abuse discourse and policy tended to assume a burning-bed-type stereotype of a meek, serially abused, non-poor, white woman."); G. Kristian Miccio, *A House Divided: Mandatory Arrest, Domestic Violence, and the Conservatization of the Battered Women's Movement,* 42 HOUS. L. REV. 237, 241 (2005) (arguing that the conservative, prosecutorial element within the Battered Women's Movement has had the effect of "reifying the cultural stereotypes of the incapacitated and irrational woman—stereotypes that confine women to, rather than liberate women from, oppressive homes"); Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 584 (1999) ("Mandatory interventions, such as arrest, prosecution, and reporting, treat battered women as fragile, uncooperative, mentally ill, and/or indecisive."); Adele M. Morrison, *Changing the Domestic Violence (Dis)course: From White Victim to Multicultural Survivor*, 39 U.C. DAVIS L. REV. 1061, 1078 (2006) ("The domestic violence victim identity—the 'battered woman'—has been constructed in direct opposition to the identities of other subordinated groups. The essential victim of domestic violence, the essential battered woman, is a white, heterosexual, middle-class woman. She is the essential battered woman because society imagines that it is she who needs protection."). *See also* ELIZABETH SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKING 120 (2000) (describing how case law, statutes, and defense strategies limit who is deemed a "battered woman" and which battered women can claim self-defense). Schneider acknowledges the diversity of abuse victims' experiences, but she also asserts "the need for a form of 'strategic essentialism' – recognition of an important commonality to women's experiences of battering in response to postmodern and essentialist challenges." *Id.* at 64–65.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



crimes now include heterosexual women, lesbians, and gay men; abuse is as common in same-sex relationships as in their heterosexual counterparts.[2] Failure to take such factors into account perpetuates a one-dimensional image of the batterer as a controlling, heterosexual, male villain—a stereotype that impedes efforts to coordinate effective responses to intimate-partner abuse and entrenches gendered hierarchies that affect men, as well as women. This Article calls attention to offender stereotypes, shows how they have operated over time, and explains why they have been especially detrimental to one aspect of modern domestic violence policy—the court-mandated participation of offenders in BIPs as part of pretrial diversion, probation, or a criminal sentence that includes jail time.

Part I shows how offender stereotypes have long hampered state intervention in domestic violence. Historically, men who physically assaulted their wives and girlfriends bore labels that fit then-current social ideologies. The Puritans of the seventeenth century viewed wife beaters as sinners who threatened the godly community by failing to maintain order in their households. The Temperance and Prohibition Movements of the late nineteenth and early twentieth centuries associated drunkenness with wife beating. The Battered Women's Movement of the late twentieth century demanded, and eventually achieved, concerted state action against batterers to an extent that these earlier movements did not. Yet it too can be criticized for taking an unduly narrow view of the factors contributing to intimate-partner abuse. According to the feminist analysis, the male batterer uses physical violence—often combined with economic, psychological, and sexual coercion—as a systematic expression of control over his female partner. Guided by this understanding of domestic violence, batterer intervention follows a feminist model that strives to teach men to respect their partners and promote equality, rather than exert dominance, in their intimate relationships.

However, as Part II explains, the feminist stereotype of the batterer often translates into policies that are ill suited to prevent recidivism by individuals who have committed non-fatal domestic violence offenses. Mandatory arrest laws increasingly result in the arrest of heterosexual women, members of the LGBT community, and people who exhibit mental illness, substance abuse, poverty, and other contextual problems. In some states, statutory domestic violence offenses that result in court-mandated participation in a BIP include property damage, harm to pets,

2. *See infra* notes 388–389 and accompanying text.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



and a broad array of other conduct.[3] Thus, even if the feminist analysis of heterosexual male violence were completely accurate, it would still provide an insufficient guiding principle for modern batterer intervention.

Part II presents the first comprehensive analysis in more than a decade of 46 sets of state and local standards for BIPs to show that, although these standards are starting to be more inclusive, they still tend to impose a "one-size-fits-all" formula designed for heterosexual male offenders. The "one-size-fits-all" approach ignores crucial differences—not only in intimate-partner violence committed by women, as opposed to men, and homosexuals, as opposed to heterosexuals—but also between heterosexual male offenders and the types of abuse they inflict. Recognizing these differences would facilitate the effective tailoring of BIPs to achieve long-term behavioral change in a variety of participants.

Drawing on historical, sociological, and psychological materials, as well as insights from masculinities studies, this Article suggests limits to our understanding of those who commit intimate-partner abuse and to the interventions—especially court-ordered BIPs—currently in place. Part III supplements the Article's historical and theoretical contributions with preliminary suggestions about how to transform pro-feminist interventions to encourage accountability and rehabilitation and to reduce recidivism without stereotyping domestic violence offenders.

## I. THE HISTORY OF DOMESTIC VIOLENCE OFFENDER STEREOTYPES

In every era in which the state has intervened to curb domestic violence, such intervention has been shaped and limited by dominant social beliefs about the type of men who abuse their wives and the reasons they do so. Part I first illustrates how stereotypes of the wife beater hampered effective laws and policies in two eras of American history: New England during the colonial period and the United States during the late 1800s and early 1900s.[4] In these historical eras, men policed other men

3. *See, e.g.,* COLO. REV. STAT. § 18-6-800.3 (2015) (defining "domestic violence" to include "any . . . crime against a person, or against property, including an animal . . . when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship"). Under Colorado law, completion of a BIP is mandatory for any person who commits an offense that includes an act of domestic violence. COLO. REV. STAT. § 18-6-801 (2015).

4. These historical periods were chosen, not because they were the only eras in which the government intervened in violent relationships, but because they provide clear examples of how domestic violence offender stereotypes limited the effectiveness of public responses. I have previously shown that police, prosecutors, and criminal courts continued to intervene against abusive husbands at least up to 1930. Carolyn B. Ramsey,

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



for exceeding a husband's legitimate use of authority to control his wife; such policing also served to enforce religious, class, and racial distinctions among men.

Part I then turns to the Battered Women's Movement of the late twentieth century and the comparatively recent legal reforms sparked by the feminist campaign against domestic violence. The feminist stereotype of the patriarchal male batterer shares a common flaw with the explanations of domestic violence offered in colonial New England and the nineteenth-century United States. Like those earlier stereotypes, the image of the domestic violence offender guiding modern laws and policies, and especially court-mandated BIPs, is too one-dimensional and too closely tied to ideologies designed to serve other sociopolitical goals to deter recidivism or rehabilitate individuals convicted of intimate-partner abuse.

This Article seeks to improve, rather than refute, feminist approaches to domestic violence. It also owes a debt to masculinities studies. Masculinities scholarship offers the critical insight that, rather than being monolithic, cultural structures of masculinity enforce distinctions between men along the lines of race, socioeconomic class, and sexual orientation.[5] Such factors place men in positions of dominance or subordination to each other, even as they exercise power over the women in their lives.[6] Men are further rendered insecure by their desire to attain seemingly unattainable proximity to the ideal of hegemonic masculinity that reigns in their particular era and geographic locale.[7] Examining the treatment of domestic violence offenders through the lens of masculinity reveals how the stereotype of the male batterer became an instrument of social control, and sometimes even social change, in various eras of

*Domestic Violence and State Intervention in the American West and Australia, 1860–1930*, 86 IND. L.J. 185, 188, 207–208, 225 (2011) (presenting evidence that men who violated norms of masculinity by beating or killing their wives were charged with crimes and punished, though with little deterrent effect, in the late 1800s and early 1900s) [*hereinafter* Ramsey, *Domestic Violence and State Intervention*].

5. *See* Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777, 782–89 (2000).

6. *Id.* at 788.

7. *See* Nancy E. Dowd, *Masculinities and Feminist Legal Theory*, 23 WIS. J. L., GENDER & SOC'Y 201, 208, 210 (2008); Harris, *supra* note 5, at 780; Ann C. McGinley & Frank Rudy Cooper, *Introduction: Masculinities, Multidimensionality, and the Law: Why They Need One Another*, *in* MASCULINITIES AND THE LAW: A MULTIDIMENSIONAL APPROACH 1, 5 (Frank Rudy Cooper & Ann C. McGinley, eds. (2012)). *See also generally* Ann C. McGinley, *Masculinities at Work*, 83 OR. L. REV. 359 (2004) (showing how structures of masculinity lead to the subordination of women and gender-nonconforming men in the workplace).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



American history, while the prevention of intimate-partner abuse remained subsidiary to other agendas.

### *A. Wicked and Abusive Carriage: The Wife Beater in Puritan New England*

In the eyes of Puritan New Englanders, wife beaters were hotheaded sinners who failed to exercise proper household government and, by analogy, risked upsetting the social and political order. Men who beat their wives had not attained the central achievements of manhood—"rationality, self-control, and mastery over whatever was passionate, sensual, and natural in the male self."[8] A wife beater broke divine law by abusing the authority granted to the male head of a household. His inability to keep the peace in his own home jeopardized the Puritan community by provoking God.[9] Cleric Benjamin Wadsworth wrote:

> If therefore the *Husband* is bitter against his wife, beating or striking her (as some vile wretches do) or in any unkind carriage, ill language, hard words, morose, peevish, surly behavior; nay if he is not kind, loving, tender in his words and carriage to her; he then shames his professions of Christianity, he breaks the Divine Law, he dishonours God, by this ill behavior. The same is true of the *Wife*, too.[10]

Both Massachusetts Bay and Plymouth colonies had laws against spouse beating,[11] which reflected the Puritan view that man and wife should maintain a harmonious union that was at once spiritual, economic, and sexual. In contrast to later times, when courts and commentators treated husband beating as a joke,[12] colonial Americans took seriously a

8. ANNE S. LOMBARD, MAKING MANHOOD: GROWING UP MALE IN COLONIAL NEW ENGLAND 9 (2003).

9. *See* ELIZABETH PLECK, DOMESTIC TYRANNY: THE MAKING OF SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT 5 (1987).

10. EDMUND S. MORGAN, THE PURITAN FAMILY: RELIGION & DOMESTIC RELATIONS IN SEVENTEENTH-CENTURY NEW ENGLAND 47–48 (1966) (quoting BENJAMIN WADSWORTH, THE WELL-ORDERED FAMILY 36 (Boston, 1712)).

11. MASSACHUSETTS BODY OF LIBERTIES 51, Liberty no. 80, *reprinted in* 1 WILLIAM H. WHITMORE, A BIOGRAPHICAL SKETCH OF THE MASSACHUSETTS COLONY FROM 1630 TO 1686 (1890) ("Every married woman shall be free of bodily correction or stripes by her husband, unless it be in his own defense upon her assault."). The law was subsequently changed to include women striking their husbands. 2 WILLIAM H. WHITMORE, A BIOGRAPHICAL SKETCH OF THE MASSACHUSETTS COLONY FROM 1630 TO 1686 (The Account of the Legislation from 1641 to 1642, including the Two Revisions of the Laws in 1649 and 1660) 88 n.40 (1890). *See also* PLECK, *supra* note 9, at 21–22.

12. *See* Elizabeth Katz, *Judicial Patriarchy and Domestic Violence: A Challenge to the Conventional Family Privacy Narrative*, 21 WM. & MARY J. WOMEN & L. 379, 420–35 (2015) (arguing that, contrary to the canonical academic narrative, courts in the early

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



wife's abuse of her husband. Indeed, if either spouse neglected their duties, "they not only wrong[ed] each other, but they provoke[d] God by breaking his law."[13]

A manly Puritan provided financially for his wife and children. His ability to support his family through productive labor constituted the yardstick by which his social worth was measured.[14] A good wife helped by working in the home and garden (or by managing servants who did this labor), and she conserved the resources her husband produced.[15] Because she was supposedly less rational and weaker in the mind than her husband, she owed him "a reverend subjection."[16] Yet, in actual practice, many men acknowledged that their spouses kept the books and responded more calmly than they did to the crises that beset the family.[17]

Whatever the reality of the man's mental and emotional control, compared to the woman's, Puritan society viewed the husband as the governor of the household. However, it insisted that he exercise his authority with moderation and that he embody an ideal of rationality in his dealings with his wife.[18] Some Puritan ministers exhorted men to use only verbal correction on their wives; others thought corporal punishment should be reserved for the most extreme provocations.[19] Yet, despite some difference of opinion over the place of violence in family government, there was widespread agreement that a man who lost his temper and inflicted excessive violence on his wife tarnished his honor and even undermined the social and political order. Neighbors, church leaders, and secular authorities saw the family and the state as roughly analogous;

twentieth century denounced wife beating but regarded abused husbands with amusement, contempt, and uncertainty).

13. MORGAN, *supra* note 10, at 30 (quoting WADSWORTH, THE WELL-ORDERED FAMILY at 40).

14. *See* LOMBARD, *supra* note 8, at 98.

15. *See id.* at 98–100; MORGAN, *supra* note 10, at 42.

16. JOHN DEMOS, FAMILY LIFE IN PLYMOUTH COLONY (2nd ed. 2000) (quoting 1 THE WORKS OF JOHN ROBINSON 239–40 (Robert Ashton ed., Boston, 1851)).

17. For example, Puritan diarist Samuel Sewall admitted that his wife Hannah had "a better faculty than I at managing affairs." MORGAN, *supra* note 10, at 43 (quoting 2 SAMUEL SEWALL, DIARY OF SAMUEL SEWALL: 1674–1729, at 93 (1879)). Across the sea in London, Puritan matron Grace Wallington "had to provide an example of steadiness and to comfort her despairing husband as one child after another sickened and died during her decade of childbearing." PAUL S. SEAVER, WALLINGTON'S WORLD: A PURITAN ARTISAN IN SEVENTEENTH-CENTURY LONDON 86 (1985).

18. LOMBARD, *supra* note 8, at 115;

19. Susan Dwyer Amussen notes this contrast in the views of English clerics William Gouge and William Whately, whose works would have been familiar to Puritan New Englanders. *See* Susan Dwyer Amussen, *"Being Stirred to Much Unquietness": Violence and Domestic Violence in Early Modern England*, 6 J. WOMEN'S HIST. 70, 72 (1994).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



hence, they regarded a man's treatment of his wife as a matter of concern to the community.[20] The Puritans had settled in New England to escape the tyranny and religious intolerance of the English king. Thus, in the Puritan belief system, the cruel autocrat was a despised figure—not a model ruler of the family or the state.[21]

Indeed, when Puritan New Englanders described a bad husband, they pointed to two central failings: his violence toward his wife and his failure to provide for her financially.[22] A man who physically abused his spouse in anger subverted the ideal of male self-control that gave him the authority to govern. Loss of self-control was sometimes labeled madness, but rarely in an exculpatory way. Rather than excusing the abusive husband's actions, "loss of control resembling madness was equated with lack of manliness."[23] As to the second failing (failure to provide), a husband who was lazy or improvident with money ignored the most basic element of his duty to his family—economic support[24]—and burdened the community with hungry mouths to feed. In short, an adult male who failed at household government could not be considered a true man. His ineptitude not only undercut his claims to respect as a husband and father; it also threatened colonial society with God's wrath by upsetting the divinely-mandated order.

In colonial New England, domestic violence offenders might be brought before a magistrate, bound over, and sentenced to a variety of punishments that often included public shaming.[25] Whipping, a fine, the stocks, or some combination of these penalties appear to have been the

20. *See* PLECK, *supra* note 9, at 18; Amussen, *supra* note 19, at 73.

21. *See* Carolyn B. Ramsey, *The Selective Enforcement of Colonial American Adultery Laws in the English Context*, 10 YALE J. L. & HUMAN. 191, 200 (1998) (criticizing the simplistic equation of Puritan ideas about the social and political order with patriarchy).

22. *See* LOMBARD, *supra* note 8, at 116.

23. *See* Elizabeth Foyster, *Male Honour, Social Control, and Wife Beating in Late Stuart England,* 6 TRANSACTIONS ROYAL HIST. SOC'Y 215, 221 (1996). Similarly, in the late nineteenth century, many wife murderers went to the gallows despite claiming insanity or delirium tremens as an excuse. *See* Carolyn B. Ramsey, *Intimate Homicide: Gender and Crime Control, 1880–1920*, 77 U. COLO. L. REV. 101, 155–56 (2006) (showing that nineteenth- and early-twentieth century courts applied provocation and insanity defenses narrowly when men were charged with killing their female intimates, while women often obtained mitigation and even acquittal by depicting their homicidal conduct as self-defense, insanity, or killing in defense of honor) [*hereinafter* Ramsey, *Intimate Homicide*].

24. LOMBARD, *supra* note 8, at 101; *see also* MORGAN, *supra* note 10, at 41-42.

25. *See* DEMOS, *supra* note 16, at 93 (indicating that public whipping was a common punishment for spouse abuse); MORGAN, *supra* note 10, at 39–40 (stating that courts in colonial New England enforced laws against spousal violence "on numerous occasions").

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



most common sentences for wife beaters. In 1672, for example, Henry Harwood of Suffolk County, Massachusetts was "convicted for abusing [and] beating his wife who was great with child; the court sentenced him to be whipped with ten stripes or pay five pounds in money fines to the court & fees of court, standing committed til [sic] the sentence be performed."[26] The previous year, a Plymouth court ordered Richard Marshall to "sit in the stocks" for "abusing his wife by kicking her from a stool into the fire."[27] Ralph Earle had to pay a fine of 20 shillings for dragging his wife "in an uncivil manner on the snow."[28]

Women were also presented to colonial courts for violence against their husbands. Joan Miller received punishment in Plymouth Colony in 1655 for "beating and reviling her husband, and egging her children to help her, bidding them knock him in the head, and wishing his victuals might choke him."[29] Courts may have preferred simply to admonish women charged with spouse abuse, rather than to inflict corporal punishment upon them.[30] Yet wives sometimes were whipped, as Ursula Edwards learned the hard way when she was "presented for striking her husband and [engaging in] abusive carriage and language."[31]

Colonial courts occasionally allowed women to separate from husbands who repeatedly assaulted them.[32] However, due to the Puritan emphasis on the reciprocal obligations of husbands and wives, the authorities often blamed both spouses for their inability to live together peaceably.[33] In Plymouth Colony in 1662, for example, George Barlow and his wife "were both severely reproved for their most ungodly living

26. 1 RECORDS OF THE SUFFOLK COUNTY COURT, 1671–1689, *in* 29 PUBLICATIONS OF THE COLONIAL SOCIETY OF MASSACHUSETTS, at 114 (1933) [*hereinafter* SUFFOLK CTY. CT. RECS.]. For the sake of clarity, this Article modernizes spelling and grammar in quotations from primary sources on the colonial period.

27. 5 RECORDS OF PLYMOUTH COLONY, COURT ORDERS: 1668–1678, at 61 (Nathaniel B. Shurtleff, ed., 1856).

28. 4 RECORDS OF THE COLONY OF NEW PLYMOUTH IN NEW ENGLAND, COURT ORDERS: 1661–1668, at 47 (Nathaniel B. Shurtleff, ed., 1855) [*hereinafter* NEW PLYMOUTH RECS.].

29. 3 RECORDS OF THE COLONY OF NEW PLYMOUTH IN NEW ENGLAND, COURT ORDERS: 1651–1661, at 75 (Nathaniel B. Shurtleff, ed., 1855).

30. *Id.* at 116 ("Mary Thorne presented for abusing and striking her husband the presentment not being fully proved the court sentenced her to be cautioned."); *id.* at 330 ("Anne Wampus bound over to the court to answer for abusing & striking her husband the court upon giving her an admonition ordered her to pay fees of court & so discharged her.").

31. 1 SUFFOLK CTY. CT. RECS., *supra* note 26, at 116.

32. *See* DEMOS, *supra* note 16, at 94 (discussing the 1665 case of John Williams of Scituate).

33. LAUREL THATCHER ULRICH, GOOD WIVES: IMAGE AND REALITY IN THE LIVES OF WOMEN IN NORTHERN NEW ENGLAND, 1650–1750 107–108 (1982).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



in contention with each other, and admonished to live otherwise."[34] Another couple spent an hour in the stocks after a court faulted the wife for neglecting the farm animals and the laundry and the husband for his cruel punishment of her.[35] The Puritans thus tended to characterize domestic violence as mutual conflict or as provoked excess in the husband's administration of discipline.

The Puritan stereotype of the wife beater as a sinful, irresponsible governor created a dilemma that undermined legal and social efforts to prevent domestic violence. Two ramifications flowed from the common advice to a man to "make his government of [his wife], as easy and gentle as possible; and strive more to be loved than feared; though neither is to be excluded."[36] First, despite condemnation of violent husbands, an ideology that deemed men the heads of their households also had to accord them some discretion in how they maintained their authority. The disobedient wife was at least as great a source of popular anxiety in colonial New England as the abusive husband. Hence, men who beat their wives often argued that, instead of striking in unbridled anger, they were simply punishing insubordination by their unruly spouses.[37] Second, even if a husband were deemed to have used excessive violence, Puritan authorities usually failed to protect the woman he assaulted.

Neighbors and magistrates rarely thought a wife's failure to perform household duties warranted extreme violence in response, however. Indeed, pamphlet literature chronicling the capital punishment of domestic killers sometimes cited men's tendency to blame their murdered spouses as evidence of their sinfulness. In an English example, Matthias Brinsden's lack of remorse for stabbing his wife to death was criticized as follows:

> [D]uring the whole time that he lay at condemnation, he never once appeared at prayers; when he was upon his trial it was thought remarkable, and a token of a savageness and barbarity of nature that . . . instead of bursting into tears for the loss of the partner of his bed, his joys and griefs; he insisted on trifling allegations, said his wife loved brandy and Geneva, disobeyed his commands, and would not be easy to live as he lived . . . .[38]

34. 4 NEW PLYMOUTH RECS., *supra* note 28, at 10.
35. ULRICH, *supra* note 33, at 107–108.
36. MORGAN, *supra* note 10, at 46 (quoting WADSWORTH, THE WELL-ORDERED FAMILY, at 36).
37. *See* LOMBARD, *supra* note 8, at 117.
38. *The Ordinary of Newgate's Account of the Behavior, Confession, and Last Dying Speech of Matthias Brinsden, Who was Executed at Tyburn, on Monday, the 24th of September, 1722, for the Murther of his Wife Hannah Brinsden, on the 16th Day of July,*

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



The prosecution and punishment of male perpetrators of domestic violence thus delineated sinful men from God-fearing ones, capable family governors from violent autocrats, and civilized men from barbarians.

Yet, in more routine cases of non-fatal beating, the attitude of early modern people toward wife abuse seems to have been more lenient. Although the settlers of colonial New England did not condone brutal discipline, they could understand it.[39] Such empathy may have resulted in the under-enforcement of domestic violence statutes in the Puritan colonies.[40] The stereotype of the cruel, sinful wife beater who acted out of passion, rather than reason, primarily served an expressive function: it told men what kind of behavior to avoid and disparaged the manliness of household heads who could not keep order without resorting to violence. The relevant criminal statutes and the stern moralizing of Puritan divines used the symbol of the wife beater to police the conduct and gender performance of other men. Yet such a stereotype did not go far toward explaining domestic violence, nor did it give the authorities a set of practical tools for facilitating either prevention or rehabilitation.

Finally, the Puritan approach failed to protect abused women. A society that required the cohabitation of married couples and rarely allowed them to divorce[41] provided few options for wives whose husbands beat them. Aside from a peace bond imposed by a court of law or a public whipping that might lead to violent retaliation, "[t]he practical remedy in most such cases was for neighbors to send the woman back home and to admonish the husband to behave in a manner more befitting a rational Christian husband."[42] The goal was to induce the man to govern better and to censure him publicly for his inferiority to other men, not to help his wife escape him.

### *B. Drunkenness and Domestic Violence: The Brutish Man in*

*Last, in the Parish of St. Anne, Black-Fryars* 2–3 (1722), available in Eighteenth Century Collections Online.

39. ULRICH, *supra* note 33, at 107–108.

40. Historian Elizabeth Pleck found only four complaints of wife beating in Plymouth Colony courts between 1663 and 1682 and "one complaint per decade between 1683 and 1702." PLECK, *supra* note 9, at 29. She suggested that the small number of wife beating cases was indicative of lax enforcement, rather than low incidence of assaults on wives. However, she estimated that the most extreme kind of domestic violence, spousal murder, occurred very infrequently in the New England colonies–only 0.1 per 100,000 in Massachusetts Bay Colony between 1630 and 1692, compared to 3.7 per 100,000 in Philadelphia, Pennsylvania, in 1970. *See id.* at 19.

41. *See* DEMOS, *supra* note 16, at 92 (noting laws against spouses living separately in Plymouth Colony); *see also* PLECK, *supra* note 9, at 23–24 (discussing the limited availability of divorce in colonial New England).

42. LOMBARD, *supra* note 8, at 118.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



*Nineteenth-Century Temperance Ideology*

In contrast to colonial New Englanders, who saw wife beaters as irresponsible, violent-tempered sinners, nineteenth-century Americans offered a different diagnosis. Against a backdrop of Temperance reform, wife beating was associated with drunkenness. The Victorian ideal of the industrious Christian husband echoed the Puritan standard, but nineteenth-century society placed greater emphasis on conjugal love than female obedience and recast the wife beater's unbridled anger as alcohol addiction. While Temperance activists primarily targeted liquor sellers and brewers, judges in the late 1800s and early 1900s punished wife beaters with fines, brief jail sentences, and even whipping.[43] However, in this period (as in other eras), the criminal justice response to domestic violence often played second fiddle to other social and political agendas and was hampered by a stereotypical view of both victims and offenders.

The beaten wife became a pitiful symbol of the Temperance campaign.[44] She was a pure, innocent victim, shrieking and trembling as her drunken husband terrorized her,[45] rather than a disorderly woman who partially deserved her bruises. While colonial courts often found fault with the behavior of both spouses, the stereotypes promoted by the Temperance Movement contrasted the brutish husband with the blameless wife.[46] Men who suffered physical and emotional abuse were ridiculed.[47] Yet, despite the centrality of the abused wife as a rallying image for the campaign to ban liquor sales, her wellbeing was not the main goal of the Temperance Movement. Nor did the Victorians probe more deeply than the perceived causal relationship between drinking and domestic violence to remedy structural or psychological factors that contributed to the problem.

43. *See infra* notes 56–60 and accompanying text.

44. *See* Jerome Nadelhaft, *Wife Torture: A Known Phenomenon in Nineteenth-Century America*, 10 J. AM. CULTURE 39, 40 (1987) (discussing the image of the beaten wife in Temperance discourse).

45. *See id.* at 40.

46. A wide variety of newspapers depicted "horrors, of which men are the authors and women the victims," and Temperance songs evoked "images . . . of innocent wives, some murdered, some only beaten, whose only responsibility was in an unspoken criticism which made husbands feel guilty." *Id.* at 42, 53. There seems to have been a more frank recognition on the part of nineteenth-century judges and juries that injured and slain women might have been unfaithful wives and slovenly housekeepers, but that such shortcomings did not justify or excuse brutal violence against them. *See* Ramsey, *Domestic Violence and State Intervention*, *supra* note 4, at 212–13, 225–28.

47. *See* Katz, *supra* note 12, at 420–35; *see also* Ramsey, *Domestic Violence and State Intervention*, *supra* note 4, at 210 & nn.136–37.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



According to Temperance activists, brutishness arose from alcohol-fueled degeneration, rather than being rooted in men's primal nature. Newspaper articles on wife beating cases echoed the view that domestic violence was episodic and fueled by drink—not systematic, coercive, and instrumental. A man named Brown "was always a hard drinker, and when under the influence of liquor would beat his wife in a shocking manner," reported the *Rocky Mountain News* in 1881 about Brown's conviction and sentence of 30 days' imprisonment for assault and battery.[48] After the turn of the century, public discourse continued to espouse a causal connection between drunkenness and wife abuse. In 1910, for example, the *Los Angeles Times* stated that "[h]ot weather and cold liquors were the contributory causes" of "[t]wo cases of wife beating, both bordering closely on murder."[49]

According to Temperance rhetoric, abusive husbands *could* have been kind spouses and productive breadwinners, if excessive drinking had not put them on the path to sloth and viciousness. Ohio temperance activist Eliza "Mother" Stewart sought to make saloon owners pay civil damages to a woman if her husband "drowned out all his manhood" with drink.[50] Stewart published a sketch of a drunkard's wife who lamented "[the] neglected business, the going down, down, the loss of our little Eden, the gradual change in my husband's nature, from one of the most tender and loving, to a moody, morose, abusive husband and father."[51] Liquor made the husband a brute and "an object of loathing and terror to those who once were thrilled with delight by the sound of his approaching footsteps."[52]

Journalists in the late Victorian and Progressive Eras also underscored how drink wrecked respectable households. For example, in 1887, the *Rocky Mountain News* reported that George Patterson had been charged with battering and threatening his wife during one of his binges: "Patterson is a tinner, capable of earning good wages, but his love for

48. *Wedded Woe: A Brutal Wife Beater Sentenced to Jail*, ROCKY MOUNTAIN NEWS (Denver, CO), Apr. 8, 1881, at 3 col. C.

49. *Women Brutally Beaten by Brutal Men*, L.A. TIMES, Apr. 18, 1910, at II1.

50. ELIZA DANIEL STEWART, MEMORIES OF THE CRUSADE: A THRILLING ACCOUNT OF THE GREAT UPRISING OF THE WOMEN OF OHIO IN 1873, AGAINST THE LIQUOR CRIME 45 (Arno Press Inc. 1972) (1890); *see also* Erin M. Masson, *The Woman's Christian Temperance Union, 1874–1898: Combating Domestic Violence*, 3 WM. & MARY J. WOMEN & L. 163, 171–72 (1997) (describing Mother Stewart's role in bringing cases against liquor sellers under the Adair Law).

51. STEWART, *supra* note 50, at 48 (quoting her editorial in the REPUBLIC, entitled *An Appeal to the Women of Springfield*); *see also* PLECK, *supra* note 9, at 53 ("Most of those who expressed an opinion held that men were not by nature brutish, but that drink caused them to degenerate.").

52. STEWART, *supra* note 50, at 48.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



rum makes a brute of an otherwise good man."[53] Commentators in the late 1800s and early 1900s tended to associate wife abuse primarily with physical violence. Yet, like the Puritans, they also faulted men for failing to provide economically for their families. Wife beaters were labeled unmanly men who failed to approximate the middle-class ideal of the sober breadwinner and devoted husband.

The brutishness of intemperate husbands was a cliché that obfuscated other factors causing or contributing to abuse. The cliché raised genuine public concern about drinking and wife beating, but such concern was marshaled toward the primary reform goals of Temperance, Prohibition, the prevention of cruelty to children,[54] and a middle-class crime control agenda. Domestic violence prevention was only a subsidiary objective. As described below, even the feminist wing of the Temperance Movement, which first associated wife beating with the legal subordination of women, avoided shining a spotlight on either the specific needs of abused wives or factors—aside from patriarchy and alcohol—that contributed to domestic violence.[55]

Public and private condemnation of domestic violence thus owed much to the image of the brutish drunkard from the Temperance literature. The corporal punishment of one's wife had been criminalized across the United States by the 1870s,[56] and both court records and newspaper articles reveal a surprising amount of intervention by police, prosecutors, and judges.[57] Criminal punishments were often substan-

53. *A Wife Beater: George Patterson in the Role of the Most Despicable of Human Beings*, ROCKY MOUNTAIN NEWS (Denver, CO), Oct. 22, 1887, col. F, at 6. Similar articles commonly appeared in newspapers in the early twentieth century, as well. *See, e.g.*, *Justice is Tempered*, L.A. TIMES, Oct. 25, 1913, at II1 (noting that a defendant charged with wife beating "is a peaceable hard-working man except when he tackles John Barleycorn").

54. Linda Gordon has shown that women whose husbands beat or raped them sometimes succeeded in obtaining assistance from nineteenth-century child protection societies, but that these societies were, first and foremost, dedicated to helping abused children. *See* LINDA GORDON, HEROES OF THEIR OWN LIVES: THE POLITICS AND HISTORY OF FAMILY VIOLENCE, BOSTON 1880–1960, at 7 (1988). Alcohol consumption was blamed for all family violence problems, including cruelty to children. *See id.* at 20.

55. *See infra* notes 75–79 and accompanying text (discussing how nineteenth-century feminists located domestic violence in the larger context of the social and legal oppression of women, but favored suffrage and the reform of marital property laws over targeted responses to wife beating and wife murder).

56. *See* Reva B. Siegel, *"The Rule of Love": Wife Beating as Prerogative and Privacy,* 105 YALE L.J. 2117, 2129–30 (1996) (discussing the persistence of spousal abuse, despite official condemnation, in the late nineteenth-century United States).

57. *See* Ramsey, *Domestic Violence and State Intervention*, *supra* note 4, at 199–204, 206–208, 216–20 (describing domestic assault cases involving male defendants in the American West between 1870 and 1930); *see also* Katz, *supra* note 47, at 405–20 (re-

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



tial—a combination of non-trivial fines and several months in jail.[58] As early as the 1830s, Samuel Chipman found that three of four inmates in one New York jail were wife beaters.[59] A few states even imposed whipping on the grounds that corporal punishment was the best way to deter violent husbands without depriving their families of economic support.[60] Yet accounts of criminal cases confirm, in various ways, that courts saw alcohol as the root cause of domestic violence. Some men who assaulted their wives were simply ordered to abstain from liquor.[61] In 1913, a Los Angeles judge "gave James Walters, charged with wife-beating, a suspended sentence of six months . . . on [the] condition that he keep out of saloons, refrain from drinking and keep up his payments on his home."[62]

Domestic assault prosecutions transcended class boundaries, implicating wealthy and middle-class men, as well as the working class and the poor.[63] Class and ethnicity did not solely define the concept of "respectability." Nevertheless, the cultural association of domestic violence with non-elites seems to have affected prosecution and punishment. Legal historian Reva Siegel infers a nexus between racial discrimination and the prosecution of wife beaters in the Reconstruction South from judicial opinions expressly denouncing "a belief among the humbler class of our *colored* population of a fancied right in the husband to chastise the wife."[64] Similarly, the whipping post may have become an implement for the social control of poor, minority men in a few states; one scholar reports that fifteen blacks, compared to only six whites, were whipped

lying on newspaper sources from 1910–1920 to show that wife beaters were prosecuted and punished in many states during that decade).

58. *See* Ramsey, *Domestic Violence and State Intervention*, *supra* note 4, at 406–408.

59. *See* Nadelhaft, *supra* note 44, at 55 (citing SAMUEL CHIPMAN, REPORT OF AN EXAMINATION OF POOR-HOUSES, JAILS, &C., IN THE STATE OF NEW-YORK, AND IN COUNTIES BERKSHIRE, MASSACHUSETTS, LITCHFIELD, CONNECTICUT, AND BENNINGTON, VERMONT, &C. 76–77 (4th ed. 1836)).

60. *See* PLECK, *supra* note 9, at 111; *see also* Ramsey, *Domestic Violence and State Intervention*, *supra* note 4, at 216–17.

61. *See* Ramsey, *Domestic Violence and State Intervention*, *supra* note 4, at 202 & n.90.

62. *Justice is Tempered*, *supra* note 53. Nevertheless, courts and juries refused to accept alcohol as grounds for acquittal. Men who relied on intoxication or alcoholic insanity as a defense to murder discovered that, while drunkenness was seen as the cause of domestic violence, it was not deemed legally exculpatory, nor did it spare wife-killers from the gallows. *See* Ramsey, *Intimate Homicide*, *supra* note 23, at 155–56.

63. *See* Katz, *supra* note 47, at 408; Ramsey, *Domestic Violence and State Intervention*, *supra* note 4, at 201 & n.85.

64. Siegel, *supra* note 56, at 2136 (quoting Harris v. State, 14 So. 266, 266 (Miss. 1894)) (emphasis added).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



for beating their wives between 1901 and 1942.[65] However, several other legal histories have found evidence regarding the role of racial bias in domestic violence cases too sparse and contradictory to draw firm conclusions.[66]

There was a more definite class bias to the offender stereotypes of the late 1800s and early 1900s. In late nineteenth-century New York City, for example, at least 12 of the 17 men convicted of first-degree domestic murders between 1879 and 1893 were working-class or unemployed.[67] Men from the working class, low-earning white-collar workers, and artisans predominated among those executed; only three were members of racial minorities.[68] Temperance discourse also associated drunken assaults on women with the working class and the poor. The drunkard was usually depicted as unemployed, or at least he squandered the family's meager earnings on alcohol. Some Temperance songs explicitly bemoaned the beatings that women endured because they refused to give their husbands money for drink or because the cupboard contained no food when the man staggered home from the bar.[69]

This connection between alcohol, poverty, and domestic violence permeated American culture beyond the Temperance Movement and influenced the way journalists and eyewitnesses described criminal cases. For example, more than half of the men executed for domestic murders in turn-of-the-century New York were portrayed as drunks who depended on the meager earnings of their female intimates for liquor money.[70] Although domestic violence defendants included wealthy and middle-class men,[71] the lasting image was that of crowded tenements, dirty children, and wives fending off blows from their intoxicated husbands. When elite men were involved, moralizing narratives associated both al-

65. *See* PLECK, *supra* note 9, at 119–20.

66. *See* Katz, *supra* note 47, at 404–405. In my research on intimate-partner homicide, I found anecdotal evidence of racial bias, particularly in the way newspapers described defendants of color, but my sources did not allow a systematic analysis of the role of race. *See* Ramsey, *Intimate Homicide*, *supra* note 23, at 173 & n.381; *see also* Ramsey, *Domestic Violence and State Intervention*, *supra* note 4, at 229, 246–48.

67. *See* Carolyn B. Ramsey, *The Discretionary Power of "Public" Prosecutors in Historical Perspective*, 39 AM. CRIM. L. REV. 1309, 1374–77 (2002) [hereinafter Ramsey, *Discretionary Power*] (describing the male offenders' lower class status).

68. *See* Ramsey, *Intimate Homicide*, *supra* note 23, at app. G at 190–91. "[A]bout twenty percent of all men who received severe punishment for killing intimates in [New York City and Denver between 1880 and 1920] belonged to racial minorities, even though such minorities constituted a tiny percentage of the total population." *Id.* at 173 & n.381.

69. *See* Nadelhaft, *supra* note 44, at 42.

70. *See* Ramsey, *Discretionary Power*, *supra* note 67, at 1375–76 & n.364.

71. *See* Katz, *supra* note 47, at 408; Ramsey, *Domestic Violence and State Intervention*, *supra* note 4, at 201 & n.85.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



cohol consumption and domestic violence with downward social mobility: formerly respectable husbands turned to the bottle, started bludgeoning their wives, and the family descended into poverty and disgrace.[72] In short, the law-and-order approach to domestic violence in the late 1800s and early 1900s sought to define the boundary between respectable and unrespectable, sober and drunk, industrious and idle, in ways that also reinforced class and racial distinctions among men.

Both the official criminal justice response to wife beating and popular punishments like tarring and feathering[73] constituted efforts to police men—often members of racial minorities or the working class—who deviated from prescriptive ideals of masculinity. Yet, despite the strong terms with which abusive husbands were condemned, the historical record from this period abounds with cases of repeat offenders brought to court on multiple occasions, only to escalate their abuse and even kill their wives after several court appearances.[74] The campaign against do-

72. *See supra* note 51–52 and accompanying text (quoting Mother Stewart's description of the declining fortunes of a drunkard's family).

73. *See* Ramsey, *Domestic Violence and State Intervention*, *supra* note 4, at 209 & n.129. Historians of early modern England, Europe, and America have documented rough-music rituals, prior to the nineteenth century, that involved costumed neighbors, beating on pots and pans or making other riotous noise, who forced a violator of social mores to ride a pole, endure various forms of ridicule, or even suffer communally-inflicted violence. *See* E.P. THOMPSON, CUSTOMS IN COMMON 469–71 (1991) (describing rough music in England and on the Continent). In early modern England, such rituals frequently targeted wives who beat or nagged submissive husbands. *See id.* at 477, 492–93. Yet, as official condemnation and punishment of wife beaters waned, communities also used rough music to shame and even expel abusive husbands. *See id.* at 493 (listing "[w]ife-beating or other ill-treatment of the wife by the husband" as one type of offense that occasioned rough music); *see also* Brendan McConville, *The Rise of Rough Music: Reflections on An Ancient New Custom in Eighteenth-Century New Jersey, in* RIOT AND REVELRY IN EARLY AMERICA 87–106 (William Pencak, Matthew Dennis & Simon P. Newman eds., 2002) (describing the use of rough music against wife beaters in colonial New Jersey).

74. *See, e.g.*, Katz, *supra* note 47, at 411 ("[M]any of these [wife beaters] were repeat offenders; fines and jail time did not seem to deter them."); Ramsey, *Domestic Violence and State Intervention*, *supra* note 4, at 217–18, 221 (discussing the failure of criminal penalties to prevent retaliatory beatings or the escalation of domestic violence). Attacking the supposed root cause—drinking—did not seem to be a panacea either. One study found that the rate of wife murder actually increased in Chicago between 1920 and 1933, the era when the law banned the sale and consumption of alcohol in the United States. Cynthia Grant Bowman & Ben Altman, *Wife Murder in Chicago: 1910–1930*, 92 J. CRIM. L. & CRIMINOLOGY 739, 779 (2002). These authors admit that Prohibition did not put a stop to drinking. However, their research only indicates that Prohibition laws failed to curb intimate violence against women, not that there was no correlation between drinking and wife murder. *See id.* at 779. Other factors besides the flawed attribution of domestic violence to alcohol consumption played a role in the ineffectiveness of late nineteenth- and early twentieth-century policies. The dearth of professionalized police forces, the gradual decline of neighborly assistance in some regions, and the lack of a so-

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



mestic abuse committed by drunken brutes failed miserably to the extent that it sought to curb wife beating and not merely galvanize support for the crusade against alcohol or enforce hierarchical demarcations between men.

### *C. Feminist Campaigns Against Domestic Violence: Patriarchy as the Root of the Problem*

As we have seen, the Temperance Movement deployed the stereotype of the drunken brute assaulting his innocent wife to spur various reforms, including the closing of saloons. First- and second-wave feminists also created images of the abusive man to mobilize support for larger political and social causes. Rather than entrenching gendered hierarchies by censuring husbands for abusing their authority over their wives, feminists identified the patriarchal social structure as the root, not only of domestic violence, but also of gender inequality in a broader sense. Indeed, the central achievement of the Battered Women's Movement of the late twentieth century lay in showing the interconnection between stopping violence against women and securing women's rights more broadly. This second-wave movement almost inevitably relied on a simple but potent image—the man who violently asserts his dominance over his powerless female victim—to raise public awareness about the gendered harms of intimate partner abuse and to galvanize state action against it.

#### 1. The Nineteenth-Century Women's Rights Movement

Although early feminists participated in the Temperance Movement, their emphasis differed significantly from that of more moderate Temperance leaders. For first-wave feminists, the problem was not alcohol itself, but the legal structure of marriage, which allowed a drunken husband to terrorize his wife, virtually without bounds. Because feminist leaders thought marital violence was rooted in male dominance, they advocated law reforms to empower women—to grant them the right to vote, easier access to divorce, and the rights to hold property in marriage, keep their earnings, make contracts, and file suit in their own names.[75]

First-wave feminists focused on giving women the legal means to escape an abusive marriage, or at least to hold greater power within it,

cial safety net for women whose husbands beat them also contributed to the failure of domestic violence prevention during this period. *See* Ramsey, *Intimate Homicide*, *supra* note 23, at 165; *see also* Ramsey, *Domestic Violence and State Intervention*, *supra* note 4, at 215–16.

75. *See* Siegel, *supra* note 56, at 2128.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



but despite offering a comparatively sophisticated structural analysis of domestic violence, they neglected to develop a less one-dimensional understanding of the wife beater.[76] The nineteenth-century feminist solution was exit: Amelia Bloomer, a leading nineteenth-century women's rights and Temperance advocate, even contended that abused women should be required by law to divorce their husbands.[77] With the notable exception of post-bellum temperance leader Lucy Stone, who unsuccessfully introduced protection order legislation in Massachusetts,[78] the nineteenth-century Women's Rights Movement offered no concrete strategies to deter men from assaulting women in the future[79] or to rehabilitate them to live non-violently with wives who did not want a divorce.

Perhaps more importantly, in the United States, the nineteenth-century feminist analysis had less impact on criminal justice responses to domestic violence over the next hundred years than did mainstream Temperance rhetoric and the paternalistic views of judges, police officers, and journalists. In the late 1800s and early 1900s, public scrutiny of domestic violence occurred precisely because such violence threatened the ideology of the separate spheres, according to which a man earned a livelihood so his wife could remain a protected angel of the house. Expressing indignation at "[t]he sight of the burly wife beater and his disfigured little wife"[80] was rarely a matter of gender equality, at least not in the modern sense.

76. For example, Elizabeth Cady Stanton advocated divorce reform by invoking the cliché of children hiding "from the wrath of drunken, brutal fathers, but . . . [rushing] out again at their mother's frantic screams, 'Help! oh, help!' . . .[as she was] dragged about the room by the hair on her head, kicked and pounded, and left half dead and bleeding on the floor." Siegel, *supra* note 56, at 2149 (quoting Elizabeth Cady Stanton, Address on the Divorce Bill, Before the Judiciary Committee of the New York Senate, in the Assembly Chamber 8 (Feb. 8, 1861) (Albany, Weed, Parsons & Co. 1861)).

77. *See* PLECK, *supra* note 9, at 55–58. Today, commentators claiming to support women's empowerment continue to suggest solutions that amount to others making decisions on abuse victims' behalf. *See, e.g.*, Ruth Jones, *Guardianship for Coercively Controlled Battered Women: Breaking the Control of the Abuser*, 88 GEO. L. J. 605, 641–57 (2000) ("Guardianship, bounded by adequate procedural safeguards, can balance the interests of the state with those of a battered woman and can protect both her interest and society's interest in ending intimate violence.").

78. *See* PLECK, *supra* note 9, at 102–104.

79. For example, nineteenth-century feminist proposals to increase women's autonomy, including the ability to divorce an abusive husband, did not squarely or effectively address the need to protect women from retaliatory violence by men who wanted to keep them trapped in a coercive relationship. *See* Ramsey, *Domestic Violence and State Intervention*, *supra* note 4, at 216 (describing the obstacles to leaving a marriage that late nineteenth-century women faced, despite the expansion of the legal grounds for divorce).

80. *A Wife Beater*, ROCKY MOUNTAIN NEWS (Denver, CO), Nov. 28, 1883, col. A, at 3.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



2. The Battered Women's Movement

Like nineteenth-century women's rights leaders, second-wave feminism attributed domestic violence to male domination. When battered women's shelters were established in the 1970s, abuse victims who compared their experiences identified patterns of violence, control, and humiliation that made it seem like batterers "followed a shared script."[81] From many individual stories, scholars and advocates distilled archetypal batterer behavior—a "culture of battering" in which the man enforces female subordination in the intimate relationship.[82] Such tactics go beyond physical assaults to encompass financial control, social isolation, humiliation, an intricate set of rules and punishments, and, frequently, escalating violence if the woman resists or tries to preserve a small area of autonomy for herself.[83] According to Evan Stark, coercive control also involves "[t]he micromanagement of how women enact gender."[84] By regulating the woman's clothing, housekeeping, child rearing, sexuality, and career choices, the man reduces her to a stereotypically domestic role and then devalues her performance of domesticity.[85]

Most second-wave feminist activists presumed that perpetrators of intimate-partner abuse were men and theorized that law, religion, and popular culture in a capitalist society trained them to expect and demand female subordination.[86] Susan Schechter wrote, for example: "Violence is only one of the many ways in which men express their socially structured right to control and chastise."[87] According to battered women's advocates, men derive benefits from controlling their female partners. In this view, abuse is instrumental. The man uses controlling behavior to obtain financial authority; to prioritize his own needs and desires; and to extract free labor, sex, and other rewards from his spouse.[88] The exertion of control may actually be the desired end. Stark suggests that some bat-

81. *See* EVAN STARK, COERCIVE CONTROL: THE ENTRAPMENT OF WOMEN IN PERSONAL LIFE 29 (2007).

82. *See* Karla Fischer, Neil Vidmar & Rene Ellis, *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 SMU L. REV. 2117, 2117–42 (1993).

83. *See* ANN JONES & SUSAN SCHECHTER, WHEN LOVE GOES WRONG 13 (1992); STARK, *supra* note 81, at 205–18, 227–77; Fischer, Vidmar & Ellis, *supra* note 82, at 2126–40.

84. STARK, *supra* note 81, at 211.

85. *Id.* at 211, 213.

86. *See* LUNDY BANCROFT, WHY DOES HE DO THAT? INSIDE THE MINDS OF ANGRY AND CONTROLLING MEN 317–33 (2002) (describing "the making of an abusive man"); SUSAN SCHECHTER, WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN'S MOVEMENT 216–31 (1982).

87. SCHECHTER, *supra* note 86, at 219.

88. *See* BANCROFT, *supra* note 86, at 151–58.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



terers' tactics "yield no proximate benefit other than the feeling of dominance itself."[89]

The feminist paradigm of the domestic violence offender also has a racial dimension. As tough-on-crime conservatives joined the campaign against domestic violence in the 1980s, efforts to protect defenseless, white women led to the assumption that the perpetrators were mostly white males.[90] Feminists lobbying for law reform did not resist this racial stereotype of the batterer because, either consciously or unconsciously, they saw the issue from the perspective of their own socioeconomic and racial status: that of middle-class white women.[91] Thus, one aspect of feminist exceptionalism is that it stereotyped a special category of criminals—domestic violence offenders—as predominantly white, despite the general cultural association of criminality with men of color.

Beyond the creation of the iconic image of the controlling male batterer, there has been relatively little inquiry, from a feminist perspective, into what motivates batterers and whether different types of abuse call for different explanations. There are several reasons for this neglect. First, in the late 1970s and early 1980s, the Battered Women's Movement pushed for the reform of legal responses to domestic violence, especially the mobilization of criminal justice resources.[92] To jump-start more vigorous and less discretionary enforcement by police and prosecutors, activists needed to make patterns of abuse visible and get the public to take them seriously. The image of the controlling husband or boyfriend was politically powerful, and it lent support to other feminist causes, such as defining date rape as a crime.[93] Second, the sharp focus on explaining why some women do not or cannot leave their abusers and why they use violence in self-defense came at the expense of opportunities to seek more nuanced answers to the question: "Why do men batter?" Third, the Battered Women's Movement emphasized batterer accountability, rather than treatment. Keeping women safe and helping

89. STARK, *supra* note 81, at 281. *See* SCHECHTER, *supra* note 86, at 219 (describing violence as a practical tool that men use to coerce and frighten women and to derive pleasure from their fear).

90. *See* Gruber, *supra* note 1, at 797.

91. *See id.*

92. *See* Tineke Ritmeester, *Batterers' Programs, Battered Women's Movement, and Issues of Accountability*, *in* ELLEN PENCE & MICHAEL PAYMAR, EDUCATION GROUPS FOR MEN WHO BATTER: THE DULUTH MODEL 169, 173 (Ellen Pence & Michael Paymar eds.,1993).

93. Some of the first American activists inspired by the establishment of battered women's shelters in England were involved in the anti-rape movement. *See id.*

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



them escape abusive relationships, along with educating the public about the harms of domestic violence, also headed the Movement's goals.[94]

Battered women's advocates turned to the criminal justice system to demand that domestic violence be labeled a crime, not just a family conflict, and that its perpetrators be arrested and punished.[95] Because insisting on accountability from batterers constituted a primary objective of feminist law reform, many factors associated with intimate-partner violence—including substance abuse, mental illness, exposure to abuse as a child, and the role of racism and poverty—were dismissed as myths or excuses.[96]

Battered women's advocates reluctantly embraced BIPs in an effort to prevent abusers from reoffending, but they viewed such programs with skepticism.[97] There were several reasons for the lukewarm acceptance of court-mandated programs for abusive men. First, some of the programs that proliferated in the United States in the early 1980s were run by mental health practitioners who were reluctant to acknowledge the shortcomings of marriage counseling and mediation or the problematic use of anger management skill-building without a concomitant emphasis on the unacceptability of violence and the negative consequences of engaging in it.[98] Second, battered women's advocates were unsure that abusive men could be rehabilitated; they believed that batterers feel entitlement to control their partners and that they lack "motivation to change."[99]

As we shall see, early pro-feminist programs dedicated to re-educating abusive men centered on acceptance of responsibility and unconditional acknowledgment of the wrongfulness and intentional nature of controlling behavior.[100] They made little provision for contextual issues that might contribute to recidivism. One author estimated that, in the early 1990s, the Duluth Domestic Abuse Intervention Project ("DAIP"), which is still the prevailing model for batterer intervention

94. *See* SCHECHTER, *supra* note 86, at 315 (describing how the Battered Women's Movement empowered abuse survivors); SCHNEIDER, *supra* note 1, at 199 (emphasizing the importance of "the public education campaigns that have been galvanized by the struggles for legal reform" on the issue of domestic violence).

95. *See* STARK, *supra* note 81, at 37.

96. *See* BANCROFT, *supra* note 86, at 23–48; SCHECHTER, *supra* note 86, at 209–16.

97. *See* STARK, *supra* note 81, at 67.

98. *See* Poco Kernsmith, *Treating Perpetrators of Domestic Violence: Gender Differences in the Applicability of the Theory of Planned Behavior*, 52 SEX ROLES 757, 758 (2005); Ritmeester, *supra* note 92, at 173.

99. EDWARD W. GONDOLF, THE FUTURE OF BATTERER PROGRAMS 17 (2012) [hereinafter GONDOLF, FUTURE].

100. *See* BANCROFT, *supra* note 86, at 334–43.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



across the country,[101] spent 75 percent of its budget on interagency communication to keep abused women safe and only 25 percent of its budget on treating male batterers.[102]

In short, as batterer intervention protocols developed, they tended to rely upon and entrench the view that domestic violence is committed by men against women and that it occurs because of the values and power dynamics of a sexist, male-dominated society. Since same-sex abuse fits uncomfortably with the feminist paradigm and "complicates its woman-centered goals," it threatened the Battered Women's Movement.[103] Hence, the Battered Women's Movement, the vigorous criminal justice response that it inspired, and the BIPs that courts order offenders to attend typically ignore same-sex intimate-partner violence, as well as male victims of female aggressors and women whose reaction to abuse involves angry, defensive "fighting back."[104] These forms of violence fall through the cracks in a system designed to address sexist, controlling men and their stereotypically passive, female victims.

## II. COURT-MANDATED BATTERER INTERVENTION PROGRAMS: A "ONE-SIZE-FITS-ALL" APPROACH TO DOMESTIC VIOLENCE OFFENDERS?

I have argued elsewhere that, in cases of intimate-partner homicide, the criminal law ought to express the wrongfulness of a killing that constitutes the ultimate act of control of an abuser over his partner: such homicides should be labeled murder, not manslaughter.[105] Yet, at the less serious end of the spectrum, especially in cases of misdemeanor domestic violence, the legal system should be concerned with prevention

101. *See* Julia C. Babcock, Charles E. Green & Chet Robie, *Does Batterers' Treatment Work? A Meta-Analytic Review of Domestic Violence Treatment*, 23 CLINICAL PSYCHOL. REV. 1023, 1026 (2004); SHELLY JACKSON, LYNETTE FEDER, DAVID R. FORDE, ROBERT C. DAVIS, CHRISTOPHER D. MAXWELL & BRUCE G. TAYLOR, NAT'L INST. FOR JUSTICE, U.S. DEP'T OF JUSTICE, NJC 195079, BATTERER INTERVENTION PROGRAMS: WHERE DO WE GO FROM HERE? 1 (2003) [hereinafter N.I.J. SPECIAL REP.]; *see also* GONDOLF, FUTURE, *supra* note 99, at 3 (stating that the prevailing model, nationwide, is a gender-based, cognitive-behavioral approach that focuses "on exposing the thought patterns related to abuse and violence, restructuring those patterns, and developing alternative behaviors").

102. Ritmeester, *supra* note 92, at 170.

103. *See* Adele M. Morrison, *Queering Domestic Violence to "Straighten Out" Criminal Law: What Might Happen When Queer Theory and Practice Meet Criminal Law's Conventional Responses to Domestic Violence*, 13 S. CAL. REV. L. & WOMEN'S STUD. 81, 90 (2003).

104. *See id.* at 109–10.

105. *See* Carolyn B. Ramsey, *Provoking Change: Comparative Insights on Feminist Homicide Law Reform*, 100 J. CRIM. L. & CRIMINOLOGY 33, 35–36, 92–93, 98–100 (2010).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



and rehabilitation, as well as blame. Finding effective alternatives to imprisonment for less serious domestic violence offenders may also serve societal and victim interests in reducing the myriad costs of incarceration—including the personal costs to victims who are connected to their abusers by bonds of financial (inter)dependence, shared parenting duties, fear of retaliation, and love. Court-mandated BIPs seek to achieve these goals.[106]

However, the protocols used in BIPs have generated bitter debates in the sociological and psychological literature, relatively little of which has been recognized in legal academic scholarship. Part II explains this debate and provides an update on the content of BIPs across the United States. Part III then makes preliminary suggestions for improving such programs based on a new understanding of domestic violence that avoids offender stereotypes.

### *A. Feminism, Anti-Feminism, and the Polarized Debate about Batterer Intervention*

The controversy about the most desirable and effective approach to batterer intervention pits two camps against each other: the proponents and the critics of the Duluth model. However, increasingly, other voices also seek to be heard. These voices suggest that there may be several types of intimate-partner violence, only one of which is characterized by the terroristic control of women by their male partners.[107] Some also emphasize the importance of cultural competence—including sensitivity to racial, ethnic, socioeconomic, and religious context—in successful in-

106. Although firearms prohibitions and completion of a BIP may be mandated by statute, even for domestic violence misdemeanors, the judge often has considerable discretion over the amount of imprisonment to which the batterer is sentenced. *See* Susan L. Miller, Carol Gregory, & LeAnn Iovanni, *One Size Fits All? A Gender-Neutral Approach to a Gender-Specific Problem: Contrasting Batterer Treatment Programs for Male and Female Offenders*, 16 CRIM. JUST. POL'Y REV. 336, 337, 339 (2005) (stating that most participants in BIPs are men ordered to complete the program in lieu of incarceration). In some jurisdictions, domestic violence offenders are even eligible for pretrial diversion programs with components that include a BIP, which allows them to avoid a criminal record and to circumvent targeted gun-control laws. *See* Rebecca G. Goddard, Note, *When It's the First Time Every Time: Eliminating the "Clean Slate" of Pretrial Diversions in Domestic Violence Crimes*, 49 VAL. U. L. REV. 267, 296–301 (2014) (arguing that pretrial diversions pose unacceptable barriers to accountability and victim safety). Finally, many courts use completion of a BIP as a post-conviction probation condition.

107. *See* MICHAEL P. JOHNSON, A TYPOLOGY OF DOMESTIC VIOLENCE: INTIMATE TERRORISM, VIOLENT RESISTANCE, AND SITUATIONAL COUPLE VIOLENCE 2, 5–6 (2008).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



terventions against battering.[108] Finally, the Duluth approach may be less monolithic and impervious to change than its detractors claim. Edward Gondolf argues, for example, that critics of the Duluth model "attack a caricature."[109] He writes: "I certainly agree—as do many Duluth proponents—that the field needs to move further ahead, especially in identifying, treating, and containing the unresponsive batterers with compounding problems. But I disagree that the Duluth model is necessarily an impediment to moving ahead."[110] To understand the debate and identify a path forward, it is first necessary to unpack the competing approaches and their criticisms of each other.

1. The Duluth Domestic Abuse Intervention Project and its Impact in the United States

The DAIP was founded in Duluth, Minnesota in the early 1980s in response to the expanded number of men who were arrested for domestic violence offenses and convicted in courts that remained reluctant to impose jail sentences on first-time offenders unless aggravating circumstances existed.[111] The re-education of batterers to avoid violence in their intimate relationships became an alternative, or in some cases, a supplement to incarceration. From the beginning, the DAIP sought to coordinate multiple agencies to minimize their employees' discretion,

108. *See generally* Rhea V. Almeida & Jacqueline Hudak, *The Cultural Context Model, in* PROGRAMS FOR MEN WHO BATTER 10-1, 10-1 to 10-24 (Etiony Aldarondo & Fernando Mederos eds., 2002) (describing a model that "addresses gender, skin color, ethnicity, spiritual practice, sexual orientation, age, and socioeconomic class, in a manner that places these issues at the core of family intervention"); Julia L. Perilla & Felipe Pérez, *A Program for Immigrant Latino Men Who Batter Within the Context of a Comprehensive Family Intervention*, *in* PROGRAMS FOR MEN WHO BATTER, *supra*, at 11-1, 11-1 to 11-31 (explaining the goals and protocols of Caminar Latino, a program for Latino immigrant families affected by domestic violence in Atlanta, Georgia); Antonio Ramírez Hernández, *CECEVIM—Stopping Male Violence in the Latino Home*, *in* PROGRAMS FOR MEN WHO BATTER, *supra*, at 12-1, 12-1 to 12-30 (describing the CECEVIM program, which was "created in 1996 out of a need to establish a culturally appropriate intervention model for Latino men who are abusive to their partners") (CECEVIM stands for 'Centro de Capacitación para Erradicar la Violencia Intrafamiliar Masculina' or Training Center to Eradicate Masculine Intrafamily Violence); Denise A. Donnelly, Linda G. Smith & Oliver J. Williams, *The Batterer Education Program for Incarcerated African-American Men, 1997–2000, in* PROGRAMS FOR MEN WHO BATTER, *supra*, at 13-1, 13-1 to 13-18 (discussing a program, primarily for black males, that was first developed at the DeKalb County Jail in Decatur, Georgia).

109. Edward W. Gondolf, *Theoretical and Research Support for the Duluth Model: A Reply to Dutton and Corvo,* 12 AGGRESSION & VIOLENT BEHAV. 644, 645 (2007) [hereinafter Gondolf, *Theoretical and Research Support for the Duluth Model*].

110. *Id.* at 653.

111. ELLEN PENCE & MICHAEL PAYMAR, EDUCATION GROUPS FOR MEN WHO BATTER xiii (1993).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



open their records to DAIP scrutiny, and hold batterers accountable, rather than enabling their violence.[112] The DAIP was designed to play "a monitoring and coordinating role . . . to prevent community collusion with abusers."[113] The nine agencies under the project's umbrella adopted written guidelines, policies, and procedures governing the responses that police, courts, and human service agencies used in domestic assault cases in Duluth.[114]

Starting in 1984, the DAIP's founders also began to develop a model to understand abusive men by interviewing women in battered women's shelters or in classes that such shelters offered. The insights gleaned from these interviews led to the creation of the Power and Control Wheel, a diagram that depicts typical behaviors used by abusers.[115] This diagram shows that psychological tactics and other conduct besides physical violence comprise patterns of intimate-partner abuse.[116] The DAIP eventually established a 26-week program "[t]o help men change from using the behaviors on the Power and Control Wheel, which result in authoritarian and destructive relationships, to using behaviors on the Equality Wheel, . . . which form the basis for egalitarian relationships."[117]

The DAIP's interagency approach to batterer intervention centered on accountability.[118] According to the underlying philosophy of the DAIP, batterers have been socialized in a society that grants men privileges based on their gender and tacitly condones their violence by blaming their female partners.[119] To change such men, the DAIP model pioneered a curriculum designed to eliminate behaviors on the Power and Control Wheel.[120] The curriculum reflected "a movement away from the anger-management focus of earlier batterer-intervention programs, and toward men's understanding of the violence and taking responsibility for it."[121] In addition to re-educating male offenders to reject attitudes believed to underpin gendered abuse, the DAIP also monitored offenders' compliance with court orders and scrutinized police and prosecutors'

112. *Id.* at 17–19.
113. *Id.* at 19.
114. *Id.* at 17; *see* Gondolf, *Theoretical and Research Support for the Duluth Model*, *supra* note 109, at 645.
115. PENCE & PAYMAR, *supra* note 111, at 2–3.
116. *See* Gondolf, *Theoretical and Research Support for the Duluth Model*, *supra* note 109, at 647.
117. PENCE & PAYMAR, *supra* note 111, at 7.
118. *Id.* at 4–5.
119. *Id.* at 4–7.
120. *See infra* notes 128–146 and accompanying text.
121. Ellen Pence, *The Duluth Domestic Abuse Intervention Project*, *in* PROGRAMS FOR MEN WHO BATTER, *supra* note 108, at 6-1, 6-13, 6-46.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



work to make sure criminal justice agencies treated domestic violence as a crime.[122] In this way, the DAIP sought to make both the offender and the relevant agencies in each case accountable for domestic violence and their complicity in allowing it to go unchecked.[123]

The Duluth approach thus framed battering as a component of patriarchy and construed it, not as episodic, but as "an expression of systematic male control which, along with emotional, economic, sexual, and verbal abuse, functions to intimidate and subjugate women."[124] Abuse arises from free will and intent—not a loss of self-control—even though some batterers may feel that they were overcome by emotion when they used violence.[125] Hence, although the Duluth model is sometimes self-described as "a group rehabilitation process,"[126] from the outset the DAIP's message to batterers was punitive and focused on deterrence: "Either stop it or lose increasing amounts of your personal freedom."[127]

The basic Duluth format, which many BIPs continue to use, can be described in the following manner. Batterer participation in the education group usually starts with a referral from criminal court, within about five days of a sentencing hearing, or from a civil court that has issued a protection order.[128] Batterers go through a group intake process with several other men.[129] Participants are screened, either at intake or when problems arise, for a variety of factors, including substance abuse and mental health issues.[130] However, under the DAIP's philosophy, abusers are not allowed to lean on such factors as excuses.[131] Some disruptive behaviors prevent men from participating in the regular group, but the DAIP also offers a special group for disruptive men, which uses a lecture-based curriculum.[132] If a court-mandated batterer's behavior prevents his participation in this special group, he can be referred back to court for noncompliance with of the court's order.[133]

122. *See* PENCE & PAYMAR, *supra* note 111, at 18–19.
123. *See id.* at 19 (discussing the importance of preventing "community collusion" with abusers).
124. Eric S. Mankowski, Janice Haaken & Courtenay S. Silvergleid, *Collateral Damage: An Analysis of the Achievements and Unintended Consequences of Batterer Intervention Programs and Discourse*, 17 J. FAM. VIOLENCE 167, 171 (2002) (providing a critical description of the Duluth model).
125. *See* PENCE & PAYMAR, *supra* note 111, at 2.
126. *Id.*at 19.
127. *Id.* at 18.
128. *Id* at 19. DAIP batterer education groups do have some voluntary participants, but only 10% of them complete the program. *Id.* at 24.
129. *Id.* at 21.
130. *Id.* at 23–24.
131. *See id.* at 4.
132. *See id.* at 23–24.
133. *See id.*

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



The 26-week Duluth curriculum is based on eight themes depicted on the Equality Wheel: *Non-threatening Behavior*; *Respect*; *Trust and Support*; *Honesty and Accountability*; *Responsible Parenting*; *Shared Responsibility*; *Economic Partnership*; and *Negotiation and Fairness*.[134] In contrast, the Power and Control Wheel illustrates behaviors that abusers employ to control their partners.[135] The first week of each unit consists of a check-in during which the men briefly describe progress on their "action plans"—written records of individual goals toward change to which each participant commits himself and the steps needed to achieve those goals.[136] A facilitator then uses videos, lectures, role play, and discussion to define a theme from the Equality Wheel.[137] The facilitator distributes "control logs" so each participant can record and analyze abusive incidents that occur in his intimate relationship and the nonviolent alternatives he could have chosen.[138] The second week explores how specific acts of abuse are used as control tactics, and after check-in, the session focuses on the participants' control logs.[139] The third week typically involves role play of alternatives to abusive behavior that could be substituted in the concrete incidents the men have described in their logs.[140]

The facilitator of the weekly group discussion plays a key role in the Duluth program because the facilitator is charged with creating a compassionate atmosphere in which batterers learn to engage in reflection and critical thinking.[141] However, the facilitator must also ensure that participants do not minimize or deny their controlling, abusive conduct or hold fast to sexist beliefs.[142] Whether Duluth-style programs shame participants remains a point of controversy. According to some descriptions of the Duluth approach, it is necessary for abusers to feel guilt and shame so they can take the first step toward change—accepting responsibility for their behavior.[143] In contrast, the Duluth model's official website denies that shaming is part of its methodology.[144] In any event, the DAIP seeks to avoid offender-facilitator collusion because a

134. *Id.* at 30–31 & Fig. 3.1.
135. PENCE & PAYMAR, *supra* note 111, at 30-31 & Fig. 3.2.
136. *See id.* at 32–33.
137. *See id*. at 32.
138. *See id.* at 32.
139. *See id.*
140. *See id.*
141. *See id.* at 67, 71–72.
142. *See id.* at 78.
143. *See* Gondolf, *Theoretical and Research Support for the Duluth Model*, *supra* note 109, at 648.
144. *See Frequently Asked Questions*, DOMESTIC ABUSE INTERVENTION PROGRAMS, http://www.theduluthmodel.org/about/faqs.html#shame (last visited June 15, 2015).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



facilitator who colludes with group members may inadvertently encourage their excuses and prevent them from being held accountable for their violence.[145] The Duluth model instructs facilitators to confront minimization, denial, and prejudiced views in a respectful manner and to send habitually uncooperative participants to the special group for disruptive men, so that they do not impede their classmates' journey to accepting responsibility for domestic abuse.[146] Inadvertent facilitator collusion and the ability of batterers to "talk the talk" in a superficial way, rather than genuinely changing their attitudes and conduct, represent major obstacles to program success.[147]

Although alternatives exist, the Duluth model continues to be the prevailing approach to batterer intervention in the United States today.[148] Programs influenced by the DAIP are variously described as using a feminist psycho-educational curriculum[149] or a gender-based cognitive-behavioral model that includes skill-building components.[150] In practice there is some overlap;[151] modern standards for the certification of BIPs increasingly allow a combination of the two.[152] As Part II.B explains, the

145. *See* PENCE & PAYMAR, *supra* note 111, at 77–83.

146. *See id.* at 81. Edward Gondolf believes that confrontation is necessary to overcome batterers' denial and resistance. In his view, "the question about confrontation is not *should* it be done, but *how* is it to be done." Gondolf, *Theoretical and Research Support for the Duluth Model*, *supra* note 109, at 648. *See also* Mankowski, Haaken & Silvergleid, *supra* note 124, at 170 (stating, in a critical description of the Duluth model, that group facilitators are supposed to be "vigilant for and routinely confront the men's sexist and controlling attitudes").

147. *See* Miller, Gregory, & Iovanni, *supra* note 106, at 341–49; Douglas P. Schrock & Irene Padavic, *Negotiating Hegemonic Masculinity in a Batterer Intervention Program*, 21 GENDER & SOC'Y 625, 635–36, 641, 643–44 (2007). While Part II (A) (2) of this Article will describe criticisms of the Duluth model's feminist ideology, poor implementation—rather than poor design—is arguably a greater weakness on the ground. One research team found that "facilitators' deference [to batterers' diversionary tactics and locally hegemonic masculine attitudes] . . . affirmed men's sense of entitlement to women's subservience, counter to the curriculum's aims." *Id.* at 636.

148. *See supra* note 101. *See also infra* note 203 and accompanying text.

149. N.I.J. SPECIAL REP., *supra* note 101, at 1.

150. *See* GONDOLF, FUTURE, *supra* note 99, at 3.

151. *See* Amie Nichole Zarling, A Preliminary Trial of ACT Skills Training for Aggressive Behavior 19 n.6, (May 2013) (unpublished Ph.D. dissertation, University of Iowa), http://ir.uiowa.edu/cgi/viewcontent.cgi?article=4801&context=etd (stating that many BIPs combine Duluth-style components with cognitive-behavioral techniques grounded in social-learning theory).

152. For examples of state standards that blend the feminist Duluth model with anger management and other skills training, see N.J. COAL. FOR BATTERED WOMEN, BATTERER'S PROGRAM STANDARDS 3, http://www.biscmi.org/other_resources/nj_bip_stds.pdf (last visited July 17, 2015); SAN DIEGO CTY. [California] TASK FORCE ON DOMESTIC VIOLENCE, *Treatment and Intervention Standards* 17–18, BATTERER INTERVENTION SERVS. COAL. OF MICH., http://www.biscmi.org/other_resources/docs/san_diego.html (last visited July 17, 2015); Rules of Domestic Violence State Coordinating Council [Tennessee] 12–

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



majority of state standards espouse a power-and-control theory of domestic violence that depicts the abuse of women as rooted in patriarchy and the "complex psychological tendency toward misogyny" that underpins it.[153] Duluth-style programs generally take a law-and-order approach to domestic violence that prioritizes the safety of female victims and the accountability of male offenders.[154] If men fail to comply with court referral to the education groups, or if they abuse their intimate partners or children while they are enrolled in the program, they face further consequences, including additional criminal charges and jail time.[155]

2. The Limited Achievements of the Duluth Model

Empirical studies of Duluth-style BIPs indicate that their achievements are limited. Attrition rates hover between 40 and 75 percent, even though program completion is a probation condition for many participants.[156] Recidivism also remains a problem for those who finish the program.[157] A meta-analytic review published in 2004 found that batterer intervention had a small effect on recidivism rates and that "[t]here were no significant differences in average effect size between Duluth-type and cognitive-behavioral batterer intervention programs."[158] A male offender who completes a BIP based on either model is only five percent less likely to re-assault his female partner than a man who has only been arrested and convicted in the criminal justice system.[159]

A study of male offenders court-ordered to attend a Duluth-style program in Broward County, Florida, concluded that the program "had no clear and demonstrable effect on offenders' attitudes, beliefs, or behavior. Evidence of severe physical abuse still existed, even 6 and 12 months after sentencing."[160] Indeed, attendance at some, but not all, of the counseling sessions actually made it more likely that batterers would be rearrested.[161] Another study tracked the results of a Duluth-type bat-

13, Rule 0490-1-.06(2) & (3) (1999), http://www.share.tn.gov/sos/rules/0490/0490-01.pdf . *See also infra* notes 213–214 and accompanying text.

153. GONDOLF, FUTURE, *supra* note 99, at 21. *See also infra* note 203 and accompanying text.

154. *See* GONDOLF, FUTURE, *supra* note 99, at 23–25.

155. *See id.* at 24.

156. *See* Babcock, Green & Robie, *supra* note 101, at 1028–30; BILL WOODWARD & KRISTEN BECHTEL, UNDERSTANDING RESEARCH EVALUATING THE EFFECTIVENESS OF BATTERERS' INTERVENTION PROGRAMS, U.S. DEP'T OF JUSTICE, NAT'L INST. OF CORRECTIONS 3 (2008) (unpublished report), http://nicic.gov/Library/Files/023363.pdf.

157. *See* Babcock, Green & Robie, *supra* note 101, at 1044.

158. *Id.* at 1043–44.

159. *Id*. at 1044.

160. N.I.J. SPECIAL REPORT, *supra* note 101, at 12.

161. *Id.* at 12–13.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



terer intervention program in Brooklyn, New York, for domestic violence misdemeanants who agreed to participate.[162] These researchers concluded, "[t]he results of this study do not support the view that treatment leads to lasting changes in behavior. . . . [Rather, they] support the view that batterer intervention merely suppresses violent behavior for the duration of [the] treatment."[163] Some scholars have even suggested that such programs increase women's risk of victimization because they create a false sense of security among abused women whose partners have gotten treatment.[164]

Although the studies described above have methodological flaws,[165] supporters of the Duluth model admit that it has experienced only modest success when measured anecdotally by the views of battered women's shelter providers[166] or by empirical analyses of recidivism.[167] One proponent of the Duluth model, Edward Gondolf, presents more optimistic findings. His multi-site evaluation of batterer programs, which included a four-year longitudinal follow-up, claimed to show a "clear de-escalation of reassault and other abuse over time, with the vast majority of men reaching sustained non-violence."[168] However, Gondolf's recent

162. *See id.* at 19.

163. *Id.* at 20.

164. *See* Babcock, Green & Robie, *supra* note 101, at 1024; Schrock & Padavic, *supra* note 147, at 644.

165. For example, Shelly Jackson points out that both the Brooklyn and Broward County studies had high dropout rates, which could make the results appear too positive, if only the attitudes and recidivism rates of men who completed the program were measured. *See* N.I.J. SPECIAL REP., *supra* note 101, at 23. Jackson also emphasizes the importance of tracking *when* a re-offense occurs because "[i]f the offender batters again during the first week of treatment, it cannot be said that the program had no effect; rather, the program had *no opportunity* to affect the batterer." *Id.* at 25 (emphasis added). The Brooklyn study controlled for this factor, but the Broward County study did not. *Id.* However, the Brooklyn study was flawed by the compromises the experimental program made—getting the misdemeanants' consent and offering a shorter program to accommodate some of the men's objections. *See id.* at 24. Finally, neither study tested whether the batterers' programs implemented the Duluth curriculum in the intended manner. *See id.* at 25. Still, Jackson used the Brooklyn and Broward County study results to conclude, "[t]he stakes for women's safety are simply too high to rely heavily on the use of BIPs without stronger empirical evidence that they work." *Id.* at 26.

166. Ritmeester, *supra* note 92, at 176–77 (reporting that almost half of 76 American and Canadian battered women's shelters surveyed in the early 1990s felt the BIPs did not decrease physical violence against women and 88 percent thought BIPs had no impact on or even increased emotional abuse).

167. *See, e.g.*, Melanie Shepard, *Evaluation of Domestic Abuse Intervention Programs*, *in* EDUCATION GROUPS FOR MEN WHO BATTER, *supra* note 92, at 163, 166–67 (reporting the results of an early DAIP study that assessed abusive behavior over a five-year period following completion of a batterer education group).

168. Gondolf, *Theoretical and Research Support for the Duluth Model*, *supra* note 109, at 652.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



book on batterer intervention acknowledges a need for reform. He admits that dropout rates may be as high as 70 percent and that "[e]xperimental results and meta-analyses suggest that batterer programs have little or no effect[,]" even on the men who complete them.[169] Because statistical modeling presents a more encouraging picture, he surmises: "Perhaps the two sets of findings supplement one another. Arguably, the experiments suggest that simply sending men to a batterer program is not sufficient in itself, and the statistical modeling indicates that some men warrant enhanced intervention of some sort [e.g. court oversight, alcohol treatment, or other supplemental programming]."[170] Yet Gondolf concedes that, as they are currently designed and implemented, batterer programs do not change the behavior of some especially dangerous, violent men who often drop out of education groups and are likely to recidivate.[171]

3. The Duluth Model's Critics

The Duluth model has incurred heated criticism from several directions. First, battered women's advocates have long feared that group education sessions do not go far enough toward combating societal acceptance of violence against women.[172] To increase accountability, some program directors favor more court oversight, probation supervision, and penalties for noncompliance, including incarceration for serious and/or repeated assaults.[173] In this view, the prevailing model is too lenient.

Second, advocates of a multicultural approach to batterer intervention find Duluth-style programs insufficiently sensitive to "obstacles to change such as racial discrimination, economic disadvantage, and traumatic experiences."[174] Moreover, while DAIP founders acknowledge that women and members of the LGBT community are also arrested for domestic violence, and the DAIP does offer a women's group, abusive men nonetheless remain the Duluth model's nearly exclusive focus.[175] In

169. GONDOLF, FUTURE, *supra* note 99, at 71, 125.
170. *Id.*
171. *See id.* at 6, 72, 125, 191, 237
172. *Id.* at 1.
173. *Id.* at 15.
174. *Id.* at 20 (summarizing the views of Fernando Mederos). *See also* N.I.J. SPECIAL REP., *supra* note 101, at 25 (stating that some researchers believe treatment approaches "need to be tailored to serve specific populations" and that the Duluth model "based on white feminist theory" may not work with offenders from minority groups).
175. PENCE & PAYMAR, *supra* note 111, at 5–6; Pence, *supra* note 121, at 6–10. The DAIP approach holds that "battering is not a gender-neutral issue." PENCE & PAYMAR, *supra* note 111, at 5. Women's use of violence is largely seen as self-defensive or as an angry response to abuse, not as battering, though the DAIP has worked with a few wom-

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



contrast, a "new psychology" of battering that has started to emerge rejects the "one-size-fits-all" structure and philosophy of the feminist approach in favor of more individualized interventions.[176]

The most strenuous objections to feminist batterer programs come from proponents of psychodynamic treatment or couples counseling, who claim that family violence is gender-neutral, and from advocates of evidence-based practice, which demands protocols with empirically demonstrated effectiveness.[177] Some of these critiques seem, quite frankly, to be motivated by hostility to feminism. Yet, rather than simply dismissing their concerns as backlash, it is worth addressing whether they contain at least some validity. Ken Corvo, Donald Dutton, and others charge the Duluth model with being ineffective and excessively ideological. In addition to these overarching claims, the detractors fire three specific criticisms at feminist BIPs. First, they claim that the philosophy and curricula of the programs vilify batterers.[178] Second, they contend that the programs are ineffective and that one reason for their ineffectiveness is the corrosive effect of confrontation on the facilitator-client relationship.[179] Third, they argue that the hegemony of the feminist paradigm has had a chilling effect on scholarship presenting alternative the-

en who committed dangerous assaults on their male partners. *See id*. at 5–6. Pence and Paymar's book is limited to describing batterer education programs for men, however. Similarly, although Pence and Paymar acknowledge the existence of same-sex domestic violence, they state that "[d]ealing with gay and lesbian battering is beyond the scope of this book." PENCE & PAYMAR, *supra* note 111, at 5. Despite the DAIP's relative lack of attention to women arrested for domestic violence, compared to men, a few commentators credit the DAIP with employing an effective combination of education and advocacy for women who use force, in contrast to other programs. *See, e.g.,* Lisa Young Larance, *When She Hits Him: Why the Institutional Response Deserves Reconsideration*, 5 VIOLENCE AGAINST WOMEN NEWSL. 10, 17 (2007) [*hereinafter* Larance, *When She Hits Him*].

176. *See* GONDOLF, FUTURE, *supra* note 99, at 5, 124–25 (offering a critical assessment of the "new psychology" of battering).

177. *See id.* at xii, 5, 15–19 (noting salient characteristics of various critiques). *See also, e.g.*, Donald G. Dutton & Kenneth Corvo, *Transforming a Flawed Policy: A call to revive psychology and science in domestic violence research and practice*, 11 AGGRESSION & VIOLENT BEHAV. 457, 459 (2006) (complaining that "a 'one-size fits all' approach, based on a contraindicated political model of male domination prevails [in batterer intervention programs]").

178. *See* Ken Corvo & Pamela J. Johnson, *Vilification of the "batterer": How blame shapes domestic violence policy and interventions*, 8 AGGRESSION & VIOLENT BEHAV. 259, 260 (2003) (criticizing the dynamic by which the "vilification of the 'batterer' has become an acceptable and strategic frame within which to address perpetrators of domestic violence."); Dutton & Corvo, *supra* note 177, at 477 (claiming that, under the Duluth model, "men and women are reduced to socially scripted automatons, without painful personal histories, without current frustrations, and inevitably without meaningful inner lives").

179. *See* Dutton & Corvo, *supra* note 177, at 463.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



ories of domestic violence and on the certification of batterer programs grounded in other models.[180]

Ken Corvo and Pamela Johnson identify the stereotyping of offenders as one of the central failures of the feminist model. In their view, Duluth-style interventions lump all domestic violence perpetrators under the batterer rubric "as if they represent the worst of the behavior . . . that occurs in family violence, ignoring and/or collapsing important distinctions along various dimensions of the problem—degree of severity, for example, or periodicity of occurrence."[181] For Corvo and Johnson, the vilification of the batterer is troubling, not only because it leads to ineffective psycho-educational or cognitive-behavioral programs, but also because it blames poor program results on the offender's supposedly incorrigible nature.[182] Alluding to the historical stereotypes described in Part I of this Article, Corvo and Johnson claim that the feminist model "is at once reminiscent of Calvinistic notions of unregenerate sinners unable to resist further wrongdoing, and of addiction and disease models in which decline is seen as inevitable, progressive, and irreversible."[183] Despite relatively recent research positing the existence of multiple types of domestic violence,[184] feminist approaches still adhere to the belief that, without punitive intervention, partner abuse will inevitably escalate. To paraphrase legal scholar Jeannie Suk, all domestic violence misdemeanants are viewed as potential O.J. Simpsons—purposeful, controlling, strategic, and ultimately murderous in their use of violence.[185] Such villains are not worthy of "treatment"; the Duluth model instead speaks of confrontation and re-education.[186]

180. *See* Corvo & Johnson, *supra* note 178, at 260; Dutton & Corvo, *supra* note 177, at 459, 461, 478.

181. *See* Corvo & Johnson, *supra* note 178, at 261; *see also* Dutton & Corvo, *supra* note 177, at 464 ("Essentially, the Duluth model views every man convicted as equivalent to the worst man [] without gradations or nuance.").

182. Corvo & Johnson, *supra* note 178, at 261.

183. *Id*.

184. *See generally, e.g.*, JOHNSON, *supra* note 107 (positing the existence of three types of domestic violence: intimate terrorism, violent resistance, and situational couple violence).

185. Jeannie Suk, *Criminal Law Comes Home*, 116 YALE L.J. 2, 44 (2006).

186. *See* Corvo & Johnson, *supra* note 178, at 261. Here, Corvo and Johnson appear to misconstrue the DAIP's reasons for preferring the term "education" to "treatment" or "therapy." In the feminist conception, battering is not a form of psychological deviance, but rather a socially condoned method of controlling women that is rooted in patriarchal privilege. Corvo corrects his error in a more recent article, co-authored with Donald Dutton. *See* Dutton & Corvo, *supra* note 177, at 462 ("The Duluth model avoids utilizing the term 'therapy' because therapy implies there is something wrong with clients, whereas, according to the Duluth philosophy they are normal, simply following cultural dictates.").

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



The use of confrontational tactics by Duluth-style program facilitators lies at the heart of Corvo's critique of feminist batterer intervention. In his view, the confrontational nature of the Duluth curriculum impedes the establishment of trust between the facilitator and the batterer and leads to high levels of program attrition.[187] Dutton and Corvo claim that the Duluth approach is based on shaming; that it requires batterers to accept "male sex role conditioning" as the cause of intimate-partner abuse; and that it will not allow them to explore any other understanding of their violence.[188] These authors write, "[no] therapeutic bond can [be] form[ed] and clients who comply will feel judged and disbelieved. Empathy is impossible, change is unlikely, group process is subverted, and clients' commitments to change are rarely internalized. It is a 'take it or leave it' posture and many clients do just that: leave."[189]

The Duluth model's one-dimensional explanation for why domestic violence occurs may have negative effects beyond its limited success in changing batterers. According to Dutton and Corvo, the hegemony of feminist ideology also chills research that might produce other understandings and approaches to intervention; "[t]he bureaucrat/activists of certifying agencies and 'batterer' treatment programs have become 'true believers,' disregarding research that does not support their views."[190] Critics also note that theories of domestic violence seem to be separated by a firewall from research on the causes of *other* types of violence, which may discourage important crossover in our understanding of how to prevent battering and change the behavior of those who perpetrate it.[191]

Scathing criticisms from the family-violence camp (which believes that women are just as violent as men) and advocates of evidence-based practice (that is, interventions shown empirically to be effective) target "a distorted stereotype" of Duluth-style programs.[192] However, it is still worth inquiring whether the batterer intervention classes of the twenty-first century are based on adequate analysis of who engages in domestic

187. Dutton & Corvo, *supra* note 177, at 463.

188. *Id.*

189. *Id.* Dutton and Corvo cite a 2002 study for the statistic that 40 to 60% of men attending the first session of a Duluth-style education group fail to complete the program, even when failure to comply is a probation violation that may lead to incarceration. *Id.* (citing Frederick P. Buttell & Michelle M. Carney, *Psychological and Demographic Predictors of Attrition Among Batterers Court Ordered into Treatment*, 26 SOC. WORK RES. 31, 31–41 (2002)).

190. *Id.* at 478.

191. *See id.* at 464 (citing JEFFREY FAGAN, NATIONAL INSTITUTE OF JUSTICE RESEARCH REPORT: THE CRIMINALIZATION OF DOMESTIC VIOLENCE: PROMISES AND LIMITS 1 (1996)).

192. *See* GONDOLF, FUTURE, *supra* note 99, at 236.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



violence and how offenders' behavior can be changed. To date, the feminist paradigm (like Puritan and Victorian efforts to police violent masculinity in earlier eras) has been grounded in an understanding of why intimate-partner abuse occurs that is too one-dimensional and too subordinate to other sociopolitical agendas to prevent such abuse and alter the behavior of its perpetrators.

The result has been a myopic focus on mandatory criminal justice responses that assumes the binary of an aggressive male perpetrator and a weak victim who cannot make rational decisions in her own self-interest. This binary has been paired with feminist batterer intervention curricula that discourage inquiry into other contributors to intimate-partner abuse and that are also ill suited to treat the heterosexual women and same-sex batterers increasingly arrested for domestic violence. In short, there has been an insufficient effort to modify intervention programs to keep pace with nascent indications that there are various types of batterers and categories of abuse, as well as myriad factors (including substance abuse, mental illness, socioeconomic status, and racial and cultural identity) that affect the offender's perpetration of violence and amenability to change.[193]

### *B. A Systematic Analysis of Modern Batterer Intervention Program Standards*

The adoption of mandatory arrest laws by the District of Columbia and at least 22 states, starting with Oregon in 1977, led to a dramatic increase in the number of domestic violence arrests.[194] Although policymakers anticipated that an increased number of men would be arrested, the arrest of straight and lesbian women for domestic violence constituted an unexpected result of such laws.[195] Indeed, female arrestees exhibited a larger proportional increase in arrest rates than men;[196] in some jurisdictions, women constitute as many as one-quarter of the total arrests

193. Legal scholar Leigh Goodmark raises a similar concern in a brief section on batterer intervention in her recent book. *See* LEIGH GOODMARK, A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM 151 (2012).

194. Devon Gray Thacker Thomas, Mandatory Arrest Laws for Intimate Partner Violence: The Scales or the Sword of Justice 7–8 (2013) (unpublished Ph.D. dissertation, University of Colorado). Six more states have preferred arrest policies that encourage, but do not require, officers to make domestic violence arrests if they had probable cause to do so. *Id.*

195. *Id.* at 14.

196. *Id.* (citing other studies that showed a 500% increase in the arrest of women for domestic violence in California and a 12-fold increase in Kenosha, Wisconsin, in the early days of mandatory arrest).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



for domestic violence.[197] Court-ordered batterer intervention, based on the paradigm of the male batterer, thus fits uncomfortably with the reality of mandatory criminal justice laws and policies. Nevertheless, in some states, statutory law compels judges to sentence anyone convicted of a crime that includes an act of domestic violence to complete a BIP.[198] In Colorado, such acts encompass property damage, threats, harm to animals, and any other conduct toward a current or former intimate partner that might be construed as punishment, intimidation, or coercion.[199] Such expansive definitions of domestic violence mean that courts order an assortment of perpetrators who engaged in varied behaviors to take batterer education classes.

The concern that straight women, lesbians, and gay men arrested for intimate-partner violence may not be effectively reached by modern BIPs (not to mention that some heterosexual men are very resistant to the programs' message) prompted the following analysis of 46 sets of state and local standards for batterer intervention across the country.[200] The majority of these standards establish mandatory criteria for the certification of programs that treat court-ordered offenders, though some merely propose best practices.[201] The goal of Part II.B is to provide an updated assessment of the types of programs the standards require or suggest. This analysis allows us to gauge whether batterer intervention remains rooted in a stereotype that impedes rehabilitation and prevention, or whether the programs have adapted to new theories and empirical realities about the offenders ordered to participate in them. Admittedly, analysis of standards does not yield complete information about how BIPs function in practice. Nevertheless, these documents establish a floor for uniformity of program content and quality, as well as coordination with other agencies.

Despite the acrimonious struggle between feminist psychoeducational and non-feminist therapeutic theories of batterer interven-

197. *Id.* (citing Kris Henning and Brian Renauer, *Prosecution of Women Arrested for Intimate Partner Abuse*, 20 VIOLENCE & VICTIMS 361 (2005)).

198. *See, e.g.,* COLO. REV. STAT. § 18-6-801 (West, Westlaw through 2015 First Reg. Sess. of 70th Gen. Assemb.); IOWA CODE ANN. § 708.2B (West, Westlaw through 2015 Reg. Sess.).

199. COLO. REV. STAT. § 18-6-800.3 (West, Westlaw through 2015 First Reg. Sess. of 70th Gen. Assemb.).

200. *See infra* notes 201–227 and accompanying text and, *infra*, Appendix A.

201. *See* Appendix B, available electronically in the Research Data series (Submissions from 2016) of the Colorado Law Faculty Scholarship Collection maintained by the William A Wise Law Library, University of Colorado Law School, http://scholar.law.colorado.edu/research-data/1. Appendices B-T to this Article, which present tables summarizing the author's findings about state and local BIP standards in the United States are all available electronically in this Research Data series.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



tion, many states' standards show practical movement toward an understanding of the multifaceted identities of offenders and the need to address this complexity to change their behavior. The evolution has been incomplete, however. As Part II.B will demonstrate, few states have gone beyond allowing homosexual offenders to participate in BIPs and requiring separate educational groups for women. In the vast majority of jurisdictions that have promulgated standards, the nature of the curricula that should be provided to non-stereotypical offenders remains sketchy, at best.

To assess the standards that currently govern BIPs, I identified 46 jurisdictions, mostly at the state level, that have promulgated such standards.[202] The vast majority of these standards specify a feminist model of group-based education that sees domestic violence as an instrument of power and control over one's intimate partner.[203] The standards generally were established to achieve program uniformity, offender accountability, and victim safety and to facilitate coordinated community responses to domestic violence.[204] More than half seek to ensure safety and accountability by notifying the victim about imminent danger from the batterer[205] and informing the criminal justice system about any assaults or threats that occur during the intervention program.[206] The majority also provide for some kind of quality-control monitoring to encourage service providers' compliance with the standards.[207]

Only three jurisdictions list the therapeutic rehabilitation of the offender as a goal.[208] The focus on accountability, rather than treatment, is

202. *See infra* Appendix A for citations to the BIP standards analyzed in this Article. Most standards are promulgated at the state level; however, in a few states, including California, county probation departments or other local entities establish their own standards.

203. *See* Appendix C, *supra* note 201, available at http://scholar.law.colorado.edu/research-data/1.

204. *See* Appendix D, *supra* note 201, available at http://scholar.law.colorado.edu/research-data/1.

205. *See* Appendix E, *supra* note 201, available at http://scholar.law.colorado.edu/research-data/1.

206. *See* Appendix F, *supra* note 201, available at http://scholar.law.colorado.edu/research-data/1.

207. *See* Appendix G, *supra* note 201, available at http://scholar.law.colorado.edu/research-data/1.

208. N.D. COUNCIL ON ABUSED WOMEN'S SERVS. ET AL., NORTH DAKOTA ADULT BATTERER TREATMENT STANDARDS 4, 21 (2012), http://cawsnorthdakota.org/wp-content/uploads/2014/09/BT-Standards-2011-CAWS.pdf ; SAN DIEGO CTY. TASK FORCE ON DOMESTIC VIOLENCE, TREATMENT AND INTERVENTION STANDARDS, *supra* note 152, at 5, § 2.5; GOVERNOR'S DOMESTIC VIOLENCE ELIMINATION (DOVE) COUNCIL, STANDARDS FOR MALE BATTERER INTERVENTION IN THE STATE OF WYOMING 4 (2010), http://www.biscmi.org/other_resources/DoVE_Council_BIP_Intervention_Standards_Final_02_18_10.pdf [hereinafter STANDARDS FOR MALE BATTERER INTERVENTION IN THE STATE OF WYOMING].

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



evident in the methods group facilitators are instructed to use. Almost 100 percent of the standards require facilitators to confront participants about their excuses for abusing their partners and their attempts to deny or minimize the harm they have inflicted.[209] Very few of the standards allow contextual problems to be explored as causes of abuse.[210] Most strongly disfavor couples counseling;[211] the few states that affirmatively allow it often specify, as Wyoming does, that couples counseling should only occur after the batterer has made significant progress in the BIP and refrained from violence for a long period of time and if the victim consents, without any coercion, to participate.[212] The teaching of skills—such as anger, stress, or conflict management—is more commonly supported. Almost half of the 46 jurisdictions allow such skill-building,[213] but often with the caveat that rage and loss of control do not cause or excuse abuse.[214] The Duluth model's detractors appear to be correct when they complain that psychodynamic therapy for batterers has been almost universally rejected by standard-setting bodies and that cognitive-behavioral programming is usually offered, if at all, with a strong dose of feminist ideology.

Nevertheless, the standards take a less stereotyped view of domestic violence offenders than critics have charged. As of 2015, the majority of jurisdictions have made some effort to account for the variety of individuals ordered to participate in intervention programs, but the provision of specialized curricula and other forms of individualization for various types of batterers remains largely unregulated or unavailable. For example, although more than 70 percent of the standards (34 out of 46 juris-

209. *See* Appendix H, *supra* note 201, available at http://scholar.law.colorado.edu/research-data/1.

210. For a comparison of the jurisdictions that clearly do not allow offenders to explore personal experiences they believe caused them to be abusive with the few that do, see Appendix I, *supra* note 201, available at http://scholar.law.colorado.edu/research-data/1. San Diego County, California, is unusual, not only in making therapy for the offender an express goal, but also in establishing standards that describe family-of-origin violence, the influence of the abuser's peer group, environmental stressors, and the abuser's psychological makeup as causal factors. *See* SAN DIEGO CTY. TASK FORCE ON DOMESTIC VIOLENCE, *Treatment and Intervention Standards*, *supra* note 152, at 1.1.

211. *See* Appendix J, *supra* note 201, available at http://scholar.law.colorado.edu/research-data/1.

212. *See, e.g.*, STANDARDS FOR MALE BATTERER INTERVENTION IN THE STATE OF WYOMING, *supra* note 208, at 26, § 6.4.

213. *See* Appendix K, *supra* note 201, available at http://scholar.law.colorado.edu/research-data/1.

214. *See, e.g.*, MO. COAL. AGAINST DOMESTIC & SEXUAL VIOLENCE, STANDARDS AND GUIDELINES FOR BATTERER INTERVENTION PROGRAMS 7–8 (2006), http://www.biscmi.org/other_resources/BIP_Service_Standard_June_2006.pdf.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



dictions) contemplate the participation of women,[215] only 26 jurisdictions clearly require separate programs for female participants, and very few of these describe a specialized curriculum for women.[216] Similarly, while approximately two-thirds of the standards are not limited to heterosexual batterers,[217] only about six jurisdictions plainly require separate groups for homosexual participants.[218] Colorado seems to be one of the few states (and perhaps even the *only* state) to offer a complete discussion of how programming for gays and lesbians should differ from that for heterosexual batterers.[219]

Analysis of standards for BIPs shows that they are evolving toward greater cultural competence and sensitivity. Although only about half of the standards take the race of the offender into account,[220] more than 70 percent acknowledge the influence of culture in some way.[221] Some standards simply strive for greater inclusivity by adding a nondiscrimination statement.[222] Others contain a requirement that culture, race, or ethnicity (and especially the experience of prejudice) be considered as part of the situation in which the offender engaged in intimate-partner abuse.[223] Some standards require facilitators to reflect the cultur-

215. *See* Appendix L, *supra* note 201, available at http://scholar.law.colorado.edu/research-data/1.

216. *See* Appendix M, *supra* note 201, available at http://scholar.law.colorado.edu/research-data/1.

217. *See* Appendix N, *supra* note 201, available at http://scholar.law.colorado.edu/research-data/1.

218. *See* Appendix O, *supra* note 201, available at http://scholar.law.colorado.edu/research-data/1.

219. *See* COLO. DOMESTIC VIOLENCE OFFENDER MGMT BD., STANDARDS FOR TREATMENT WITH COURT ORDERED DOMESTIC VIOLENCE OFFENDERS, App. B-I (2013) [hereinafter COLO. DVOMB STANDARDS], https://cdpsdocs.state.co.us/dvomb/Standards/standards.pdf ("Specific Offender Population Best Practice Guidelines for Providing Court-Ordered Treatment to Domestic Violence Offenders in Same-Sex Relationships").

220. *See* Appendix P, *supra* note 201, available at http://scholar.law.colorado.edu/research-data/1.

221. *See* Appendix Q, *supra* note 201, available at http://scholar.law.colorado.edu/research-data/1.

222. *See, e.g.*, IND. COAL. AGAINST DOMESTIC VIOLENCE, BATTERERS' INTERVENTION PROGRAM STANDARDS & CERTIFICATION GUIDELINES 11 (2013), http://www.icadvinc.org/wp-content/uploads/2010/08/Batterers-Intervention-Program-Standards-7.2013.pdf ("There will be no discrimination on the basis of race, class, age, national origin, sexual orientation or handicaps in hiring of employees or in providing services to batterers.").

223. *See, e.g.*, OR. ADMIN. R. 137-087-0055 (2016) (BIP staff should acknowledge that offenders may have been subject to oppression but should also be vigilant for ways that culture can support battering and hinder positive change).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



al, racial, or ethnic composition of the community.[224] Nevertheless, it is common to specify that membership in a marginalized population shall not be used as an excuse for violence and abuse.[225]

Almost all jurisdictions mandate screening for substance abuse and mental illness at intake, but few provide for the treatment of mental disorders, alcoholism, or drug addiction within the batterer program. Individuals with such contextual problems are referred to outside treatment before they are allowed to enroll, required to receive such treatment concurrently, or totally barred from participation in the BIP, depending on the severity of their mental illness or addiction.[226] Other screening items—such as lethality, criminal history, and past perpetration of domestic violence[227]—relate to ensuring the safety of victims and program staff, rather than tailoring the intervention to achieve successful preventive and rehabilitative outcomes for various types of abusers.

## III. THE PATH AWAY FROM OFFENDER STEREOTYPES

Part I showed that, during the colonial period and the nineteenth century, men used the arrest, prosecution, and punishment of wife beaters to enforce hegemonic masculine ideals of self-control, sobriety, breadwinning, and benevolent family governance. Although feminists transformed the dialogue about domestic violence by locating it in patriarchy and gender inequality, the batterer paradigm that the Battered Women's Movement used to spur a vigorous state response and that still drives domestic violence policy shares some limitations with earlier stereotypes of the wife beater. Part II.B showed that BIP standards have done little to alter the feminist paradigm of the male offender who abuses his female intimate partner.[228] The program curricula are overwhelmingly designed for straight male offenders. Furthermore, with regard to men, who still constitute the majority of individuals arrested for domestic

224. *See e.g.*, ILL. ADMIN. CODE tit. 89, § 501.90 (2016) ("Co-facilitation team composition shall mirror the race, ethnicity, and cultural considerations of the population served.").

225. *See, e.g.*, 920 KY. ADMIN. REGS. 2:020 § 6(f) (2016) ("[C]ultural background is not an explanatory cause of domestic violence but can influence the batterer's behavior.").

226. For jurisdictions that require mental health screening, see Appendix R, *supra* note 201, available at http://scholar.law.colorado.edu/research-data/1. For substance abuse screening, see Appendix S, *supra* note 201, available at http://scholar.law.colorado.edu/research-data/1.

227. For the kinds of risk assessment screening that various jurisdictions require, see Appendix T, *supra* note 201, available at http://scholar.law.colorado.edu/research-data/1.

228. *See infra* Part II.B.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



violence,[229] the standards make little provision for contextual factors, aside from sex-role conditioning in a patriarchal society, that contribute to abusive behavior.

Part III explores how we might develop a new, inclusive understanding of intimate-partner abuse that steers away from offender stereotypes and helps dismantle gender hierarchies that harm men as well, as women. This Part turns to the question of how pressures and frustrations arising from gender hierarchies shape the behavior of domestic violence offenders today and considers how current batterer intervention protocols could be modified to achieve permanent changes in offenders' behavior, given the diversity of individuals that mandatory arrest laws bring into the criminal justice system.

Although this Article primarily focuses on the ineffectiveness of laws and policies rooted in offender stereotypes, there may be other important goals beyond reducing recidivism, which is difficult to measure. A more empathetic recognition of the offender's humanity (and the hurdles he or she faces to acknowledging and altering abusive behavior) constitutes one of these additional goals.[230] The need to adopt BIP protocols that reduce resentment and increase long-term change is also closely connected to the goal of avoiding reliance on incarceration for less serious domestic violence crimes.

Law professor and former prosecutor Cheryl Hanna argued that "[t]oo few, not too many, men are incarcerated for severe and chronic violence against their intimate partners."[231] I certainly agree with Hanna that "[u]nessentializing men who batter" is a crucial step towards improved sentencing.[232] However, while Hanna saw rehabilitation as a sentencing goal that only benefits the offender and characterized BIPs as a soft option (treatment, not punishment),[233] this Article's criticism of BIP

229. *See* Kris McDaniel-Miccio, *Confronting the Gendered State: A Feminist Approach to Gender Inequality and Gender Violence in the United States and the Irish Republic*, 30 WIS. J.L. GENDER & SOC'Y 23, 32 n.44 (2015) (stating that arrest records after the passage of mandatory arrest laws in the majority of American states indicate "that most batterers [are] male and most victims [are] female"). *See also* Marianne Hester, *Portrayal of Women as Intimate Partner Domestic Violence Perpetrators*, 18 VIOLENCE AGAINST WOMEN 1067, 1067 (2012) (noting that in the United Kingdom, as in the United States, "the majority of incidents of IPV reported to the police involve male-to-female abuse").

230. *See* GOODMARK, A TROUBLED MARRIAGE, *supra* note 193, at 146–51.

231. Cheryl Hanna, *The Paradox of Hope: The Crime And Punishment Of Domestic Violence*, 39 WM. & MARY L. REV. 1505, 1577 (1998).

232. *Id.* at 1562. However, in contrast to Hanna's focus on male batterers, this Article emphasizes that not all individuals arrested for domestic violence are heterosexual males.

233. *See id.* at 1540–41.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



standards takes a different tack. To my mind, rehabilitation can have the Utilitarian goal of ensuring the offender is safe to return to society and maybe even to the abuse survivor, assuming he or she wants to reconcile. Ideally, BIPs should embody a theory of punishment that combines accountability with a forward-looking emphasis on societal benefits.

Unfortunately, existing approaches now result in a revolving door of court-ordered BIP enrollment and re-assault, especially for high-risk offenders. These offenders will eventually be imprisoned if they are subject to a rigorous system of monitoring.[234] But while some period of incarceration may be appropriate, prison and jail are not ideal places to learn non-violence. The system cannot and should not pursue a strategy of long-term incapacitation for domestic violence offenders if their crimes fall short of murder. Rather, it is imperative to find an efficacious method of changing their behavior. To this end, BIPs should be reformed, not abolished.[235]

### *A. "Incorrigible" Male Offenders: The Role of Categories and Contextual Factors*

Duluth-style programs do not effectively reach some especially dangerous men. These men often drop out of BIPs and, even if they complete the requisite number of classes, they continue to offend and may eventually escalate their violence.[236] One response to the dilemma that high-risk men pose might be to beef up coordinated community responses—that is, to strengthen ties with the criminal justice system to ensure that probation officers and courts demand compliance with program rules, as well as a cessation of intimate-partner abuse.[237] However, this Article also advocates tailoring program content to fit various categories

234. *Cf.* Allegra M. McLeod, *Decarceration Courts: Possibilities and Perils of a Shifting Criminal Law*, 100 GEO. L.J. 1587, 1621–25 (2012) (explaining how specialized domestic violence courts, based on intensive judicial monitoring of offenders ordered to attend batterer education classes, may increase the likelihood of incarceration without significantly reducing recidivism).

235. The authors of one of the most prominent meta-analytic reviews, presenting pessimistic conclusions about the efficacy of batterer treatment, remain reluctant to conclude that BIPs have been a total failure. *See* Babcock, Green & Robie, *supra* note 101, at 1048 ("Results showing a small effect of treatment on violence abstinence do not imply that we should abandon our current battering intervention programs."). Indeed, even without modification, the five percent decrease in violence that this study reported "would equate to approximately 42,000 women per year no longer being battered. *Id.* at 1044. Improved BIP design and implementation might significantly augment these numbers.

236. *See* GONDOLF, FUTURE, *supra* note 99, at 6, 72, 237.

237. *Id.* at 192, 196.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



of batterers, to the extent that resources allow, rather than simply wielding a bigger club over potential recidivists.

An important theoretical insight supporting the categorization of batterers is the recognition that individuals who resort to domestic violence are not uniformly powerful and controlling, nor are they all straight men. Masculinities scholarship shows that cultural structures of masculinity are often hierarchical and that they include race, class, and sexual orientation, as well as gender.[238] According to Angela Harris, "all men experience pressure not to be women and not to be 'faggots.' The instability of masculine identity in the face of all these pressures makes violence in defense of self-identity a constant possibility."[239] Heterosexual men not only use violence to police other men and announce their own superiority, but also to subordinate women. Men who rank low in various power hierarchies due to poverty, class status, race, and effeminate physical characteristics may be especially likely to use violence against women to exert power and control over the domestic aspect of their lives. Even if a relatively powerless man does not employ intimate-partner abuse as a tool of coercion, he may develop alcohol or drug addictions and exhibit other contextual problems, such as unemployment, that contribute to situational conflict in his relationships. In either case, a man who feels insecure or oppressed may resist identifying his behavior with the Power and Control Wheel and remain unwilling to change more than superficially to comply with a strict Duluth-style approach.[240] The key to improving BIPs for men may lie in integrating a structural understanding of how gendered hierarchies affect men with greater empathy for their individual emotions and experiences, including their experience of powerlessness.[241]

Categorizing male domestic violence offenders does not necessarily mean scrapping feminist educational components. Indeed, it remains essential to steer male offenders away from blaming their victims and to demand that they accept responsibility for the harms they have inflicted. However, improving batterer intervention does require feminists to retreat from their unwillingness to explore how factors like alcoholism, drug addiction, poverty, unemployment, family-of-origin abuse, cultural background, and racial bias contribute to domestic violence. The links

238. *See* Harris, *supra* note 5, at 779.
239. *Id.* at 780.
240. *Cf.* Johnna Rizza, Comment, *Beyond Duluth: A Broad Spectrum of Treatment for a Broad Spectrum of Domestic Violence*, 70 MONT. L. REV. 125, 133 (2009) (making a comparable point, based on the view that not all domestic violence is severe or controlling).
241. *See* Mankowski, Haaken, & Silvergleid, *supra* note 124, at 176.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



between such factors and men's abuse of women needs further research, so that interventions with a greater likelihood of changing batterers' behavior can be developed. Finally, BIPs should consider reducing their emphasis on confrontation and shaming, in favor of more empathetic, motivational methods. [242]

Male batterers and the abuse they inflict can be categorized along several dimensions. First, at least one leading researcher has suggested that there are multiple forms of intimate-partner violence—only one of which involves the type of patriarchal terrorism that has been the focus of feminist scholars and the Battered Women's Movement.[243] Both men and women may engage in situational couple violence that arises, not from cycles of coercive control and violent resistance, but from particular situations like tension over money or unemployment in a lower-income family.[244] The second dimension along which categories might be constructed involves contributors to domestic violence—or seen from another angle, major obstacles to rehabilitation and deterrence. These include substance abuse; mental illness; the effects of family-of-origin

242. At least one state—Iowa—recently reformed its approach to batterer intervention in response to concerns that confrontational tactics and refusal to explore the offender's experience of emotions have failed to produce positive outcomes. The approach to community-based batterer intervention now used in Iowa, Achieving Change Through Value Based Behavior ("ACTV"), is grounded in Acceptance and Commitment Theory ("ACT"), which constitutes a shift away from traditional cognitive-behavioral therapy. *See* IOWA DEP'T OF CORRECTIONS STANDARDS FOR IOWA DOMESTIC ABUSE PROGRAM 4 (2014) [hereinafter IDAP] (on file with the author); Zarling, *supra* note 151, at 34, 18–25. In her influential doctoral dissertation, supervised by Dr. Erika Lawrence, Amie Zarling proposed ACT as an alternative to the Duluth model, which she criticized for its use of confrontational tactics and its failure to consider the offender's own experiences as anything other than excuses. *See* Zarling, *supra* note 151, at 16–19. Writing under a former name, she and Lawrence previously described the need for "an evidence-based theoretical framework" for understanding intimate-partner violence and "a more empirically-guided approach to IPV interventions." Amie Langer & Erika Lawrence, *Toward an Integrated, Empirically Supported Theory of Intimate Partner Violence*, in INDIRECT AND DIRECT AGGRESSION 357, 369 (K. Osterman, ed., 2010), http://psychology.uiowa.edu/files/psychology/groups/lawrence/files/Toward%20an%20Integrated.pdf. ACT, the new approach that Zarling advocates, seeks to teach domestic violence offenders that their thoughts and feelings do not have to control their behavior, rather than to change their thoughts and feelings. *See* IDAP, *supra*, at 4; Zarling, *supra* note 151, at 28–34, 92. Zarling, who is now an assistant professor at Iowa State University, worked with the Iowa Department of Corrections to implement the ACTV program based on her research findings for male domestic violence offenders. Vanessa Franklin, *Stopping domestic violence: New program works with offenders*, IOWA STATE DAILY (Oct. 1, 2014), http://www.iowastatedaily.com/news/article_d61a016e-48cb-11e4-a976-3b5a11bfe3ee.html.

243. *See* JOHNSON, *supra* note 107, at 2–12.

244. *See id.* at 64 ("The stresses of economic marginality produce difficulties that can lead to arguments that can escalate into violence from either or both partners."); *infra* text accompanying notes 353, 355–359 (discussing women's situational use of force).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



violence; and the influence of culture, class, race, and ethnicity. Scholars, policymakers, and service providers need to take a serious look at the role these contributors play and how intervention programs can address them, so that they do not impede the offender's progress toward accepting responsibility for the harm he has inflicted and making a permanent change in his behavior.

Although stratifying BIP programming according to risk level has shown promising effects on recidivism,[245] Colorado is one of the only states to require this type of approach in its BIP certification standards. Colorado offenders are placed in one of three levels of treatment based on an initial risk assessment.[246] They can move between levels with the consensus of their treatment team.[247] The initial risk assessment considers many factors, including substance abuse, mental health issues, and criminal history—as well as asking whether the offender engaged in an ongoing pattern of abuse and whether he or she has a pro-social support network.[248] Only offenders deemed suitable for the least intensive treatment enroll in a program that is predominantly psycho-educational.[249] The moderate and high-risk offenders are instead placed in groups that focus on cognitive-behavioral changes and treatment for contextual problems like mental disorders and substance abuse.[250] The Colorado approach is not perfect,[251] but it takes strides toward modifying BIPs to account for the diversity of offenders ordered to attend them and the differing obstacles to genuine behavioral and attitudinal change they face.

Although the recommendation to avoid "one-size-fits-all" programming might seem to cater to batterers' excuses, rather than their blameworthiness and the imperative of protecting victims, it is not intended to have that effect. Rather, tailoring interventions to better fit the problems that afflict certain categories of abusers might reduce recidi-

245. *See* WOODWARD & BECHTEL, *supra* note 156, at 5.
246. COLO. DVOMB STANDARDS, *supra* note 219, at 5-1, 5-15, 5-33.
247. *Id*.
248. *Id.* at 5-6 to 5-10, 5-33.
249. *Compare id.* at 5-15 (describing weekly group sessions that address psycho-educational and other content for those in Level A treatment), *with id.* at 5-16 to 5-17 (indicating that those in Levels B and C attend weekly sessions using cognitive-behavioral treatment, paired with monthly substance abuse, mental health, or other interventions).
250. *Id.* at 5-16 to 5-17.
251. Risk assessment raises several red flags. Chief among them is the well-known problem of false positives and false negatives. Errors due to the type of risk assessment instrument used, or mistakes by the people implementing it, may stigmatize and over-police men who do not actually fit in the "especially dangerous" category. At the other extreme, risk assessment may fail to predict some men's escalation from minor to severe battering (or even homicide).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



vism where the feminist educational curriculum has failed. Practically speaking, fine-grained assessment of offenders might be best achieved by BIPs at intake, rather than by judges.[252] But such screening and categorization is not impossible, as Colorado's experience demonstrates.[253]

1. Substance Abuse

In contrast to the Victorian and Prohibition eras, the Battered Women's Movement rejected alcohol as a cause of intimate-partner violence.[254] A central concern is that batterers will use their drinking to avoid responsibility. Yet some research indicates that a perpetrator's intoxication actually increases the likelihood of his being blamed and arrested for domestic violence.[255] Furthermore, multiple studies across the disciplines of sociology, criminology, and psychology "reveal a consistent and robust association between alcohol use and the occurrence of [intimate partner abuse]."[256]

Research places the co-occurrence rate of substance abuse and domestic violence between 25 and 50 percent.[257] Some scholars believe that the connection between drinking and domestic violence varies according to the sex of the offender. For example, a study of domestic violence perpetrators in Tennessee found that the men were more likely to have

252. Treatment evaluations conducted before sentencing or at intake into a BIP already affect sentencing in some states. For example, a Colorado statute requires judges to sentence any person to batterer treatment if that person has committed a crime "the underlying factual basis of which has been found by the court. . .to include an act of domestic violence" or a property crime used as a method of coercion and control. COLO. REV. STAT. § 18-6-801 (2015). But treatment evaluations may help the court determine the appropriate sentence or choose an alternative disposition if the evaluation "discloses that sentencing to a treatment program would be inappropriate[.]" *Id.*

253. *See* COLO. DVOMB STANDARDS, *supra* note 219, at 5-12 to 5-17.

254. *See supra* notes 43–74 and accompanying text (describing how wife beating was attributed to drunkenness in Victorian and Prohibition Era America); *supra* note 96 and accompanying text (noting that battered women's advocates regarded the connection between substance abuse and intimate partner violence as a myth or excuse).

255. *See* Keith C. Klostermann & William Fals-Stewart, *Intimate Partner Violence and Alcohol Use: Exploring the Role of Drinking in Partner Violence and Its Implications for Intervention*, 11 AGGRESSION & VIOLENT BEHAV. 587, 592–93 (2006); *see also supra* note 62 (discussing how men were convicted of murdering their wives and girlfriends in the nineteenth century despite raising intoxication or delirium tremens as a defense).

256. *See* Klostermann & Fals-Stewart, *supra* note 255, at 588.

257. Larry Bennett & Patricia Bland, *Substance Abuse and Intimate Partner Violence*, NAT'L ONLINE RES. CTR. ON VIOLENCE AGAINST WOMEN 2 (2008), http://www.vawnet.org/Assoc_Files_VAWnet/AR_SubstanceRevised.pdf.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



had prior treatment for substance abuse than the women.[258] About half of the men in BIPs have substance abuse problems, and they are more likely to batter when they have been drinking.[259] Drunkenness also appears to be one of the strongest predictors of recidivism on the part of men court-ordered to enroll in a BIP.[260]

Nevertheless, no consensus exists about the precise nature of the relationship between substance abuse and domestic violence. There is controversy over whether alcohol plays a causal or merely facilitative role. A prominent model describes drinking as the proximate cause of violence (i.e., the effects of alcohol *produce* aggression).[261] In this view, alcohol disrupts cognitive function, reducing the drinker's ability to interpret social cues and react appropriately.[262] Scholars offering alternative explanations fall into several groups: (1) those who believe the effect of alcohol is indirect and situational (i.e., "alcohol use creates an environment that sets the stage for partner conflict and, ultimately, partner violence");[263] (2) those who see substance abuse as a separate condition that co-occurs with domestic abuse and other factors like mental disorders and poverty;[264] and (3) those who posit that alcohol serves as a means of gaining power and control (or at least a *feeling* of power and control).[265]

According to the third theory, men use alcohol excessively to compensate for lack of self-confidence about their masculinity. Like domestic violence, alcohol abuse is a manifestation of men's "underlying need for power and control."[266] An alcohol-abusing batterer drinks heavily to show that he is tough and virile—a real man who can hold his liquor. He beats his wife or girlfriend to put her in her place in the gendered hierarchy.[267] Thus, rather than being causally linked, alcohol abuse and do-

258. Kris Henning, Angela Jones & Robert Holdford, *Treatment Needs of Women Arrested for Domestic Violence: A Comparison with Male Offenders*, 18 J. INTERPERSONAL VIOLENCE 839, 846 (2003).

259. Bennett & Bland, *supra* note 257, at 1.

260. *Id.* at 5–6 (citing EDWARD W. GONDOLF, BATTERER INTERVENTION SYSTEMS: ISSUES, OUTCOMES, AND RECOMMENDATIONS (Nancy Hale et al. eds., 2002)).

261. *See id.* at 4; Klostermann & Fals-Stewart, *supra* note 255, at 591.

262. *See* Bland & Bennett, *supra* note 257, at 4.

263. *See* Klostermann & Fals-Stewart, *supra* note 255, at 590; *see also* JOHNSON, *supra* note 107, at 65 ("[I]t is highly likely that much of the effect of alcohol on situational couple violence has to do with the arguments that are precipitated by one partner's objections to the other partner's excessive drinking.").

264. *See* Bennett & Bland, *supra* note 257, at 4 (citing studies that fit this theory); Klostermann & Fals-Stewart, *supra* note 255, at 590 (same).

265. *See* Edward W. Gondolf, *Alcohol Abuse, Wife Assault, and Power Needs*, 69 SOC. SERV. REV. 274, 276 (1995) [*hereinafter* Gondolf, *Alcohol Abuse*)]; *see also* Bennett & Bland, *supra* note 257, at 4 (describing "power motive" theories).

266. *See* Gondolf, *Alcohol Abuse*, *supra* note 265, at 276.

267. *See id*. at 276–79.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



mestic violence are both the product of a society that privileges men over women but makes men feel insecure about their grip on power.[268] The link between social disempowerment and alcohol abuse likely involves non-stereotypical abusers, too, because drinking often makes people—male or female, straight or homosexual—feel more powerful and assertive.[269] Individuals who are disadvantaged on the basis of race, socioeconomic or employment status, sexual orientation, physical characteristics, or other factors may try to compensate for their insecurity with alcohol and intimate-partner abuse.

The majority of certification standards require BIPs to make referrals for substance abuse treatment through external programs, either consecutively or concurrently with batterer intervention,[270] though the trend favors either closely coordinated or integrated services.[271] Substance abuse treatment and batterer intervention may be grounded in very different paradigms—the former emphasizing a disease/addiction theory and the latter presenting intimate-partner violence as a bad choice that the batterer is socially conditioned to make but that he can avoid.[272] While the extant research does not demonstrate which approach to treating substance abuse by batterers is most effective,[273] a coordinated model in which professionals in each program have knowledge of the other's field ought to produce better results than one in which the BIP and the substance abuse treatment provider have little or no contact.[274] An integrated approach is arguably the most efficient because it does not require the offender to pay for and complete two separate programs, and it allows staff to keep close track of each participant. However, housing the two types of counseling under one roof poses safety concerns for the victim and other risks if the staff is not sufficiently trained in the danger and accountability issues inherent in domestic violence.[275] The question of

268. *See id.* at 276.

269. *See infra* note 428 and accompanying text (noting the possibility that lesbians are especially vulnerable to excessive drinking for several reasons, including their social disempowerment). Some straight women arrested for domestic violence also engage in substance abuse. *See* Penny A. Leisring, Lynn Dowd & Alan Rosenbaum, *Treatment of Partner Aggressive Women*, 7 J. AGGRESSION, MALTREATMENT, & TRAUMA 257, 267 (2003).

270. *See supra* note 226 and accompanying text; Appendices R & S *supra* note 201, available at http://scholar.law.colorado.edu/research-data/1.

271. *See* Bennett & Bland, *supra* note 257, at 7.

272. *See* Gondolf, *Alcohol Abuse*, *supra* note 265, at 281; Lisa Lightman & Francine Byrne, *Courts Responding to Domestic Violence: Addressing the Co-Occurrence of Domestic Violence and Substance Abuse: Lessons from Problem-Solving Courts,* 6 J. CTR. FOR FAM., CHILD. & CTS. 53, 59–61 (2005).

273. *See* Bennett & Bland, *supra* note 257, at 7.

274. *See* Lightman & Byrne, *supra* note 272, at 66–67.

275. *See id*. at 66.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



concurrent versus consecutive substance abuse treatment is also a thorny one. Although alcohol or drug impairment makes it difficult for an offender to learn in a BIP, some jurisdictions lack authority over low-level misdemeanants for a sufficient length of time to monitor the completion of two consecutive programs.[276]

Treating addiction and substance abuse in a synchronized way does not necessarily mean a return to a flawed, mono-causal explanation of domestic violence like the Temperance and Prohibition Movement's direct attribution of wife beating to alcoholism. Whether drinking and drug use plays a causal or merely contextual role, failure to address an offender's drug or alcohol problem undermines the effectiveness of batterer intervention. Substance-abuse treatment should be part of an integrated or at least closely coordinated response.

2. Mental Disorders

A complete discussion of the role of mental illness lies beyond the scope of this Article, but the psychological health of domestic violence offenders presents a similar challenge to their abuse of alcohol and drugs. Domestically violent men are generally more likely than non-violent men to exhibit depression, psychopathy, or evidence of borderline or antisocial personality disorders.[277] Some men—jealous, emotionally dependent intimate terrorists, for example—tend to present both mental disorders and substance abuse problems.[278] Yet "no consensus on a psychological profile [for batterers] has emerged from the research community."[279]

Most state standards for batterer intervention already specify screening for mental illness, as well as substance abuse, at intake and the referral of people in need of treatment to outside providers, either sequentially or in parallel with the BIP.[280] However, under some state standards, a ban on BIP participation by offenders who are currently experiencing addiction or a severe mental disorder[281] raises the concern that

276. *See id*. at 67–68.

277. *See* Etiony Aldarondo & Fernando Mederos, *Common Practitioners' Concerns About Abusive Men*, in PROGRAMS FOR MEN WHO BATTER, *supra* note 108, at 2-1, 2-7.

278. *See* JOHNSON, *supra* note 107, at 80.

279. Aldarondo & Mederos, *Common Practitioners' Concerns About Abusive Men*, *supra* note 277, at 2-7.

280. *See supra* notes 226 and accompanying text; Appendices R & S, *supra* note 201, available at http://scholar.law.colorado.edu/research-data/1.

281. *See, e.g.*, DEL. DOMESTIC VIOLENCE COORDINATING COUNCIL, DOMESTIC VIOLENCE INTERVENTION STANDARDS 19–20 (2012) (stating that providers may refuse to serve offenders whose "[c]hronic substance abuse or chemical dependency requires completion of an intervention program" or whose extensive psychiatric, developmental, or

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



such offenders will fall between the cracks—that neither their violence nor their contextual problems will be adequately resolved in a coordinated manner.

Categorization and differential assignment of batterers to programs tailored to maximize effectiveness for their particular psychological profile would be a more promising approach.[282] In Colorado, for example, offenders with psychological problems are assigned to higher-intensity treatment levels; the Colorado standards also recommend against empathy-based treatment for offenders, in the highest intensity level, who manifest psychopathic behavior.[283]

3. Family History of Abuse

Most men who were abused or who witnessed abuse in their family of origin do not grow up to become domestic violence offenders.[284] Nevertheless, there may be a strong correlation between intimate terror-

cognitive problems preclude participation in the BIP); CHILD & FAMILY SERV., PARENTS & CHILDREN TOGETHER, HAW. STATE JUDICIARY, HAWAI'I BATTERER INTERVENTION PROGRAM STANDARDS 28 (2010), http://www.ncdsv.org/images/HI_BIPS-Standards_December2010.pdf (providing that severe mental health problems or severe chemical dependence are grounds for exclusion from a program); N.M. COAL. AGAINST DOMESTIC VIOLENCE & PARTNERS, NEW MEXICO DOMESTIC VIOLENCE OFFENDER TREATMENT/INTERVENTION PROGRAM STANDARDS 11 (2013), http://www.nmcadv.org/wp-content/uploads/2012/09/20130306-NM-DVOTI-Standards-FINAL.pdf ("[I]ndividuals whose psychiatric symptoms prevent their full participation" may be excluded from the program.); NORTH DAKOTA ADULT BATTERER TREATMENT STANDARDS, *supra* note 208, at 232 (listing "[p]ersons with untreated alcohol or drug addictions" and "[p]ersons with in active psychosis" among those who should not participate in the program).

282. One well-known psychological typology divides batterers into family-only, borderline and generally violent/anti-social categories. *See* Amy Holtzworth-Munroe & Gregory L. Stuart, *Typologies of Male Batterers: Three Subtypes and the Differences Among Them*, 116 PSYCHOL. BULL. 476, 476 (1994). The first group—the family-only batterers—tend to engage in the least severe violence and abuse; they are thought to be more treatable and more readily deterred by criminal sanctions than offenders in the other two categories. *See id.* at 482. The second group—borderline batterers—often have personality disorders and substance abuse problems that require rigorous, integrated treatment. *See id.* These men use violence in an effort to avoid losing their partners. Finally, antisocial batterers inflict the most severe violence, use weapons, often have long rap sheets, and do not confine their violence to the family. *See id.* Research indicates that feminist cognitive intervention programs are more likely to change the behavior of anti-social batterers, who use violence to get their way, whereas dependent, borderline personalities respond better to psychodynamic intervention. *See* JOHNSON, *supra* note 107, at 79 (citing Daniel G. Saunders, *Feminist-Cognitive-Behavioral and Process-Psychodynamic Treatments for Men Who Batter: Interactions of Abuser Traits and Treatment Model*, 4 VIOLENCE & VICTIMS 393 (1996)).

283. COLO. DVOMB STANDARDS, *supra* note 219, at 5-14 to 5-16.

284. *See* JOHNSON, *supra* note 107, at 68.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



ism and being subjected to family violence in childhood;[285] "about one-third of men in BIPs report witnessing or experiencing violence in their families of origin."[286] This correlation is not limited to men. Women ordered to participate in BIPs also show high rates of childhood victimization.[287] According to at least one study, a comparison of male and female offenders showed more similarities than differences with regard to family-of-origin violence.[288]

Childhood victimization or even witnessing intimate-partner violence as a child has several deleterious effects. First, it may make it difficult for the individual to form normal intimate relationships as an adult, due to anxiety about abandonment, and second, if adult role models use physical aggression toward their partners, a child may grow up believing that domestic violence is normal.[289] In either case, BIP facilitators should make sensitive assessments of participants and allow participants who have histories of family-of-origin violence to explore its role in their perpetration of intimate-partner abuse as adults, which only a few state standards analyzed in Part II.B currently allow.[290]

Because confrontational facilitator styles may cause participants to resist learning non-violence or comply very superficially with the facilitator's expectations, a more empathetic approach is desirable. This does not mean that batterers should be allowed to excuse their behavior, but neither should factors conditioning their bad choices to use aggression be ignored. Sentencing judges and BIP providers need to consider the total picture of each offender, including whether he suffered and/or witnessed abuse in his family of origin.

285. *See id.* at 34.

286. Aldarondo & Mederos, *Common Practitioners' Concerns About Abusive Men*, *supra* note 277, at 2-7 (citing Edward W. Gondolf, *Characteristics of Court-Mandated Batterers in Four Cities: Diversity and Dichotomies*, 5 VIOLENCE AGAINST WOMEN 1277–93 (1999)).

287. *See* Leisring, Dowd & Rosenbaum, *supra* note 269, at 262 (reporting the results of three studies of heterosexual women court-mandated to treatment for intimate-partner aggression).

288. *See* Henning, Jones & Holdford, *supra* note 258, at 850.

289. *See id.*

290. *See* NEV. ADMIN. CODE § 228.185 (2015) (requiring a discussion of intergenerational patterns of violent behavior in program curricula); NORTH DAKOTA ADULT BATTERER TREATMENT STANDARDS, *supra* note 208, at 21 (similar). However, some jurisdictions that make learning about intergenerational abuse part of the BIP expressly state that acceptance of responsibility means "the offender has stopped using excuses such as being . . . abused as a child." COLO. DVOMB STANDARDS, *supra* note 219, at 5-24.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



4. Race, Ethnicity, National Origin, Class, and Culture

African-Americans, Latinos, and other men of color account for a disproportionately high percentage of the offenders who come into contact with the criminal justice system, though studies that control for demographic factors, such as unemployment and poverty, suggest little or no correlation between domestic violence and membership in a racial or ethnic minority group.[291] Socioeconomic status seems to play a bigger role.[292] Nevertheless, as Aya Gruber has noted, "although domestic violence reform became a reality because of the desire to protect white women, [mandatory laws and policies have] resulted in the widespread incarceration of minority men."[293] This distributive justice issue might call for more radical reform, but the present concern of this Article is the modification of BIPs to increase their ability to change the behavior of culturally diverse participants.

BIPs that offer culturally appropriate curricula for offenders from specific ethnic or racial backgrounds embody the view that lumping offenders into a one-dimensional paradigm makes it difficult to teach them non-violence.[294] Examination of current state standards reveals that this is an emerging area of reform and that most states have made efforts to ensure a greater degree of cultural competence and inclusivity than in the past. Those that are striving to accommodate diversity typically envision that BIPs will provide staff, instructional materials, and/or teaching strategies with marginalized groups in mind[295] and not that members of such

291. *See* JOHNSON, *supra* note 107, at 36; Aldarondo & Mederos, *Common Practitioners' Concerns About Abusive Men*, *supra* note 277, at 2-5.

292. *See* JOHNSON, *supra* note 107, at 35–36; Aldarondo & Mederos, *Common Practitioners' Concerns About Abusive Men*, *supra* note 277, at 2-5.

293. Gruber, *supra* note 1, at 798.

294. *See, e.g.*, Ramírez Hernández, *CECEVIM—Stopping Male Violence in the Latino Home*, *supra* note 108, at 12-3, 12-8 ("It is easy to see batterers as uni-dimensional, but this view is judgmental and not useful because it assumes that abusers will never stop their abuse . . . . [I]t is also a superficial view because many survivors do not see their abusers as uni-dimensional. In many instances they do not want to separate from them, they want the abuse to stop and be able to enjoy the parts of the relationship that are nurturing.").

295. *See, e.g.,* HAWAI'I BATTERER INTERVENTION PROGRAM STANDARDS, *supra* note 281, at 13–14; ILL. ADMIN. CODE tit. 89, §§ 501.30, 501.90 (2016); BATTERERS' INTERVENTION PROGRAM STANDARDS & CERTIFICATION GUIDELINES, *supra* note 222, at 19; EXEC. OFFICE OF HEALTH & HUMAN SERVS., DEP'T OF PUBLIC HEALTH, COMMONWEALTH OF MASS., GUIDELINES AND STANDARDS FOR THE CERTIFICATION OF INTIMATE PARTNER ABUSE EDUCATION PROGRAMS 4–5 (2015), http://www.mass.gov/eohhs/docs/dph/com-health/violence/bi-guidelines.pdf; NEW MEXICO DOMESTIC VIOLENCE OFFENDER TREATMENT/INTERVENTION PROGRAM STANDARDS, *supra* note 281, at 6–7; NORTH DAKOTA ADULT BATTERER TREATMENT STANDARDS, *supra* note 281, at 25; OR. ADMIN. R. 137-087-0055 (2016); S.C. DEP'T OF SOCIAL SERVS., STANDARDS OF CARE FOR BATTERERS

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



groups will be segregated within the program, unless they face a language barrier. However, as described below, there has been some experimentation with culturally and racially specific group education. Furthermore, certain communities of color may be disproportionately represented in BIPs due to the demographics of domestic violence arrests in a particular locale.[296]

Although sensitivity to culture, race, and ethnicity might be confused with cultural defenses at criminal law,[297] intervention programs grounded in these types of contextual factors still emphasize accountability. They posit that social and cultural factors make men from minority groups prone to compensate for their subordination to white males by exerting dominance over women.[298] A few sets of standards also expressly consider the role of socioeconomic class and geographic marginalization. For example, Ohio's standards direct BIPs to train their staff to work effectively with members of Appalachian communities that face such challenges as "geographic isolation, high unemployment, lack of

TREATMENT 3, 8 (2005), http://dss.sc.gov/content/customers/protection/dv/scbt.pdf ; Rules of Domestic Violence State Coordinating Council [Tennessee], *supra* note 152, at 14, 16, Rules 0490-1-.06(5) & 0490-1-.07(2)(d); COAL. FOR THE TREATMENT OF ABUSIVE BEHAV. & VA. SEXUAL AND DOMESTIC ACTION ALL., VIRGINIA STANDARDS FOR BATTERER INTERVENTION PROGRAMS: RESPONDING TO MALE VIOLENCE AGAINST WOMEN 15 (revised 2010), http://www.vabipboard.org/assets/bipstandards.pdf.

296. For example, 84.2 percent of the men and women participating in a BIP in Shelby County, Tennessee, were African-American. Henning, Jones & Holdford, *supra* note 258, at 845, 853.

297. On tensions between cultural defenses and the feminist campaign against domestic violence, see generally Holly Maguigan, *Cultural Evidence and Male Violence: Are Feminist and Multiculturalist Reformers on a Collision Course in Criminal Courts?,* 70 N.Y.U. L. REV. 36 (1995).

298. For example, the Cultural Context Model ("CCM") pioneered in New Jersey recognizes that men may be subject to racism, classism, and homophobia and that women from many cultures are conditioned to excuse the violence of male household heads. Almeida & Hudak, *The Cultural Context Model*, *supra* note 108, at 10-2, 10-3, 10-8. However, while the criminal justice system perpetuates these hierarchies, "accountability is a central theme of the CCM, threaded into all of its components." *Id.* at 10-14. Scholars encouraging the development of "progressive black masculinities" make a similar point. For example, Patricia Hill Collins writes:

> [B]lack male violence against women, against gay men of all races, and among themselves constitutes a triad of aggressive behavior that takes on added importance for African American men whose power within the broader political economy remains compromised. At the same time, black men's adoption of violence as evidence of strength harms them and others.

Patricia Hill Collins, *A Telling Difference: Dominance, Strength, and Black Masculinities, in* PROGRESSIVE BLACK MASCULINITIES 73, 86 (Athena D. Mutua ed. 2006).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



public transportation, and high levels of poverty."[299] Ideally race, ethnicity, socioeconomic class, and culture will be used as an explanatory framework—not an excuse—for minority men's violence and as an idiom for communicating with them, so that they can learn to change their attitudes and behavior.

Several older models developed for Latino batterers provide examples of both the strengths and potential pitfalls of culturally sensitive BIPs. Founded in 1990, Caminar Latino is a state-certified program in Atlanta, Georgia, for Latino immigrant families affected by domestic violence.[300] Most participants immigrated to the United States from Mexico or Central America; they tend to be poor and have little formal education.[301] The guiding philosophy of Caminar Latino suggests that "the abuse of men against women (in the overwhelming majority of cases) is a behavior that males have learned through modeling at home and in a society in which violence is an accepted way of resolving differences."[302] Latino men are strongly affected by *machismo*—a set of beliefs and expectations about male behavior that endorses the supremacy of men over women.[303] Although positive aspects of *machismo* accord value to a man's loyalty, respect, sense of honor, and a commitment to provide for his family, *machismo* also imposes gender-based double standards about sexual fidelity, alcohol consumption, and the use of violence.[304]

Although Caminar Latino recognizes that "[a]n immigrant Latino has few male role models for whom the negative use of power against women is not an effective weapon," the program nevertheless demands accountability from abusers.[305] Latino batterers choose to engage in domestic abuse, and they must bear responsibility for their actions. A man who uses physical violence against his partner during the program has to start the program over again, and the court is notified of the new act of violence.[306] Caminar Latino deploys a *concientización* model to teach men to stop using violence, to examine their abuse of women critically in

299. BATTERER'S INTERVENTION COMM., OHIO DOMESTIC VIOLENCE NETWORK, OHIO STANDARDS FOR BATTERERS INTERVENTION 12 (2010), http://www.odvn.org/Uploads/Documents/BI_Standards_2010__Final3_Ohio.pdf (quoting LISA CONTOS SHOAF, OHIO OFF. OF CRIM. JUST. SERVS., DOMESTIC VIOLENCE IN APPALACHIAN OHIO: THE VICTIM'S PERSPECTIVE (2004)).

300. *See History*, CAMINAR LATINO, http://caminarlatino.org/about-us/history/ (last visited May 6, 2015).

301. *See* Perilla & Pérez, *supra* note 108, at 11-3, 11-26.

302. *Id.* at 11-3.

303. *See id.* at 11-8.

304. *See id.*

305. *Id.* at 11-5.

306. *See id.* at 11-14.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



a social and cultural context, and to join a network of other men striving for change in their community.[307]

Many of the program's specific protocols are derived from insights about Latino culture. For instance, because Latinos generally learn to respect their elders, the program uses older or middle-aged women as facilitators of men's groups.[308] The program also depends on rote memorization, experiential learning, and oral discussion because many of its participants have low levels of literacy.[309] Finally, while Caminar Latino does not necessarily encourage families to stay together, it "derives from the reality [that] the overwhelming majority of Latina immigrants who come to our program . . . still live with their batterers and do not wish to end their relationship."[310]

The program provides concurrent services for women and children and claims that the safety of these vulnerable clients is paramount.[311] Its current website disavows couples counseling because of the dangers such interactions pose.[312] However, in the past, Caminar Latino did permit men to attend the women's sessions,[313] which seems risky and likely to result in intimidation or even violence, precluding the women from expressing their feelings candidly. Still, Caminar Latino operates on the important principle that "the possibility for a violence-free home environment is predicated on the men also receiving help."[314]

Another program for Latino men—Training Center to Eradicate Intrafamily Violence or CECEVIM, which is based in San Francisco[315]—also gleans insights from the study of Latino masculinities. According to this analysis, Latino men value certain traits (e.g., lack of emotion) that are the opposite of the feminine (e.g., crying) in reaction to their history of oppression by an imperial power.[316] While some aspects of Latino culture make domestic violence difficult to eradicate, CECEVIM embraces other aspects—the value placed on community building for ex-

307. *See id.* at 11-3 to 11-6. *Concientización* is a Spanish term for critical consciousness-raising. *See id.* at 11-3.
308. *See id.* at 11-9.
309. *See id.*
310. *Id.* at 11-2, 11-27.
311. *See* Perilla & Pérez, *supra* note 108, at 11-2, 11-28.
312. *FAQ*, CAMINAR LATINO, http://caminarlatino.org/about-us/faq/ (last visited May 6, 2015).
313. *See* Perilla & Pérez, *supra* note 108, at 11-6.
314. *Id.* at 11-27.
315. *See* CECEVIM, http://www.cecevim.org/cecevim (last visited May 6, 2015). The acronym, CECEVIM, comes from the Spanish name for the training and consulting agency: Centro de Capacitación para Erradicar la Violencia Intrafamiliar Masculina. *Id.*
316. *See* Ramírez Hernández, *CECEVIM—Stopping Male Violence in the Latino Home*, *supra* note 108, at 12-4 to 12-6.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



ample—that enhance the effectiveness of group therapy.[317] Religion or spirituality can also become an agent of transformation.[318] Lastly, CECEVIM uses an egalitarian structure in which the group, rather than a confrontational facilitator or expert, imposes accountability on each batterer.[319] This avoids a hierarchical dynamic that would recall the colonial people's superficial compliance with the demands of their conquerors.[320]

The emphasis on cultural context carries with it the potential to backfire: proponents of Latino-specific programs admit that convincing batterers to stop blaming their violence on external factors constitutes a major hurdle to guiding batterers to *concientización*.[321] Nevertheless, there have been efforts to spread the CECEVIM model nationally and even internationally,[322] and preliminary studies of Caminar Latino indicate high completion rates and low levels of recidivism.[323]

Programs for African-American males also seek to combine accountability with a frank acknowledgment of the marginalization, poverty, and racial bias that many black men face and the special vulnerability of black women, who experience higher rates of victimization than any other racial group.[324] Batterer intervention for African-American males has the potential to channel the reasoning of Progressive Black Masculinities scholars. For example, Athena Mutua argues that, when black men embrace sexism and engage in gendered violence, they "reinforc[e] structures of domination that have complicated and negative consequences for black women but also for black men."[325]

317. *See id.* at 12-15.
318. *See id.* at 12-12.
319. *See id.* at 12-14 to 12-17.
320. *See id.* at 12-14 to 12-15 (explaining why CECEVIM eschews facilitator control tactics). Caminar Latino also uses an egalitarian model in which facilitators and participants are supposed to show mutual respect and treat each other as peers. *See* Perilla & Pérez, *supra* note 108, at 11-28.
321. *See* Ramírez Hernández, *CECEVIM—Stopping Male Violence in the Latino Home, supra* note 108, at 12-16.
322. *See id.* at 12-2. The CECEVIM model is being used in several locations in Mexico (Mexico City, Morelia, Michoacan, and Puebla), as well as by programs in San Francisco, Atlanta, Portland, Baltimore, and Oklahoma. *See* CECEVIM, http://www.cecevim.org/cecevim (last visited May 6, 2015).
323. *See* Perilla & Pérez, *supra* note 108, at 11-29 (reporting that about 90% of court-mandated men complete the program, and at a six-month follow-up, 97% of men who have completed the program have not re-entered the court system).
324. *See, e.g.*, Donnelly, Smith & Williams, *supra* note 108, at 13-4 (describing a program first developed largely for African-American men in the DeKalb County Jail in Decatur, Georgia). The authors of the DeKalb study note that program facilitators were supposed to emphasize personal responsibility for intimate-partner violence, rather than allowing participants to blame racism or learned behavior. *See id.* at 13-3, 13-6 to 13-7.
325. Athena D. Mutua, *Theorizing Progressive Black Masculinities, in* PROGRESSIVE BLACK MASCULINITIES, *supra* note 298297, at 3, 4.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



Black males exhibit low completion rates in traditional BIPs that do not use culturally competent curricula.[326] Hence, programs like the one begun at the DeKalb County Jail in Decatur, Georgia, in 1997 were developed as an alternative. The DeKalb program largely served black male inmates during the three years it was in use, but it is supposedly adaptable to non-institutionalized populations and other men whose racial or ethnic background gives them a unique experience of domestic violence and who are unlikely to change their behavior in response to a "one-size-fits-all" intervention strategy. Program facilitators in the DeKalb County Jail program did not provide therapy; rather, they offered an educational format designed to teach inmates of African-American heritage to live violence-free.[327]

The diversity of court-ordered participants in BIPs has resulted in vague provisions for cultural competence in state standards. Yet some states show a nascent understanding of the connection between masculinities, domestic violence, and government intervention to eradicate it. For example, Ohio's standards assert that "patriarchy does not only support sexism but also supports racism, heterosexism, classism, and other oppression that allows one group's dominance over another."[328] Ohio now encourages its BIPs to move away from the mainstream, middle-class, white, heterosexual model on which they were founded to acknowledge the experiences of all offenders ordered to participate in them.[329] Such inclusivity is not supposed to come at the price of victim safety or offender accountability, though that it is the delicate balance that more inclusive BIPs must figure out how to strike. Making these programs effective for racial and cultural minorities constitutes a worthy goal that will help prevent domestic violence sentencing from defaulting to a two-track model in which more affluent white offenders avoid jail time, while minority offenders disproportionately face incarceration.

### *B. Women Who Use Force*

Although mandatory arrest laws have led to dramatic increases in the number of women arrested for domestic violence, research into the causes of and contributors to such violence has focused almost exclusive-

326. Donnelly, Smith, & Williams, *supra* note 108, at 13-3.
327. *See id.* at 13-3, 13-5, 13-14.
328. OHIO STANDARDS FOR BATTERERS INTERVENTION, *supra* note 299, at 3. Colorado incorporates the concept of intersectionality in its treatment of female offenders, as well, indicating that the "[p]erceived or actual social, racial, and/or class injustices" that some women experience should be a topic in the women's curriculum. COLO. DVOMB STANDARDS, *supra* note 219, at App. B-II-4.
329. OHIO STANDARDS FOR BATTERERS INTERVENTION, *supra* note 299, at 11–12.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



ly on male offenders.[330] Even more importantly, "the applicability of available theories and treatments to women arrested for domestic violence remains unknown."[331] A bitter and seemingly intractable divide exists between researchers who rely on national survey data to claim that there is gender parity in the initiation of violence, and scholars who cite Bureau of Justice Statistics data, which consistently suggests that "women are five times more likely than men to have been the victims of domestic violence."[332] A complicating factor is that heterosexual men may underreport being abused by women because society does not take male victimization seriously.[333] However, the studies purporting to show gender parity fail to account for qualitative differences in why violence occurred, how severe it was, and whether it was part of an ongoing pattern of coercive control.[334] For this and other reasons, survey data based on the Conflict Tactics Scale yields an incomplete and even erroneous comparison of men's and women's intimate violence that strips it of its context.[335]

To develop appropriate treatment protocols for female offenders, resolving the numbers debate matters less than determining what legal out-

330. *See* Henning, Jones & Holdford, *supra* note 258, at 839–40.

331. *Id*. at 840.

332. Michelle Carney, Fred Buttell & Don Dutton, *Women Who Perpetrate Intimate Partner Violence: A Review of the Literature with Recommendations for Treatment*, 12 AGGRESSION & VIOLENT BEHAV. 108, 108–9 (2007). *See also* Russell P. Dobash, R. Emerson Dobash, Margo Wilson & Martin Daly, *The Myth of Sexual Symmetry in Marital Violence*, 39 SOC. PROBS. 71, 72 (1992) (arguing that "claims of sexual symmetry in marital violence are exaggerated, and that wives' and husbands' uses of violence differ greatly, both quantitatively and qualitatively").

333. Carney, Buttell & Dutton, *supra* note 332, at 111. *See also supra* notes 12 & 47 and accompanying text (noting that, historically, judges and others ridiculed men who complained that their wives had abused them).

334. For articles criticizing a gender-neutral response to intimate-partner abuse, see, e.g., Shamita Das Dasgupta, *A Framework for Understanding Women's Use of Nonlethal Violence in Intimate Heterosexual Relationships*, 8 VIOLENCE AGAINST WOMEN 1364, 1377–82 (2002); Larance, *When She Hits Him*, *supra* note 175, at 10.

335. If feminist scholars can be criticized for being tethered to ideology, the approach of the "gender parity" camp has its own shortcomings—mostly notably, reliance on a survey methodology that failed to track such qualitative factors as whether the violence was ongoing and patterned, why it was used, and whether the person who "initiated" the incident started the argument or the physical fight. *See* L. Kevin Hamberger & Theresa Potente, *Counseling Heterosexual Women Arrested for Domestic Violence: Implications for Theory and Practice*, 9 VIOLENCE & VICTIMS 125, 127 (1994). According to critics of the "gender parity" thesis, objective evidence from the records of police, emergency rooms, and domestic violence shelters consistently shows that women are much more likely than men to be assaulted and injured by their intimate partners. *See* Dobash, Dobash, Wilson, & Daly, *supra* note 332, at 74. In contrast, the Conflict Tactics Scale, on which the "gender parity" thesis relies, defines acts of domestic violence in subjective terms which are meaningless when stripped of their context, *see id*. at 78–80, and yields inconsistent descriptions of the same incidents by husbands and wives. *See id.* at 77–78.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



comes are appropriate for women who use force against their male partners and whether intervention programs can help them avoid being rearrested in the future. Police, prosecutors, judges, probation officers, and BIP providers increasingly encounter these questions because mandatory arrest laws bring female arrestees under their jurisdiction. Yet due to the comparative dearth of research on intimate-partner violence committed by women, the answers remain frustratingly tentative and sparse.[336] Courts today often order women convicted of domestic violence offenses to participate in BIPs designed for male offenders.[337] Although about two-thirds of state standards mandate separate groups for women, very few explain how interventions for women should differ from those for men.[338] Even the family-violence scholars who claim that women are as violent as men find this situation "less than ideal."[339]

The prevailing view in the academic literature is that women arrested for domestic violence usually acted self-protectively, or in retaliation for past abuse, and that this fact differentiates them from male arrestees.[340] As many as 60 to 80 percent of women mandated to complete BIPs used violence to respond to harm to themselves or their children.[341] Michael Johnson notes that it is more correct to refer to this type of female behavior as "violent resistance," rather than "self-defense," since the latter term denotes a legal category with narrow, doctrinal ele-

336. *See* Leisring, Dowd & Rosenbaum, *supra* note 269, at 260 ("Without sufficient research examining women's aggression, clinicians working with partner aggressive women cannot look to the literature for effective interventions.") Miller, Gregory, & Iovanni, *supra* note 106, at 352 ("Despite the national increase in treatment programs established for women arrested for domestic violence, very little research . . . has explored the context and effectiveness of [female offender programs].").

337. Carney, Buttell & Dutton, *supra* note 332, at 112; *see* Leisring, Dowd & Rosenbaum, *supra* note 269, at 260, 263. In some jurisdictions, treatment programs for women were developed because the alternative had been disparate, unfairly harsh outcomes for female offenders, compared to men; the latter were ordered to counseling with the incentive of reduced fines or dropped charges if they completed the program. Hamberger & Potente, *supra* note 335, at 130. In other parts of the country, courts refer both men and women to batterer intervention classes, but the classes remain grounded in a protocol aimed to re-socialize men to reject their historical privilege and adopt nonviolent, egalitarian ways of relating to their intimate partners. *See* Dasgupta, *supra* note 334, at 1368; *see also* Larance, *When She Hits Him*, *supra* note 175, at 10.

338. *See* Appendix M, *supra* notes 201 and 216, available at http://scholar.law.colorado.edu/research-data/1.

339. Carney, Buttell & Dutton, *supra* note 332, at 112.

340. *See* Hamberger & Potente, *supra* note 335, at 128, 134–35; *see also* Henning, Jones & Holdford, *supra* note 258, at 841–42, 851.

341. *See* Kernsmith, *supra* note 98, at 760. *See also* JOHNSON, *supra* note 107, at 52 (citing SUSAN L. MILLER, VICTIMS AS OFFENDERS: THE PARADOX OF WOMEN'S VIOLENCE IN RELATIONSHIPS 120–21 (2005) for the estimate that 65% of women ordered to attend a BIP were resisting their abusers).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



ments.[342] Violent resistance also encompasses retaliatory conduct in which the woman seeks retribution for depression and pain arising from a long period of subordination at the hands of her partner.[343] Some states require police officers to determine which member of the couple was the "primary aggressor," rather than making a dual arrest; however, such laws and policies fail to shield women who reacted to their partner's past or prospective violence, since they did not face a threat the law deems imminent.[344]

Should female offenders be deemed "batterers"? Just because a woman is convicted of a domestic violence offense does not mean she abused her partner as a control tactic. Indeed, researchers and service providers have found that women rarely use force to coerce their husbands or boyfriends into long-term behavioral change.[345] Rather, according to one observer, female offenders' stated motivations for using force include "the desire to defend their self-respect against their partners' verbal and/or emotional attacks; to defend their children; a refusal to be victimized again; being passive did not work so maybe using violence will; and to gain short-term control over a chaotic/abusive situation . . . ."[346] Moreover, a woman who gets arrested for domestic violence might have been trying to assert the autonomy necessary to leave the intimate relationship. One study found that female offenders were twice as likely as male offenders to feel uncertain about whether they wanted to stay with their partners.[347] The same research indicated that while men in the sam-

342. JOHNSON, *supra* note 107, at 52.

343. *See id.* at 53.

344. *See* Leigh Goodmark, *Law is the Answer? Do We Know that for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS U. PUB. L. REV. 7, 23 n.93 (2004) (citing Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009, 1045 (2000)). Some jurisdictions have "predominant aggressor" laws that instruct police to arrest the person who caused the most violence, rather than assuming the initial (or "primary") aggressor was at fault. *See* Thacker Thomas, *supra* note 194, at 6 (citing STOP ABUSIVE AND VIOLENT ENVIRONMENTS (SAVE), PREDOMINANT AGGRESSOR POLICIES: LEAVING THE ABUSER UNACCOUNTABLE? (2010)). Predominant aggressor laws might be slightly more successful in protecting women who are actually victims, since another qualitative difference between men and women who engage in intimate-partner violence is that women are less likely than men to inflict serious injury. Hamberger & Potente, *supra* note 335, at 125.

345. *See* Dasgupta, *supra* note 334, at 1378; *see also* Hester, *supra* note 229, at 1072–73; Larance, *When She Hits Him, supra* note 175, at 13; Miller, Gregory, & Iovanni, *supra* note 106, at 347.

346. Larance, *When She Hits Him, supra* note 175, at 14.

347. Henning, Jones & Holdford, *supra* note 258, at 851 (describing the results of a study of 3,200 men and women arrested, convicted, and placed on probation for heterosexual domestic violence between January 1999 and April 2001 in Shelby County, Tennessee).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



ple were as likely as women to have experienced clinically significant relationship stress, the cause of that stress differed with the sex of the arrestee: "[W]omen's relationship dissatisfaction . . . may be largely influenced by their partners' abusive behavior, whereas relationship dissatisfaction for men may derive primarily from concerns about abandonment and loss of control."[348] In sum, women tend to act violently as a survival strategy, and this strategy often backfires because their male partners, who rarely fear them, retaliate in ways that make them even more vulnerable. Accordingly, it is an error to refer to most female offenders as batterers.[349]

This understanding of women's use of force is not uncontested. Some researchers point to longitudinal studies, combined with national survey data, to claim that domestic violence perpetrated by women often "has a long developmental history, preceding the current adult relationship, so it cannot be dismissed as self-defense" or even retaliation.[350] From this perspective, the similarities between male and female arrestees—abuse of alcohol or drugs, prior aggression, the ability to inflict serious injury (especially if the woman uses a weapon), and demographic factors, including mental health history and childhood exposure to violence—outweigh the differences.[351]

Are these conflicting analyses of women's violence irreconcilable? Michael Johnson has argued that feminist scholars and activists (who believe that women's violence is overwhelmingly self-defensive, while men's is coercive and terroristic) and family violence researchers (who see gender parity) are actually talking about different phenomena.[352] Intimate terrorists are primarily men, whereas women engage in two other types of violence in Johnson's three-part typology—"violent resistance"

348. *Id.*

349. *See* Dasgupta, *supra* note 334, at 1366–68, 1378; *see also* Larance, *When She Hits Him*, *supra* note 175, at 11, 13. Lisa Larance admits that some women have the capacity to be batterers, but she contends that "the majority of heterosexual women in VISTA [the female offender program that Larance designed] used their force in intimate relationships to regain short-term control over their situations, not to exert ongoing coercion and control over their partners . . . . [M]ost women's use of force is separate, distinct behavior from battering. . .and demands different intervention." Lisa Young Larance, *Serving Women Who Use Force in Their Intimate Heterosexual Relationships: An Extended View*, 12 VIOLENCE AGAINST WOMEN 622, 625 (2006) [hereinafter Larance, *Serving Women*]. *See also supra* note 175 (describing the DAIP's work with the few women in the program whose assaults on their male partners were not a response to abuse).

350. Carney, Buttell & Dutton, *supra* note 332, at 110.

351. *See id.* at 112, 114; Henning, Jones & Holdford, *supra* note 258, at 847–48, 850–51 (finding that both women and men had experienced "clinically significant relationship distress" and exposure to violence as children).

352. JOHNSON, *supra* note 107, at 3.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



and "situational couple violence."[353] Violent resistance encompasses pushing back against an abusive partner in ways that often do not qualify as self-defense under the criminal law.[354] Pragmatically, because women with a history of victimization may lash out in retaliation and pain, which still constitutes a crime, BIPs should be equipped to counsel them differently than they would the archetypal male batterer.

The second type of violence that women use, situational couple violence, shows great variability. It can be perpetrated by men as well as women. It may occur in a single, anomalous incident, or it may be ongoing.[355] Some couples engage in minor physical fights, inflicting minimal injury, but situational couple violence can also be lethal.[356] Perhaps most importantly, rather than being rooted in male domination and misogyny (as intimate terrorism is), situational couple violence arises from myriad factors. These include tensions over relationship status, financial troubles, child-rearing, and the household's division of labor; substance abuse; verbal aggression; communication deficits; mental disorders; family histories of violence; education (or lack thereof); and differences in cultural background.[357] Johnson notes that "[a]t times the problem has less to do with one individual and more to do with how the couple communicates."[358] If the legal system intervenes in such relationships at all, a highly punitive response seems unwarranted, except in severe cases. Treatment or counseling may offer the best chances of success. However, intervention programs for female offenders that explain participants' conduct solely by reference to violent resistance are unlikely to be effective for women who have engaged in situational couple violence, which does not involve efforts to resist coercive control.[359]

How have women arrested for domestic violence been treated thus far? Despite the ostensible gender neutrality of the criminal law, the perceptions of a female arrestee and those around her may soften the stigma of being charged with a domestic violence offense. In a study of BIP participants in Los Angeles County, California, several women reported

353. *Id.* at 2, 51–52, 60.

354. *Cf.* Larance, *Serving Women, supra* note 349, at 627–28 (2006) (describing the motivations of female participants in the VISTA Program in New Jersey, which only serves women who engaged in non-self-defensive violence).

355. JOHNSON, *supra* note 107, at 62.

356. *See id*. at 60–62.

357. *Id*. at 63–68.

358. *Id.* at 70.

359. *See id.* at 61 ("Situational couple violence is not driven by a general motive to control, but arises out of the dynamics of particular situations."). The needs of the minority of women who initiate violence likely differ from those of women act in response to abuse. Kernsmith, *supra* note 98, at 769.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



that their use of violence would be viewed with approval because they were trying to protect themselves and their children.[360] Another researcher found that, even if a female arrestee was not resisting abuse, friends, family, and criminal justice personnel still treated her like a victim, and the woman might deploy discourses of feminine victimhood to resist being labeled a criminal.[361] Police officers bound by mandatory arrest laws also expressed concern that their lack of discretion forced them to make wrongful arrests.[362] Finally, as we shall see, BIPs that accept female participants often treat women differently than male offenders.[363]

Current standards for batterer intervention that address female offenders often specify that education groups should be segregated by sex.[364] However, the standards rarely provide information about the content or goals of the separate women's groups. Indeed, one of the most significant problems with the treatment of women arrested for domestic violence is that, aside from requiring gender-specific groups, state standards provide few or no signposts for how women's programs should be structured, what specialized topics they should cover, and whether female offenders should be further categorized on the basis of factors in addition to their sex. A mere handful of states, including Colorado and Iowa, have adopted best practices guidelines for treating female offenders.[365]

360. Kernsmith, *supra* note 98, at 767.

361. *See* Thacker Thomas, *supra* note 194, at 65–75, 92–121.

362. *Id.* at 154–56. However, in her study of intimate partner violence cases in England, Marianne Hester found that "the police appeared more ready to arrest women despite patterns of violent behavior that were less intense or severe than the patterns exhibited by men"; they seemed to treat the female perpetrator cases more seriously and to construe the woman as the main problem even when the man in the couple had been the perpetrator in more incidents; and they failed to recognize that women were acting self-defensively because they did not take the larger pattern of abuse into account. Hester, *supra* note 229, at 1074–75.

363. *See infra* text accompanying notes 368–386. The views of BIP staff may also have subtle effects on interactions with female participants, regardless of official program content. *See* Miller, Gregory, & Iovanni, *supra* note 106, at 343 (stating that, although the facilitator of a female offender program the authors observed knew the women in the group had been charged with crimes, she seemed to believe "that most arrested women are not the primary perpetrators of violence in their relationships").

364. About two-thirds (or 26) of the 46 jurisdictions analyzed take this approach. *See* Appendix M, *supra* notes 201 and 216, available at http://scholar.law.colorado.edu/research-data/1.

365. *See* COLO. DVOMB STANDARDS, *supra* note 219, at App. B-II ("Specific Offender Population Best Practice Guidelines For Providing Court-Ordered Treatment to Female Domestic Violence Offenders"); IOWA DEP'T OF CORRECTIONS STANDARDS FOR THE MOVING ON FEMALE OFFENDER PROGRAM 15 (2006) (on file with the author).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



While only a minority of standards distinguish interventions for female offenders from those for males, those that differentiate men's programs from women's do so in two ways. First, the underlying assumptions about the causes of and contributors to women's violence are different. The current BIP standards in several jurisdictions suggest that female participants may have acted in self-defense and that abusers and victims should not be placed in the same education group.[366] For instance, the 2012 edition of the North Dakota Adult Batterer Treatment Standards expressly adopts the view that "[w]omen typically use violence in self-defense" and "women's use of violence is preceded by severe acts of violence by their partners."[367] Second, the few certification standards that provide requirements or guidance for female-only programs indicate that women should be taught different skills than men; indeed, the focus on skill building, rather than confrontation and attitudinal change, is often expressly precluded for male offender groups.[368]

The association of domestically violent women with past abuse has important implications for program content. Unlike BIPs for men, female offender programs, in practice, tend to adopt a therapeutic style that places the violent incidents for which the women were arrested in the context of past abuse and other "life stressors."[369] In the few jurisdictions that have established a special, standardized curriculum for female participants, a common requirement is that women arrested for domestic violence receive training in safety planning, assertiveness, anger management, non-violent parenting, and non-aggressive communication skills[370]—components often absent, by design, from batterer intervention

366. For jurisdictions that require separate programs or groups for women, see Appendix M, *supra* notes 201 and 216, available at http://scholar.law.colorado.edu/research-data/1. The assumption that many women ordered to complete BIPs only used force in self-defense is discussed in the text accompanying notes 340–344, *supra*, and notes 367 & 379, *infra*.

367. NORTH DAKOTA ADULT BATTERER TREATMENT STANDARDS, *supra* note 281, at 10.

368. *See infra* notes 370–373 and accompanying text.

369. Miller, Gregory, & Iovanni, *supra* note 106, at 342–43 (noting that, in the program they observed, women's use of violence was contextualized by reference to unemployment, poverty, substance abuse, and concerns about housing, transportation, and child care, as well as past victimization).

370. Iowa is one of the few states to promulgate separate standards for women. Its all-female Moving On programs teach a variety of skills (problem solving, creative and critical thinking, social skills, assertiveness, and deep relaxation) and strive to help women understand the "contextual, situational, and personal factors" that contributed to their criminal behavior. IOWA DEP'T OF CORRECTIONS STANDARDS FOR THE MOVING ON FEMALE OFFENDER PROGRAM, *supra* note 365, at 15.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



programs for men.[371] Colorado's standards direct providers to consider the impact of woman-specific experiences like "abortion, miscarriage, stillbirth, . . . rape, . . . [and] sexual harassment."[372] They also suggest attention to other topics that may be especially important for female offenders, including appropriate ways of expressing "anger as [a] healthy response to injustice/violence" that they suffered as children or in abusive adult relationships in the past.[373]

Although state certification standards are usually silent about the curricula of female offender programs, there has been experimentation with special content for women at the level of individual BIPs. For example, the standards promulgated by the Massachusetts Department of Public Health do not explain how women's groups should differ from men's,[374] but over the years, a program for partner-aggressive women at the University of Massachusetts Medical School has gradually placed less emphasis on power and control, on the theory that women rarely frighten men into compliance, and more emphasis on such practical considerations as finding affordable housing and being prepared for a quick escape from danger.[375] According to this approach, female participants should be re-directed to alternative ways of handling situations that cause them to feel anger, fear, stress, or depression.[376] Similarly, the VISTA program in New Jersey helps women develop a safety plan and identify non-violent strategies for addressing anger that are likely to succeed in their specific relationships. VISTA also encourages participants to explore how family-of-origin conflict might have contributed to their use of force and how women's socialization to subordinate their welfare to that of their family sucks them into an ineffective cycle: they feel inferior and angry, use violence and/or shouting, and then make profuse apologies for their behavior.[377]

371. *See supra* notes 203–214, 226–227 and accompanying text (discussing standards governing programs primarily designed for male offenders). *But see* Leisring, Dowd & Rosenbaum, *supra* note 269, at 264, 266 (indicating that anger management and effective communication skills training are components that could be borrowed from the University of Massachusetts Medical School's programs for men).

372. COLO. DVOMB STANDARDS, *supra* note 219, at App. B-II-4.

373. *Id*. at App. B-II-3 to -4.

374. *See generally* GUIDELINES AND STANDARDS FOR THE CERTIFICATION OF INTIMATE PARTNER ABUSE EDUCATION PROGRAMS [MASS.], *supra* note 295.

375. Leisring, Dowd & Rosenbaum, *supra* note 269, at 268–69, 271. As early as the 1990s, Miller, Gregory, & Iovanni observed a female offender program on the East Coast that taught participants about anger management, support networks and other resources, as well as equipped them to negotiate the criminal justice process in the future without being pushed into pleading guilty. Miller, Gregory, & Iovanni, *supra* note 106, at 345.

376. *Id.* at 264, 270 (indicating that such strategies might include getting treatment for woman-specific conditions like menopause or premenstrual syndrome).

377. Larance, *Serving Women*, *supra* note 349, at 633, 636–37.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



As these examples show, many women's programs are "structured to avoid any implication that domestically violent women . . . [are] no different from male batterers."[378] This distinction often arises from the assumption that female offenders used force in response to an attack or threat.[379] However, more recently, program providers and scholars have begun to cast their net wider to develop a more complicated analysis of women's use of force.[380] Lisa Larance, who founded the VISTA Program in New Jersey and the RENEW program in Michigan, gives examples of women who committed violent acts against innocent partners to express unresolved anger at past abuse by other people, including previous husbands and parents.[381] Using the extended time frame that VISTA favors, Larance found that, in addition to being arrested for self-defensive or retaliatory violence,[382] female offenders used force to make an intimate partner listen or refrain from leaving during an argument, to regain self-respect, and as a strategy in child custody battles.[383] Although the women in VISTA are deemed not to have acted in self-defense, the program helps participants realize that they are victims and survivors, as well as violators of the law.

Special programming for women does not have to be incompatible with accountability. For instance, despite VISTA's emphasis on women's victimization, VISTA staff treat female participants as responsible actors who are capable of seeking nonviolent options.[384] Because the

378. Hamberger & Potente, *supra* note 335, at 130 (describing the Kenosha Domestic Abuse Intervention Project's program for women in Wisconsin).

379. According to a study conducted in the 1990s, for example, the Kenosha Domestic Abuse Intervention Project in Wisconsin taught women that "their use of violence stems from the abuse of power and control to which they have been *subjected* by their partners." *Id.* at 131 (emphasis added).

380. For instance, legal scholar Jamie Abrams criticizes what she calls a limited strategy of containment that approaches women's violence as a potential threat to the feminist paradigm of battering and the practical achievements of the Battered Women's Movement in generating services for female victims and punitive responses for male perpetrators. Abrams suggests that a frank exploration of how and why women use force, in a variety of contexts from intimate relationships to sports and even acts of terrorism, might actually strengthen the feminist movement and make it more relevant to a society on the cusp of recognizing gender nonconformity. *See generally* Jamie R. Abrams, *The Feminist Case for Acknowledging Women's Acts of Violence*, 22 YALE J. L. & FEMINISM 287 (2016).

381. Larance, *When She Hits Him*, *supra* note 175, at 13–16; *see* Larance, *Serving Women*, *supra* note 349, at 630. *See also* Hester, *supra* note 229, at 1068 (noting research suggesting that some women who were victimized in the past by their parents or other partners used force in subsequent intimate relationships).

382. Larance, *Serving Women*, *supra* note 349, at 628.

383. *See id.* at 628, 631.

384. *See id.* at 634–35. *See also* Hamberger & Potente, *supra* note 335, at 129–31 (describing a similar approach in Kenosha, Wisconsin).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



women's use of force had bad results—including arrest, legal bills, shame, and other collateral consequences of a conviction, as well as retaliatory battering—many of them want to avoid a replay of the scenarios that led to their involvement with the criminal justice system.[385] According to Larance, "[t]he benefit of encouraging [participants to take] responsibility—if done supportively, nonjudgmentally, and proactively—for the consequences of their use of force is that women can begin to feel less like passive, dependent agents and more like empowered, skilled individuals able to navigate a relationship in a manner that serves them over the short and long term."[386]

The establishment of intervention programs for court-ordered female participants need not preclude training police officers to avoid the arrest of domestic violence survivors who lashed out in self-defense or providing affirmative legal defenses that better fit such women's predicament. Nor would it be an error to design different programs and curricular content for female offenders who primarily used violence in response to abuse, as opposed to initiating it. Helping women take responsibility for their own aggression and choose non-violent solutions to domestic stressors, traumas, and fears is not the same as victim blaming, though in some situations, the woman may have acted in a blameworthy manner. Finally, female offenders exhibit some of the same contextual problems as men: for instance, high rates of psychological and mood disorders, as well as suicidal ideation, among female offenders[387] suggest that coordination with appropriate mental health treatment should also be available for women.

### *C. Same-Sex Abuse*

According to one estimate, physical violence and/or psychological abuse occurs in approximately 25 to 33 percent of all same-sex relationships, which makes the incidence of intimate-partner abuse in the LGBT community comparable to its incidence among heterosexuals.[388] Another

385. *See* Larance, *Serving Women, supra* note 349, at 635; Hamberger & Potente, *supra* note 335, at 130.

386. Larance, *Serving Women, supra* note 349, at 634. The Kenosha, Wisconsin program also aspired to achieve the objectives of accountability, specific deterrence, and rehabilitation, and the researchers who studied it found it to be largely successful. *See* Hamberger & Potente, *supra* note 335, at 136 ("Compliance in the Kenosha program is extremely high, indicating that the program has perceived value to the clients.").

387. Leisring, Dowd & Rosenbaum, *supra* note 269, at 269–70; *see* Henning, Jones & Holdford, *supra* note 258, at 846–48.

388. NAT'L CTR. FOR VICTIMS OF CRIME & THE NAT'L COAL. OF ANTI-VIOLENCE PROGRAMS, WHY IT MATTERS: RETHINKING VICTIM ASSISTANCE FOR LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUEER VICTIMS OF HATE VIOLENCE & INTIMATE PARTNER VIO-

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



estimate puts the rate of abuse at about 12 to 50 percent for both same-sex and heterosexual couples.[389] Transgender victims also suffer intimate-partner violence,[390] and they are especially vulnerable to discrimination when they seek help. Nevertheless, support services for LGBT victims and BIPs for same-sex abusers remain sparse.[391] Same-sex abuse involves some unique behaviors and strategies, such as threatening to "out" the victim, capitalizing on societal homophobia, and manipulating the victim's internalized guilt about being homosexual to isolate and intimidate him or her.[392] These differing facets of same-sex abuse make curricula designed for straight men inadequate for gay and lesbian batterers.

Most BIP standards do not exclude homosexual participants, but they rarely offer separate groups and specially tailored curricula for LGBT offenders.[393] Some states still place same-sex offenders in heterosexual groups.[394] Others anticipate the need for individual counseling

LENCE 5 (2010) [hereinafter WHY IT MATTERS]; Nancy J. Knauer, *Same-Sex Domestic Violence: Claiming a Domestic Sphere While Risking Negative Stereotypes*, 8 TEMP. POL. & C.R. L. REV. 325, 330 (1999); Morrison, *supra* note 103, at 117.

389. Joanna Bunker Rohrbaugh, *Domestic Violence in Same-Gender Relationships*, 44 FAM. CT. REV. 287, 287 (2006). The variation in statistics on the incidence of abuse likely arises from differing definitions of what "abuse" means. Restrictive definitions that encompass only physical violence yield lower numbers than more expansive understandings of abuse that cover patterns of physical *and* emotional harm.

390. "Transgender people [constituted] at least 4.7 percent of the survivors accessing services through members of the National Coalition of Anti-Violence Programs (NCAVP) in 2009." Leigh Goodmark, *Transgender People, Intimate Partner Abuse, and the Legal System*, 48 HARV. C.R.-C.L. L. REV. 51, 55 (2013).

391. *See supra* notes 217–219 and accompanying text and Appendices N & O (describing the dearth of standards providing appropriate programs for lesbian and gay offenders, as of 2015), *supra* note 201, available at http://scholar.law.colorado.edu/research-data/1; WHY IT MATTERS, *supra* note 388, at 6, 9–14; Morrison, *supra* note 103, at 82. In the 1990s, former San Diego Deputy City Attorney Kathleen Finley Duthu used to "ask the court to order gay and lesbian defendants to attend one year of counseling with a private therapist since there [was] no certified batterer's treatment program for gay men or lesbians in San Diego County." Kathleen Finley Duthu, *Why Doesn't Anyone Talk about Gay and Lesbian Domestic Violence?*, 18 T. JEFFERSON L. REV. 23, 39–40 (1996). BIPs in some states still refer LGBT offenders for individual counseling. *See infra* notes 395–396 and accompanying text.

392. *See* Duthu, *supra* note 391, at 31–32; Knauer, *supra* note 388, at 337; Rohrbaugh, *supra* note 389, at 293. Another complicating factor is that the abuse victim may not want to "out" his or her abuser by revealing the nature of their relationship to family, friends, doctors, therapists, or legal authorities. *See* Sandra E. Lundy, *Abuse That Dare Not Speak Its Name: Assisting Victims of Lesbians and Gay Domestic Violence in Massachusetts*, 28 NEW ENG. L. REV. 273, 286 (1993).

393. *See supra* notes 217–219 and accompanying text; Appendices N & O *supra* note 201, available at http://scholar.law.colorado.edu/research-data/1.

394. *See, e.g.*, NORTH DAKOTA ADULT BATTERER TREATMENT STANDARDS, *supra* note 281, at 23.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



and/or outside referrals for homosexual BIP participants;[395] they may allow a choice among these approaches, based on offender characteristics and/or provider resources and competence.[396] Even states that require some kind of special programming for same-sex abusers tend to be vague about what that programming should entail. For example, Ohio recognizes the potential dangers of failing to segregate LGBT participants in individual counseling or LGBT-specific groups and provides for group facilitators from LGBT communities.[397] But aside from stating broadly that BIPs "shall reflect the experience of LGBTQ communities in the program materials by adjusting the language, including LGBTQ scenarios in group work, and creating policies that are LGBTQ inclusive,"[398] the Ohio standards do not go far beyond those that simply bar BIPs from discriminating on the basis of sexual orientation.[399] There is little or no information in most standards about what causes same-sex partner abuse, how it differs from heterosexual partner abuse, and what interventions are appropriate to prevent reoffending.

Colorado is one of the few states that not only provides LGBT offender groups, but also spells out in some detail the topic areas to cover with same-sex abusers and the minimum competencies that the facilitators of LGBT groups must attain. Facilitators in Colorado must be able to assess the offender's "stage of coming out"; level of acceptance or rejection by family, friends, and employer; degree of internalized homophobia; "vulnerability to hate crimes"; and "level of access to LGBT

395. Tennessee takes this approach, for example. *See* Rules of Domestic Violence State Coordinating Council [Tennessee], *supra* note 152, at 7, Rule 0490-1-.05(1)(e)(1).

396. *See, e.g.*, IOWA DEPARTMENT OF CORRECTIONS STANDARDS FOR IOWA DOMESTIC ABUSE PROGRAM 8 (2014) (on file with the author); NEB. DOMESTIC VIOLENCE SEXUAL ASSAULT COAL., DOMESTIC VIOLENCE OFFENDER PROGRAM STANDARDS 9 (2012), http://www.ndvsac.org/wpcontent/uploads/General/BIP/Final_State_Standards_revision_6_15_12.pdf; TEXAS DEP'T OF CRIM. JUST., CMTY. ASSISTANCE DIV., BATTERING INTERVENTION AND PREVENTION PROGRAM (BIPP) ACCREDITATION GUIDELINES App. G at 51 (2014), http://www.tdcj.state.tx.us/documents/BIPP_Accreditation_Guidelines.pdf. Alternatively, in some jurisdictions, the service provider can apply for a variance to modify the program for homosexual participants. *See, e.g*, STATE OF RHODE ISLAND BATTERERS INTERVENTION PROGRAM STANDARDS OVERSIGHT COMM., BATTERERS INTERVENTION PROGRAM COMPREHENSIVE STANDARDS 9.2.1.1 (amended 2007), http://sos.ri.gov/documents/archives/regdocs/released/pdf/BIPSOC/4993.pdf .

397. *See* OHIO STANDARDS FOR BATTERERS INTERVENTION, *supra* note 299, at 14.

398. *Id.*

399. For examples of BIP standards in which the provision of services for same-sex abusers is limited to a non-discrimination statement, see, e.g., S.C. DEP'T OF SOC. SERVS., STANDARDS OF CARE FOR BATTERERS TREATMENT, *supra* note 295, at 3; WASH. ADMIN. CODE § 388-60-0105 (West 2016); 2007 MALE BATTERERS TREATMENT STANDARDS FOR WISCONSIN BATTERERS TREATMENT PROVIDER ASSOCIATION CERTIFIED DOMESTIC ABUSE BATTERERS TREATMENT 5, IV(B)(6) (2007), http://www.wcadv.org/sites/default/files/resources/WBTPA%20_Standards_2007.pdf.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



support resources"—among other factors.[400] The curriculum for same-sex groups in Colorado includes topics related to the marginalization and discrimination that LGBT people face and the unique ways in which their abusers can victimize them.[401]

Part III.C contends that, in addition to developing education groups specifically for same-sex offenders when the demand is sufficient to form them, researchers and service-providers need to discover why lesbians and gay men abuse their intimate partners and whether such abuse can be explained by reference to the gendered power-and-control paradigm on which the Duluth model relies.[402] This is imperative because, beyond being underserved by victim assistance and batterer programs, LGBT partner violence is also under-theorized. LGBT abusers should not be ordered to enroll in existing Duluth-style programs—even in separate groups from heterosexual, cisgender offenders—without significant inquiry into whether intimate-partner violence in their relationships has the same foundations as men's violence against women.

### 1. Lesbian Partner Violence and the Feminist Paradigm of the Batterer

Lesbian partner violence has long been under-reported by its victims, hushed by the lesbian community, and ignored by feminist activists.[403] Intimate-partner violence in lesbian relationships "shakes the very foundations of cultural or 'different voice' feminism," which celebrates the positive values associated with women, including their supposed non-violence.[404] Thus, recognizing same-sex abuse threatens the positive image of an alternative, egalitarian "all-woman space" that the lesbian community has worked hard to promote.[405] According to one

400. COLO. DVOMB STANDARDS, *supra* note 219, at App. B-I-1 to -2.

401. *Id.* at App. B-I-3. A few other states acknowledge that same-sex abusers may use special methods of control and intimidation, such as threatening to "out" their partners, and that heterosexist and homophobic attitudes facilitate same-sex partner abuse. *See, e.g.*, N.H. GOVERNOR'S COMM'N ON DOMESTIC & SEXUAL VIOLENCE, BATTERERS INTERVENTION STANDARDS 5, 16 (2002).

402. Some BIP standards claim to be limited to heterosexual males due to lack of knowledge about appropriate interventions for female and LGBT offenders. *See, e.g.*, GOVERNOR'S TASK FORCE ON BATTERER INTERVENTION STANDARDS, BATTERER INTERVENTION STANDARDS FOR THE STATE OF MICHIGAN 7 (1998).

403. *See* Knauer, *supra* note 388, at 326, 328, 331; Morrison, *supra* note 103, at 83.

404. Knauer, *supra* note 388, at 328.

405. Mary Eaton, *Abuse by Any Other Name: Feminism, Difference, and Intralesbian Violence*, *in* THE PUBLIC NATURE OF PRIVATE VIOLENCE: THE DISCOVERY OF DOMESTIC ABUSE 195, 217 (Martha Albertson Fineman & Roxanne Myktiuk eds., 1994); Knauer, *supra* note 388, at 331.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



lesbian writer, "We fear fueling society's hatred and myths by speaking openly about lesbian battering."[406]

The fact that lesbians abuse each other seems to contradict the core assumption of the Battered Women's Movement that domestic violence arises from patriarchy and is always inflicted on women by men. In light of same-sex partner abuse, some experts now define domestic violence as "an abuse of power that can happen in any type of intimate relationship, regardless of gender or sexual orientation."[407] Although lesbian partner violence is sometimes deemed "milder" than its heterosexual counterpart,[408] abuse in lesbian relationships is still patterned behavior linked to jealousy, emotional dependency, and power imbalances between members of the couple.[409] The majority of abused lesbians experience both physical and psychological harm.[410] Thus, in some respects, violence between lesbians is qualitatively similar to heterosexual intimate-partner violence.

But there are important differences. Fearing the prejudice of society in general, as well as pressure not to air the dirty laundry of the LGBT community, lesbian, gay, bisexual, and transgender victims are less likely to seek help than women battered by men.[411] When lesbian partner violence does get reported, police officers who are ignorant of the dynamics of abuse between women often have difficulty identifying the primary aggressor.[412] Judges are also more likely to issue mutual orders of protection in cases of lesbian couples, both because the judge perceives the situation as a girl fight, involving violence on both sides, and because an abusive lesbian may try to characterize herself as a victim of blows that, in reality, her partner struck in self-defense.[413] Lack of shelter space, the homophobia of service providers, and uncertainty about whether domes-

406. DAVID ISLAND & PATRICK LETELLIER, MEN WHO BEAT THE MEN WHO LOVE THEM: BATTERED GAY MEN AND DOMESTIC VIOLENCE 101 (1991) (quoting KERRY LOBEL, NAMING THE VIOLENCE: SPEAKING OUT ABOUT LESBIAN BATTERING 200 (1986)).

407. Rohrbaugh, *supra* note 389, at 292.

408. *Id.* at 291.

409. CLAIRE M. RENZETTI, VIOLENT BETRAYAL: PARTNER ABUSE IN LESBIAN RELATIONSHIPS 116–17 (1992); Rohrbaugh, *supra* note 389, at 293, 295.

410. In a survey of 100 lesbian respondents, 87 percent of the women claimed to have experienced both physical and psychological abuse. Respondents reported greater frequency of psychological abuse, but more than half had experienced pushing and shoving (75 percent) and blows with fists or an open hand (65 percent). RENZETTI, *supra* note 409, at 20–21.

411. Morrison, *supra* note 103, at 116.

412. *See* Duthu, *supra* note 391, at 34–35; Knauer, *supra* note 388, at 333–34; Lundy, *supra* note 392, at 283–84.

413. *See* Shannon Little, *Challenging Legal Definitions of Family in Same-Sex Domestic Violence*, 19 HASTINGS WOMEN'S L.J. 259, 263 (2008).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



tic violence laws cover same-sex relationships[414] all inhibit lesbians from seeking help when they suffer intimate-partner violence. Because the 2013 reauthorization of the Violence Against Women Act ("VAWA") expressly includes same-sex couples in two important provisions—the definition of "underserved populations" and a non-discrimination clause barring any program funded wholly or partially by VAWA money from discriminating "on the basis of gender identity . . . [and] sexual orientation"—such oversights, biases, and errors now stand a better chance of being corrected.[415]

Yet, to respond effectively to lesbian partner violence, theorists and service providers must first seek to understand why it occurs and how it compares to the paradigm of heterosexual abuse inflicted by men. This is an area of controversy. Some scholars believe that lesbian partner violence can be explained without abandoning the paradigm of patriarchal power. Adele Morrison argues, for example:

> Choosing to act out abusively toward an intimate partner is coded as an aspect of being a man. Being a victim of that abuse is coded as an aspect of being a woman. The individual's biological sex (or actual self-identified gender) is irrelevant. Thus same-sex domestic violence—all domestic violence—is rooted in sexism.[416]

In short, Morrison believes that the feminist gender paradigm is accurate, but she suggests that "one must define 'battering' not as 'male' (the sex), but as behavior that is an aspect of the 'socially constructed' (gendered) man's behavior, which can be committed regardless of biological sex, sexual orientation or sexual community of the offender."[417] The lesbian who acts as the aggressor is female as a matter of biology and gender identity; yet, when she inflicts violence on her partner, she displays male attributes and seeks "the social rewards that go with exhib-

414. On this latter problem, see generally *id.* at 259, 263 (arguing that domestic violence statutes "should be amended to include explicit language incorporating relationships of all types and to account for broader understandings of the abusive acts themselves").

415. *See* Ashley LeBrun, Note, *Are We There Yet?—VAWA 2013: Same-Sex Legal Acceptance*, 39 SETON HALL LEGIS. J. 101, 106–107 (2015). Along these lines, in 2013, the state of California adopted a legislative finding that "the problem of domestic violence in the gay, lesbian, bisexual, and transgender community [is] of serious and increasing magnitude" and "existing domestic violence services for this population are underfunded and that members of this population are unserved or underserved in the state." CAL. PENAL CODE § 13823.17(a) (West 2013). As a result, California has established a special grant program "for the development and support of domestic violence programs and services [including batterer intervention] for the gay, lesbian, bisexual, and transgender community." CAL. PENAL CODE § 13823.17(b)(4).

416. Morrison, *supra* note 103, at 139.

417. *Id.* at 91.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



iting a behavior that is assigned to a man."[418] Failing to recognize that same-sex violence is gendered may yield legal and policy changes with unintended bad consequences.

In contrast to scholars who seek to fit lesbian partner abuse into the feminist model of male dominance, other theorists criticize the gender-based approach for imposing a heteronormative framework on lesbian relationships. Mary Eaton calls instead for a lesbian-specific model that accounts for unique aspects of intralesbian violence, including its sexualized nature and the fact that lesbians experience multiple forms of oppression or even total erasure in a society that does not want to acknowledge their existence.[419] She criticizes feminist theory for exacerbating heterosexist stereotypes about lesbians' need to imitate male and female gender roles to have a satisfying sexual relationship.[420] From this perspective, lesbian partner violence is still about control, but it is arguably not a manifestation of male dominance in society or the historical oppression of women. In support of this lesbian-centered analysis, experts note that same-sex abuse does not correlate to the masculine appearance of the aggressor or to disparities in physical size or strength between intimate partners.[421] As Claire Renzetti emphasizes, it is a myth that "only 'butch' or very masculine lesbians batter."[422]

Existing BIPs aimed at the feminist re-education of men are ill suited to change the behavior of lesbians. First, due to mistakes in identifying the primary aggressor and the continued practice of mutual arrest in same-sex cases,[423] some lesbians whom law enforcement detains will actually be victims. Second, even if the arrestee *was* the primary aggressor, she is unlikely to be rehabilitated, and may actually be harmed, in a program designed for heterosexual male batterers, who "tend to be overtly homophobic."[424] At least one state expressly acknowledges this concern by providing separate groups for women and same-sex offenders "to ensure *safety* and appropriate interventions."[425] Although the Power and Control Wheel used in Duluth-style programs could probably be adapted for lesbian batterer education, facilitators need to be trained to interact knowledgeably and sensitively with lesbian participants, and program

418. *Id.* at 152.
419. *See* Eaton, *supra* note 405, at 200, 206, 215, 219.
420. *See id.* at 207.
421. *See* Rohrbaugh, *supra* note 389, at 292–93.
422. RENZETTI, *supra* note 409, at 103; *see* Eaton, *supra* note 405, at 207.
423. *See* Morrison, *supra* note 103, at 94.
424. RENZETTI, *supra* note 409, at 128.
425. 89 ILL. ADMIN. CODE tit. 89, § 501.30(b)(7) (2016) (emphasis added).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



standards must do more than simply add sexual orientation to a politically-correct list of traits in a non-discrimination statement.

Finally, same-sex domestic violence offenders, like their heterosexual counterparts, often have mental disorders and histories of being abused or neglected as children; they also tend to exhibit secondary abusive behaviors, like excessive alcohol or drug use.[426] The sparse research on substance abuse among homosexual batterers suggests that it is just as prevalent as among heterosexuals.[427] According to Renzetti, "A lesbian motivated to drink (or use drugs) because she believes the alcohol (or drug) makes her more powerful and assertive may act out these beliefs by becoming abusive toward her partner while under the influence."[428] Substance abuse and past experiences of family violence are probably facilitators, not causes, of lesbian partner abuse,[429] and allowing an offender to lean on such problems as a crutch defeats the goal of making her accept responsibility for her aggressive conduct. Nevertheless, contextual problems like substance abuse, mental illness, and the effects of childhood trauma must be addressed before she can become fully rehabilitated and unlikely to reoffend.

2. Intimate-Partner Abuse by Gay Men

A growing body of scholarship on masculinities emphasizes that "violent acts affirm the offender's normative masculinity, and can be perpetrated on men as well as women."[430] In their pioneering book on intimate-partner abuse by gay men, David Island and Patrick Letellier argue that gay male batterers confuse being male with negative images of masculinity in American popular culture:

> For some men, becoming nonviolently masculine in our society is difficult because in many ways our society links masculinity *with* violence. Hollywood, television, sports, the military, advertising,

426. *See* Ned Farley, *A Survey of Factors Contributing to Gay & Lesbian Domestic Violence*, in VIOLENCE IN GAY AND LESBIAN DOMESTIC PARTNERSHIPS 35, 36 (Claire M. Renzetti & Charles Harvey Miley eds., 1996); *see also* Rohrbaugh, *supra* note 389, at 295 (discussing Farley's findings).

427. *See* Bennett & Bland, *supra* note 257, at 9 (summarizing the extant studies).

428. RENZETTI, *supra* note 409, at 66.

429. *See id.* at 116–17.

430. Giovanna Shay, *[Including But Not Limited To] Violence Against Women*, 42 SW. L. REV. 801, 809–10 & n.51 (2013). *See generally* Frank Rudy Cooper, *"Who's the Man?": Masculinities, Terry Stops, and Police Training*, 18 COLUM. J. GENDER & L. 671 (2009) (discussing how *Terry* stop-and-frisk procedures are often "masculinity contests" in which the police officer uses violence and harassment to subordinate other men); Harris, *supra* note 5, at 781–88 (explaining how the precariousness of masculine identity causes men to use violence against other men, as well as against women).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



> music, and many visible male heroes and leaders are all guilty of making this unfortunate connection . . . . Negative ideas about masculinity popular in America include acting tough at all times, not showing tender feelings at all. The lean, mean, super-cool, stoic cowboy is a perfect example of this (distorted) Hollywood view of masculinity. Another particularly obnoxious interpretation of masculinity teaches men to get their way by flexing their muscles, drinking to excess, getting angry, and hitting people.[431]

Island and Letellier characterize abusive gay men as insecure, jealous, controlling individuals who have trouble managing their anger and frustration and who overcompensate for their perceived weaknesses by using violence.[432] The "failed macho complex"[433] that gay batterers exhibit is in many respects similar to that of heterosexual male abusers: "It is not difficult to ascribe to gay men who batter all of the values and characteristics of heterosexual male batterers who develop in a patriarchal culture."[434]

In the final analysis, however, Island and Letellier generally eschew a gender-based, sociopolitical explanation in favor of a psychological one: "Domestic violence remains best explained as caused by perpetrators, of either gender, who have serious psychological problems, as well as problems with power and control."[435] These authors advocate the psycho-diagnostic categorization of gay batterers by treatment providers.[436] Nevertheless, they contend, abusers engage in criminal conduct, and double messages that hold gay male batterers accountable, but blame "our screwed up society" for causing their behavior, are destined to be counterproductive.[437] Island and Letellier thus favor a combination of mental health treatment and criminal liability for gay men who abuse their partners.[438] Although their book was written more than twenty

431. ISLAND & LETELLIER, *supra* note 406, at 50.
432. *Id.* at 76–80.
433. *Id.* at 51 (quoting EDWARD W. GONDOLF, RESEARCH ON MEN WHO BATTER: AN OVERVIEW, BIBLIOGRAPHY, AND RESOURCE GUIDE 4 (1988)).
434. *Id.* at 68. Other experts believe that abusive lesbians and gay men compensate for pain, insecurity, and self-loathing arising from internalized homophobia by seeking to dominate and inflict abuse on their intimate partners. *See* Dan Byrne, *Clinical Models for the Treatment of Gay Male Perpetrators of Domestic Violence*, in VIOLENCE IN GAY AND LESBIAN DOMESTIC PARTNERSHIPS, *supra* note 426, at 107, 109–10.
435. ISLAND & LETELLIER, *supra* note 406, at 254. Other scholars and practitioners suggest that "domestic violence must be understood as both a social *and* a psychological phenomenon" and that the two are "not necessarily mutually exclusive." Gregory S. Merrill, *Ruling the Exceptions: Same-Sex Battering and Domestic Violence Theory*, in VIOLENCE IN GAY AND LESBIAN DOMESTIC PARTNERSHIPS, *supra* note 426, at 9, 14.
436. *See id.* at 60.
437. *See id.* at 60–63.
438. *Id.* at 85.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



years ago, it may still contain the seeds of an improved approach that acknowledges structural influences on gay men's behavior but seeks solutions in individualized treatment and monitoring ordered by a criminal court.

LGBT scholars often express concern about the punitive effect of the criminal justice response on non-traditional victims and its effacement of their objectives in calling the police. For example, Morrison argues that "[k]eeping a perpetrator employed, living at home and participating in family life, but not abusing, is often what a victim truly wants."[439] Although Morrison does not analyze the effectiveness of batterer intervention programs,[440] BIP standards that address the particular context of gay and lesbian intimate-partner violence and that require separate groups or at least individual counseling sessions for same-sex offenders, depending on resources and demand, have the potential to achieve many LGBT victims' goals.

Like heterosexual offenders, lesbians and gay men who abuse their partners probably fit several different psychological profiles. For this reason, they might be most effectively treated by a BIP that offers several curricular tracks, rather than a single feminist psycho-educational model, and that takes seriously the need for coordination with substance abuse and mental health treatment. This Article's recommendations for heterosexual programs are thus applicable to LGBT offenders with the added imperative of training BIP staff and providing special curricular content to address the causes and manifestations of same-sex partner abuse.

## CONCLUSION

Throughout this Article, insights from masculinities studies guided the discussion of how men in earlier historical periods used wife-beating prosecutions to police other men and how, in recent times, the pressures that shape men's (and women's) behavior have been obscured by a mono-causal explanation of intimate-partner abuse as rooted in male dominance over women. At various points in American history, the gov-

439. *Id.* at 151. Morrison is less confident than Island and Letellier that criminal justice solutions are appropriate. She blames governance feminism for entrenching a narrow, conventional, heteronormative approach to domestic violence and giving "police another reason to enter already over-policed communities and to arrest and prosecute those who are already most arrested and prosecuted." Morrison, *supra* note 103, at 106. In her view, the system needs to adopt the values of the queer community, which would include training law enforcers and service providers to recognize gender fluidity and discard derogatory views of LGBT people. *See id.* at 135–46.

440. *See id.* at 158.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



ernment took steps to censure men who beat their wives. However, such efforts were usually made in service of larger sociopolitical objectives and relied on offender stereotypes to achieve their ends. The Puritans exhorted men to be good governors of their wives and children, lest bad family governance provoke the wrath of God against the whole community. The wife beater was sinful, unable to control his emotions—and, hence, less than a true man—and his wife often provoked his ungodly rage. However, the dual shaming and punishment of spouses who failed to live in harmony with each other neither protected victims, nor effectively prevented marital violence. In the late 1800s and early 1900s, Temperance crusaders identified alcohol as the root cause of domestic violence. The prosecution and punishment of wife beaters underscored the need to curb liquor selling and consumption. Moreover, the stereotype of the drunken brute who skipped work and beat his wife when he returned from the saloon used the social problem of wife beating to demarcate class and racial boundaries.

Starting in the late nineteenth century, feminists associated domestic violence with male dominance and gender inequality. The Battered Women's Movement of the late twentieth century took the greatest strides to harness the apparatus of the state to arrest and prosecute batterers. Yet, as in previous eras, battered women's advocates created a stereotype to achieve their ends. The image of the coercive, controlling male abuser was used to foster sweeping reforms. Court orders for domestic violence offenders to participate in intervention programs accompanied mandatory laws and policies requiring the police to arrest batterers and prosecutors to charge them with crimes.

In the area of domestic violence law enforcement, feminism has ceased to be a grassroots political reform campaign. It now exercises substantial influence over government action to arrest, convict, and punish offenders. From this position of authority, feminist-inspired policies risk entrenching the very hierarchies that feminism sought to combat. BIPs offer a means of reducing reliance on imprisonment to make batterers accountable for their crimes and to protect their victims from reassault; yet state standards for batterer intervention have evolved too slowly and incompletely to achieve these goals with regard to the diversity of individuals that mandatory arrest laws bring into the criminal justice system. This Article has argued that court-mandated batterer intervention should be modified to account for offenders, including heterosexual women and same-sex abusers, who do not neatly fit the feminist paradigm; the contextual factors contributing to intimate-partner abuse; and the need to develop new approaches to prevent recidivism by high-risk male offenders who are ineffectively reached by the leading

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



feminist curriculum. Feminism played an essential role in bringing intimate-partner abuse to the forefront of public attention and governmental action, but it is now time to abandon the stereotype of the coercive, controlling, heterosexual, male batterer in favor of a more nuanced understanding of why domestic violence occurs, what behavior it encompasses, and how it can be prevented.

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



## APPENDIX A:

### CITATIONS TO STATE AND LOCAL STANDARDS FOR BATTERER INTERVENTION PROGRAMS

**Alabama**

- E-mail from Jawandalyn Brooks, Project Dir., Ala. Coal. Against Domestic Violence, to Jennifer Sisk, research assistant to Carolyn B. Ramsey, Professor of Law, Univ. of Colo. Law Sch. (March 25, 2015) (noting that standards have been removed and reforms are under consideration).

**Alaska**

- ALASKA ADMIN. CODE tit. 22, §§ 25.010–25.090 (1998).

**Arizona**

- ARIZ. ADMIN. CODE §§ R9-20-201–R9-20-208 (2013).

**California**

- SAN DIEGO CTY. TASK FORCE ON DOMESTIC VIOLENCE, TREATMENT AND INTERVENTION STANDARDS.
- SANTA CLARA CTY. PROBATION DEP'T, STANDARDS FOR BATTERERS PROGRAMS AND CERTIFICATION (2014).

**Colorado**

- COLO. DOMESTIC VIOLENCE BD., STANDARDS FOR TREATMENT WITH COURT ORDERED DOMESTIC VIOLENCE OFFENDERS (2005).

**Delaware**

- DEL. DOMESTIC VIOLENCE COORDINATING COUNCIL, DOMESTIC VIOLENCE INTERVENTION STANDARDS (2012).

**Florida**

- FLA. STAT. ANN. § 741.325 (West 2014.)
- BATTERER INTERVENTION CERTIFICATION MINIMUM STANDARDS, FL. ADMIN. CODE, Ch. 65H-2 (2007) (rule repealed, but providers may continue to use it as a guide to best practices).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



**Georgia**

- GA. COMP. R. & REGS. 125-4.9.01–125.4.9.14 (2003).

**Hawaii**

- CHILD & FAMILY SERV., PARENTS & CHILDREN TOGETHER, AND HAWAI'I ST. JUDICIARY, FIRST CIRCUIT, HAWAI'I BATTERER INTERVENTION PROGRAM STANDARDS (2010).
- CHILD & FAMILY SERV., DOMESTIC VIOLENCE CLEARINGHOUSE & LEGAL HOTLINE, HAWAII ST. JUDICIARY, FIRST CIRCUIT, HAWAII ST. COAL. AGAINST DOMESTIC VIOLENCE, PARENTS & CHILDREN TOGETHER, DOMESTIC VIOLENCE TASK FORCE GROUP, AND DOMESTIC VIOLENCE WORKING GROUP, HAWAII BATTERERS INTERVENTION PROGRAM STANDARDS FOR THE ISLAND OF OAHU, HAWAII (2002).

**Idaho**

- IDAHO COUNCIL ON DOMESTIC VIOLENCE & VICTIM ASSISTANCE, MINIMUM STANDARDS FOR DOMESTIC VIOLENCE OFFENDER INTERVENTION PROGRAMS (2011).

**Illinois**

- ILL. ADMIN. CODE. tit. 89, § 501 (2001).

**Indiana**

- IND. COAL. AGAINST DOMESTIC VIOLENCE, MINIMUM STANDARDS FOR BATTERERS' INTERVENTION PROGRAMS CERTIFICATION AND IMPLEMENTATION GUIDANCE (2015).
- IND. COAL. AGAINST DOMESTIC VIOLENCE, MINIMUM STANDARDS FOR BATTERERS' INTERVENTION PROGRAMS BIP PARTICIPANT NOTICE OF RIGHTS (2015).

**Iowa**

- IOWA DEP'T OF CORR., STANDARDS FOR IOWA DOMESTIC ABUSE PROGRAM (2014) (on file with author).

**Kansas**

- KAN. OFFICE OF ATTORNEY GEN., BATTERER INTERVENTION PROGRAM (2012–2016).

**Kentucky**

- KY. CABINET FOR HEALTH & FAMILY SERVS., DEP'T OF CMTY. BASED SERVS., BATTERER INTERVENTION (2013).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



**Maine**

- 03-201-15 ME. CODE R. §§ 1–6 (LexisNexis 1998).

**Maryland**

- GOVERNOR'S FAMILY VIOLENCE COUNCIL, OPERATIONAL GUIDELINES FOR ABUSER INTERVENTION PROGRAMS IN MARYLAND.

**Massachusetts**

- COMMONWEALTH OF MASS., EXEC. OFFICE OF HEALTH & HUMAN SERVS., DEP'T OF HEALTH, GUIDELINES AND STANDARDS FOR THE CERTIFICATION OF INTIMATE PARTNER ABUSE EDUCATION PROGRAMS (2015).

**Michigan**

- GOVERNOR'S TASK FORCE ON BATTERER INTERVENTION STANDARDS, BATTERER INTERVENTION STANDARDS FOR THE STATE OF MICHIGAN (1998).

**Minnesota**

- MINN. STAT. § 518.B02 (2014).

**Missouri**

- MO. COAL. AGAINST DOMESTIC & SEXUAL VIOLENCE, STANDARDS AND GUIDELINES FOR BATTERER INTERVENTION PROGRAMS INCLUDING A SELF-EVALUATION TOOL FOR BATTERER INTERVENTION PROGRAMS (2006).

**Montana**

- MONT. CODE ANN. §§ 45-5-206, 45-5-231– 45-5-234 (West 2012).

**Nebraska**

- NEB. DOMESTIC VIOLENCE SEXUAL ASSAULT COAL., DOMESTIC VIOLENCE OFFENDER PROGRAM STANDARDS (2012).

**Nevada**

- NEV. ADMIN. CODE, § 228 (West 1998).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



**New Hampshire**

- GOVERNOR'S COMM'N ON DOMESTIC & SEXUAL VIOENCE, BATTERERS INTERVENTION SUBCOMM., BATTERERS INTERVENTION STANDARDS (2002).

**New Jersey**

- N.J. COAL. FOR BATTERED WOMEN, BATTERER'S PROGRAM STANDARDS (2004).

**New Mexico**

- N.M. DOMESTIC VIOLENCE OFFENDER TREATMENT/ INTERVENTION, PROGRAM STANDARDS (2013).

**North Carolina**

- 17 N.C. ADMIN. CODE .0701 (West 2016).

**North Dakota**

- N.D. ADULT BATTERER TREATMENT FORUM, NORTH DAKOTA ADULT BATTERER TREATMENT STANDARDS (2012).

**Ohio**

- SUPREME COURT OF OHIO, COURT CHECKLIST FOR BATTERER INTERVENTION PROGRAMS.

**Oklahoma**

- OKLA. ADMIN. CODE §§ 75:25-1-1–75:25-1-5 (2011).

**Oregon**

- OR. ADMIN. R. 137-087-0000 (2016).

**Rhode Island**

- BATTERER'S INTERVENTION PROGRAM STANDARDS OVERSIGHT COMM., BATTERER'S INTERVENTION PROGRAM COMPREHENSIVE STANDARDS (2007).

**South Carolina**

- S.C. DEP'T OF SOC. SERVS., STANDARDS OF CARE FOR BATTERERS TREATMENT (2005).

**Tennessee**

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



- TENN. COMP. R. & REGS. 0490-1-.01–0490.1.09 (1999).

**Texas**

- TEX. DEP'T OF CRIMINAL JUSTICE CMTY., JUSTICE ASSISTANCE DIV., BATTERING INTERVENTION AND PREVENTION PROGRAM (BIPP) ACCREDITATION GUIDELINES (2014).

**Utah**

- UTAH DEP'T OF HUMAN SERVS., OFFICE OF LICENSING, OUTPATIENT TREATMENT RULES CHECKLIST (1998), http://hslic.utah.gov/docs/checklist%20%20outpatient%20treatment. pdf.
- UTAH DIV. OF CHILD & FAMILY SERVS., DOMESTIC VIOLENCE PRACTICE GUIDELINES (2010).

**Vermont**

- VT. DEP'T OF CORR. AGENCY OF HUMAN SERVS., VERMONT DOMESTIC ABUSE TEAMS AND PROGRAMS.
- VT. COUNCIL ON DOMESTIC VIOLENCE, VERMONT STATEWIDE STANDARDS FOR PROGRAMMING FOR MEN WHO BATTER WOMEN (2010).

**Virginia**

- VA. SEXUAL & DOMESTIC ACTION ALL., VIRGINIA STANDARDS FOR BATTERER INTERVENTION PROGRAMS (2010).

**Washington State**

- WASH. ADMIN. CODE § 388-60-0245 (2001).

**Washington, DC**

- COURT SERVS. & OFFENDER SUPERVISION AGENCY FOR D.C., STRATEGIC PLAN FISCAL YEARS 2014–2018 (2013).

**West Virginia**

- W.VA. CODE R. §§ 191-3-1–191-3-3 (2003).

**Wisconsin**

- WIS. BATTERERS TREATMENT PROVIDER ASS'N, WIS. COAL. AGAINST DOMESTIC VIOLENCE, MALE BATTERERS TREATMENT STANDARDS FOR WISCONSIN BATTERERS TREATMENT PROVIDER ASSOCIATION (2007).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 7



**Wyoming**

- GOVERNOR'S DOMESTIC VIOLENCE ELIMINATION COUNCIL, STANDARDS FOR MALE BATTERER INTERVENTION IN THE STATE OF WYOMING (2010).

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 8

Australian Government
Department of Social Services

# Gender Inequality and Violence against Women

What does the evidence say?

April 2018



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 8



# Contents

**Purpose and Objectives** ..... 3
*Intended audience* ..... 3
*What this paper is not* ..... 3
**Key messages** ..... 4
**Our policy frameworks and initiatives** ..... 4
From 'Change the Story: A shared framework for the primary prevention of violence against women and their children in Australia', Our Watch, 2015 ..... 4
From 'Reducing Violence against Women and their Children, Research informing the development of a national campaign', commissioned by DSS, 2015 ..... 4
From the 'National Plan to Reduce Violence against Women and their Children 2010-2022', Council of Australian Governments, 2010 ..... 5
*So what is the issue with targeting gender inequality as a key factor?* ..... 6
**Tracking attitudinal change and violence rates** ..... 7
*National Community Attitudes towards Violence against Women Survey* ..... 7
*Personal Safety Survey* ..... 7
**The results are in:** ..... 8
**The dilemma for policymakers** ..... 9
**Data from the European Union** ..... 10
**Data from the Asia-Pacific** ..... 12
**Other inconsistencies** ..... 13
*Hearing the voice of victims of VAW* ..... 13
*Case Study* ..... 13
*Recognising the socioeconomic dimensions of VAW* ..... 13
**Questions for policymakers** ..... 14
**Where to from here?** ..... 16~~15~~
**References** ..... 18~~17~~
**Contacts** ..... 18~~17~~
**Attachment A: What drives and reinforces violence against women? From Our Watch's Change the Story** ..... 2
**Attachment B: Factors in addition to gender inequality that are associated with, or contribute to, family and domestic violence** ..... 3

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 8



# Purpose and Objectives

This paper was requested by s 22 in April 2018.

This paper will provide recent and reliable data insights that question the prevailing logic that gender inequality (GI) is a 'key' or 'causal' factor driving violence against women (VAW) perpetration (henceforth referred to as 'the position').

The objectives of this paper are to:

1. inform mid to senior level policymakers of the potential pitfalls of the position
2. improve senior DSS policymakers' capacity to respond to critics of the position
3. provide frank advice in the spirit of impartial policy debate and improvement.

### *Intended audience*

Policymakers with a commitment to evidence-based policy and a good background knowledge of related initiatives including the *National Plan to Reduce Violence Against Women and their Children 2010-2022* (National Plan), managed by Family Safety Branch, the National Campaign to Reduce Violence Against Women (National Campaign), managed by Communication Services Branch, and the work of Our Watch and Australia's National Research Organisation for Women's Safety (ANROWS).

### *What this paper is not*

This discussion paper is deliberately brief and due to timing and resource limitations:

- is not a systematic review of the evidence that originally supported the position in 2010, but rather a scan of more recent (~within last five years) evidence that has come to the attention of the Department in the course of the National Plan's implementation
- is not intended to attack the position maliciously, nor to dismiss GI as a legitimate factor correlated with VAW perpetration
- is not intended to address another associated policy debate about whether male and female victims of violence are being supported equally by our initiatives
- is not recommended for readers new to the subject matter, as little background information is provided.



Document release under the Freedom of Information Act 1982 (Cth)
by the Department of Social Services

DSS - FOI LEX 56983 - Document 8



# Key messages

- No single factor alone causes VAW. VAW is a complex social phenomenon occurring as a result of various contributing factors.
- Gender inequality, including gender inequitable attitudes, does not cause VAW. However, it has been consistently identified by reputable studies to be correlated with VAW.
- Based on recent data from international studies, it does not appear gender inequality is significantly more correlated with VAW than other contributing factors.
- In Australia, attitudes towards VAW are improving at the same time as the prevalence of VAW is increasing.
- More research is needed, from the Australian setting, to inform anti-VAW policies into the future.

# Our policy frameworks and initiatives

Since at least 2010, the prevailing logic underpinning the Department's anti-VAW initiatives, including the National Plan, is that GI is a key factor driving VAW perpetration in Australia.

This position is found throughout various Government policy documents and in those produced by Government-funded researchers:

From 'Change the Story: A shared framework for the primary prevention of violence against women and their children in Australia', Our Watch, 2015

- "What this framework makes clear is that gender inequality is the core of the problem and it is the heart of the solution." (Foreword)

From 'Reducing Violence against Women and their Children, Research informing the development of a national campaign', commissioned by DSS, 2015

- "There is strong community support for the cessation of extreme violence against women. A significant barrier to achieving this change, however, is low recognition of the heart of the issue and where it begins. There is a clear link between violence towards women, and attitudes of disrespect and gender inequality. These attitudes are unconscious, yet firmly entrenched, among many Australian adults and children. And as adults we are allowing young people to develop these attitudes from an early age. Often unknowingly, we are perpetuating the problem." (Executive Summary)



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 8



## From the 'National Plan to Reduce Violence against Women and their Children 2010-2022', Council of Australian Governments, 2010

- "By working together and challenging the attitudes and behaviours that allow violence to occur, all Australian governments are saying a very loud "no" to violence." (Foreword)
- "Evidence shows that key predictors of violence against women relate to how individuals, communities and society as a whole view the roles of men and women." (Page 14)
- "At every level of society, gender inequalities have a profound influence on violence against women and their children. Building greater equality and respect between men and women can reduce the development of attitudes that support or justify violence." (Page 15)
- "Broader social policy initiatives that address gender inequality and improve the status of women are critical to reducing violence against women. The strategy will use the link between gender equality and violence to create better outcomes." (Page 15)

In particular, the link between gender inequitable attitudes and VAW is presumed to have a strong association and that by improving attitudes towards VAW – and towards women more generally – a reduction in actual VAW will be achieved. This is the theory of change underpinning the National Plan and it is one that many of our funded projects depend on being right in order for the National Plan to succeed.

The National Plan was endorsed by the Council of Australian Governments (COAG) under the former Labor Government and released in 2011. While the National Plan recognises that 'all forms of violence against women are unacceptable', it explicitly targets two main types of violence: domestic and family violence and sexual assault (Page 1, Introduction, National Plan).

The rationale provided for targeting these two forms of violence is that these crimes are 'gendered' crimes. That is, they have an unequal impact on women, whereas physical violence is more likely to be directed towards men, most often by other men (COAG 2010; ABS 2016).

To this day, sexual assault and physical violence at the hands of a partner (henceforth 'partner violence') continue to have an unequal impact on women.

**Commented** s 22 I think you should also include on this page, that inte ly, gender inequality is considered the leading cause of VAW – can just include a paragraph citing UN Multi-Country Study, WHO methodology studies and their findings.



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

### *So what is the issue with targeting gender inequality as a key factor?*

Improving equality of opportunity between men and women is an admirable policy goal, it is an ideal the vast majority of Australians support and – in line with the evidence – should be recognised as one factor, among many, contributing to VAW in Australia.

The issue with the position today is that it appears to be over-emphasising the predictive relationship between GI, including gender inequitable attitudes, and VAW perpetration relative to other factors. This over-emphasis can be found throughout the individual actions of all of the Action Plans under the National Plan, the scenarios depicted by the 'stop it at the start' National Campaign, and across the research and advocacy work of Our Watch and ANROWS. In particular, readers are encouraged to see **Attachment A: Our Watch's explanation for 'what drives and reinforces violence against women?'**



*Still from 'stop it at the start' advertisement, funded by the Department of Social Services*




The trouble with over-emphasising the relative associative strength of two factors is that is has implications. Most importantly, it detracts energy and investment away from factors that have been found to be as much, if not more, correlated with VAW perpetration. The unintended result being the Department's initiatives may be disproportionately focussed on what is in reality just one part of the problem.

In the end, poorly targeted policies produce suboptimal results, and the ones who are affected most by these results are victims of violence across Australia.

On 12 April 2018, the Department received the results of the latest wave of the National Community Attitudes towards Violence against Women Survey (NCAS). These results follow those of the Personal Safety Survey (PSS) submitted to the Department by the Australian Bureau of Statistics in November 2017.

Among the findings of both surveys, it is becoming increasingly evident that national VAW prevalence rates **are not following improved attitudes towards VAW**.

Additional information on both the NCAS and PSS can be found on the next page.

**Commented** s 22 I think you need to explain what you mean by "improved attitudes towards VAW". I presume you mean increase in percentage of people who agree that VAW is never justified.



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 8



# Tracking attitudinal change and violence rates

## *National Community Attitudes towards Violence against Women Survey*

The NCAS was developed by VicHealth in partnership with The University of Melbourne, the Social Research Centre and experts across Australia, and supported by the Australian Government Department of Social Services as part of the National Plan.

The NCAS tracks Australians' attitudes towards VAW over time (2009, 2013, 2017) to gauge whether attitudes about a number of different topics have improved, including attitudes towards:

- Gender equality
- Sexual harassment
- Sexual violence including rape
- Gender roles

**Commented** s 22 Does it also track attitudes towards physical domestic violence? If so, I think that should be listed here too.

## *Personal Safety Survey*

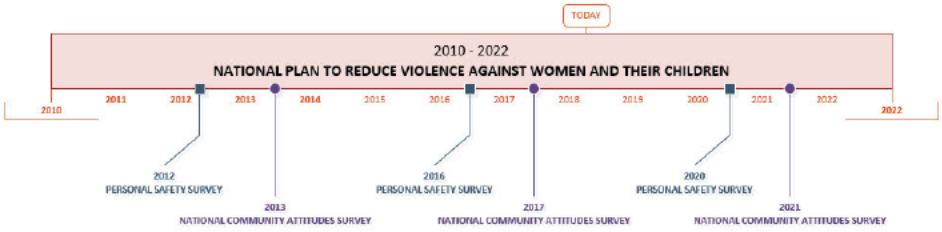
The PSS collects national information from men and women aged 18 years and over about the nature and extent of violence experienced since the age of 15. It also collects detailed information about men's and women's experience of:

- current and previous partner violence and emotional abuse since the age of 15
- stalking since the age of 15
- physical and sexual abuse before the age of 15
- witnessing violence between a parent and partner before the age of 15
- lifetime experience of sexual harassment
- general feelings of safety.

**Figure 1: Funding[1]**

| Survey Wave | | | | | |
|---|---|---|---|---|---|
| *PSS 2012* | *NCAS 2013* | *PSS 2016* | *NCAS 2017* | *PSS 2020* | *NCAS 2021* |
| $11.4 million | $3.1 million | $12.3 million | $3.1 million | TBC | TBC |

**Figure 2: Timing[2]**




[1] Approximate
[2] Approximate



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 8



# The results are in:

## Figure 3: Australian attitudes towards violence against women over time

## Assessment of attitudinal change

- **Australian attitudes towards violence against women, including more general attitudes towards women, have overwhelmingly improved under the National Plan (2009-2017)**

| *Proportion of respondents who disagree with the below statements* | 2009 | 2013 | 2017 |
|---|---|---|---|
| It's a woman's duty to stay in a violent relationship in order to keep the family together | 93.48 | 91.41 | 96.86 |
| Domestic violence can be excused if THE OFFENDER is heavily affected by alcohol | 94.37 | 91.99 | 95.47 |
| Domestic violence can be excused if THE VICTIM is heavily affected by alcohol | 92.82 | 90.17 | 95.31 |
| A woman has to have children to be fulfilled | 89.4 | 88.26 | 92.65 |
| Women who are sexually harassed should sort it out themselves rather than report it | 87.61 | 88.12 | 92.59 |
| A man is less responsible for rape if he is drunk or affected by drugs at the time | 93.14 | 91.75 | 91.92 |
| Discrimination against women is no longer a problem in the workplace in Australia | 90.18 | 86.79 | 90.43 |
| DV excused if results from getting so angry they temporarily lose control | 82.05 | 79.25 | 88.8 |
| Domestic violence is a private matter to be handled in the family | 87.88 | 83.99 | 88.21 |
| Women often say no when they mean yes. | 85.03 | 82.37 | 86.95 |
| If a woman is raped while she is drunk or affected by drugs she is at least partly responsible | 82.61 | 80.75 | 86.55 |
| Domestic violence can be excused if, afterwards, the violent person genuinely regrets what they have done | 77.54 | 79.02 | 86.39 |
| I don't believe it's as hard as people say it is for women to leave an abusive relationship* | 47.73 | 49.87 | 84.63 |
| On the whole, men make better political leaders than women | 77.06 | 71.73 | 84.43 |
| Men should take control in relationships and be the head of the household | 83.7 | 81.62 | 84.15 |
| MANY allegations of sexual assault made by women are false* | 69.41 | 69.91 | 81.3 |
| Women prefer a man to be in charge of the relationship | 72.9 | 69.57 | 73.94 |
| Rape results from men not being able to control their need for sex | 62.95 | 54.72 | 63.27 |
| Women going through custody battles OFTEN make up or exaggerate claims of domestic violence in order to improve their case | 35.03 | 33.83 | 47.28 |
| ***Proportion of respondents who agree with the below statements*** | **2009** | **2013** | **2017** |
| In domestic situations where one partner is physically violent towards the other it is entirely reasonable for the violent person to be made to leave the family home | 92.49 | 91.32 | 89.12 |
| It is a serious problem when a man tries to control his partner by refusing her access to their money | 81.35 | 79.21 | 83.55 |
| Women are more likely to be raped by someone they know than by a stranger | 83.75 | 78.07 | 79.47 |
| If I needed to get outside advice or support for someone about a domestic violence issue, I would know where to go | 66.73 | 60.08 | 61.09 |
| ***Proportion of respondents who recognise the below behaviours are a form of domestic violence*** | **2009** | **2013** | **2017** |
| Tries to scare or control by threatening to hurt other family members - a form of domestic violence? | 98.68 | 98.15 | 98.88 |
| Forces the other partner to have sex - a form of domestic violence? | 98.74 | 97.85 | 98.33 |
| Slaps or pushes to cause harm or fear - a form of domestic violence? | 98.38 | 98 | 98.25 |
| Throws or smashes objects to frighten or threaten - a form of domestic violence? | 98.15 | 97.56 | 97.14 |
| Stalking - a form of violence against women? | 93.41 | 90.88 | 94.19 |
| Controls the social life by preventing them from seeing family and friends - a form of domestic violence? | 87.25 | 87.94 | 93.42 |
| Repeatedly criticises to make partner feel bad or useless - a form of domestic violence? | 88.03 | 87.35 | 92.78 |
| Harassment via repeated emails, text messages and the like - a form of violence against women? | 88.94 | 86.85 | 92.48 |
| Controls the other partner by denying them money - a form of domestic violence? | 77.21 | 75.17 | 84.56 |

**question phrasing differed between surveys, question intent remained the same*
*Note: **Not for further distribution** until validated by a second analyst and authorised by the Social Research Centre*
*Source: NCAS 1995, 2009, 2013, 2017, funded by DSS*
*Data Analyst: Jacob Siddall, Research and Data Section, Family Safety Branch, 02 6146 6514, jacob.siddall@dss.gov.au*

*Key:*

*The colour scale is benchmarked in line with the values and colour below. Movements towards green are improvements. Movements towards red are deteriorations.*

33.83 | 40 | 50 | 60 | 70 | 80 | 98.88

Interpretation key to the left



**FOR OFFICIAL USE ONLY**

Document released under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

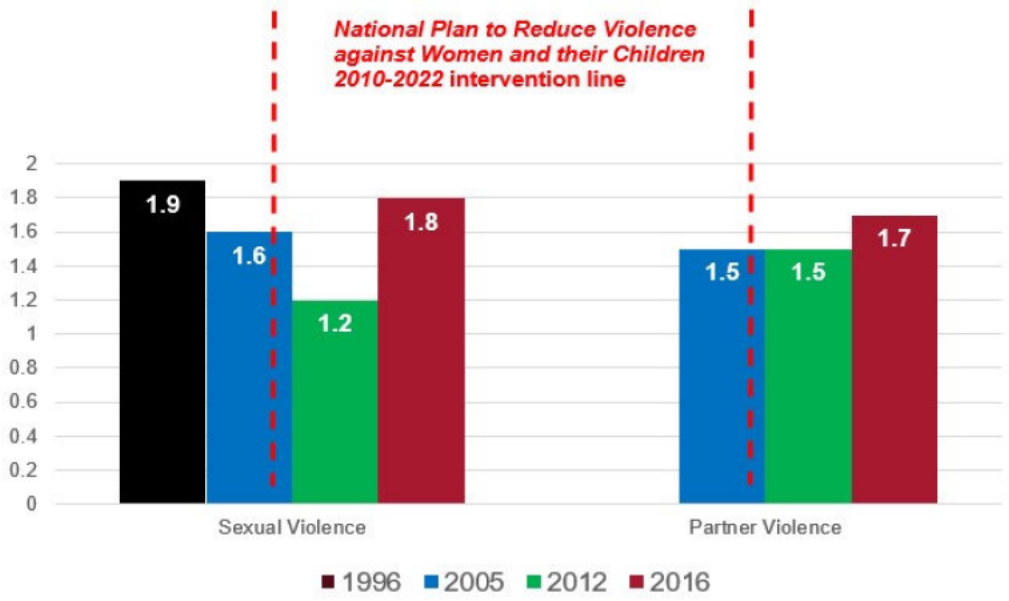
DSS - FOI LEX 56983 - Document 8



**Figure 4: Violence against Australian women over time, proportion (%) of women who experienced sexual violence and partner violence, during the last 12 months, 1996, 2005, 2012, 2016, Australia**

## Assessment of violence change

- **Sexual violence and partner violence against Australian women has increased under the National Plan (2005-2016)**




*Source: Australian Bureau of Statistics Personal Safety Survey, funded by DSS*

## Conclusions

- **In Australia, attitudes towards violence against women have <u>improved</u> while the prevalence of sexual and partner violence against women has <u>increased</u>.**
- **It appears, based on the latest available evidence, that the theory of change underpinning the National Plan may be incorrect.**



Taking the above information into account, it would be prudent for policymakers to at least be doubtful of an overt causal link between attitudes and VAW.

In fact, this was precisely the suggestion alluded to by researchers from the University of Melbourne, VicHealth and the Social Research Centre in the 2013 NCAS Full Technical Report:

***"The data [above] suggests that it is possible that reduction in blatant normative support for violence against women has not been matched by reductions in violence itself."***

Page 227, 2013 NCAS Full Technical Report

Puzzlingly, this message does not appear to be getting through to the overseers of the National Plan. As part of the evaluation of the Second Action Plan (2013-2016), KPMG found that most National Plan stakeholders considered 'that the various actions under this priority [National Plan Priority 1 – Driving whole of community action] were effective in driving cultural and attitudinal change to prevent violence against women and children' (KPMG 2017). This finding, unfortunately, is illustrative of an apparent disconnect between what officials, academics and sector representatives have theorised about the causes of VAW in the past and what our data tells us is actually happening in the community today.

## The dilemma for policymakers

You are now are aware of credible evidence contradicting the position.

A frequent response to this evidence is 'won't it take time for the violence rates to catch up with improvements in attitudes'. While this may well be the case, without any valid national comparisons it's essentially a strategic gamble. At stake? The safety of female victims of violence across Australia.

In the next section, this paper will present data from both Europe and the Asia-Pacific region that indicates it is more likely than not that violence rates will not follow attitudinal improvements. The real dilemma, then, especially for senior policymakers is: 'is it ethical to push forward with the narrow focus of the position, knowing what we now know?'



Document released under the Freedom of Information Act 1982 (Cth)
by the Department of Social Services

# Data from the European Union

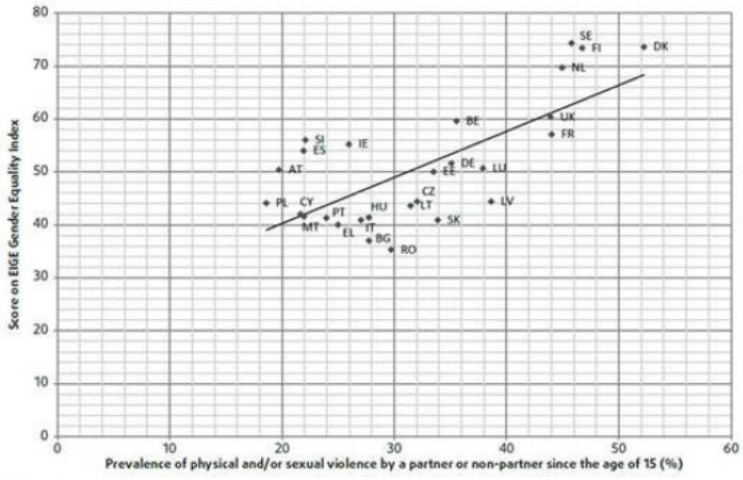
*Question for consideration:* If GI is the key factor driving VAW in Australia, why does data from similar regions of the world suggest the exact opposite is the case – that gender equality is actually positively correlated with an increased prevalence of VAW?

Below are the findings from a 2014 European Union (EU)-wide survey of women about their experiences of violence. The below scatter plot matrix displays the relationship between women's experience of physical and/or sexual violence since the age of 15, by a partner and/or non-partner (%), and each EU Member State's score on the European Institute for Gender Equality (EIGE) 'Gender Equality Index'.

The finding, as can be observed, is that those countries with higher Gender Equality Index scores also have a higher prevalence of VAW.

**Figure 5: Comparison of Gender Equality (GE) Score and violence, EU**

Figure 2.4: Relationship between women's experiences of physical and/or sexual violence since the age of 15, by a partner and/or a non-partner (%), and EU Member States' scores on the EIGE Gender Equality Index [a,b]




*Notes: a Correlation coefficient 0.714, $R^2$ = 0.510.*
*b Croatia is not included in EIGE's Gender Equality Index, so Croatia is excluded from this analysis.*
*Sources: FRA gender-based violence against women survey dataset, 2012; EIGE Gender Equality Index 2013*

*Source: 'Violence against women: an EU-wide survey' (2014), European Union (EU) Agency for Fundamental Rights*

Particularly troubling is that it appears the highest rates of VAW co-occur in those countries with higher gender equality (Norway, Sweden, Finland, and Denmark).

**Commented** s 22 Does this suggest that rates of violence in these countr over 40%?

This is also known as the 'Nordic Paradox'.



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 8



The relationship between the prevalence of VAW and Gender Equality Scores across the EU can be more clearly observed in Figure 6 below, where the lack of any clear pattern supporting the position can be seen.

Note that the 'GE Score' column provides the baseline visualisation, sorted from highest to lowest GE Score. Were gender inequality a causal factor for VAW across the EU, the two columns would presumably look much similar.

The aggregate GE Score and VAW Prevalence rate for the EU is outlined in the middle.

**Figure 6: EU Countries, comparison of Gender Equality (GE) Score and prevalence of VAW, since the age of 15**

| Country | GE Score | VAW Prevalence (%) |
|---|---|---|
| SE | 82.6 | 29.7 |
| DK | 76.8 | 32.6 |
| FI | 73.0 | 32.4 |
| NL | 72.9 | 31.5 |
| FR | 72.6 | 29.1 |
| UK | 71.5 | 29 |
| BE | 70.5 | 29.7 |
| IE | 69.5 | 25.6 |
| LU | 69.0 | 32.3 |
| SI | 68.4 | 22.4 |
| ES | 68.3 | 25.2 |
| **EU-28** | **66.2** | **27.5** |
| DE | 65.5 | 26.9 |
| AT | 63.3 | 25.6 |
| IT | 62.1 | 26.8 |
| MT | 60.1 | 25.2 |
| BG | 58.0 | 44.2 |
| LV | 57.9 | 38.2 |
| LT | 56.8 | 25 |
| PL | 56.8 | 22.1 |
| EE | 56.7 | 25.8 |
| PT | 56.0 | 24.5 |
| CY | 55.1 | 24.7 |
| CZ | 53.6 | 28 |
| HR | 53.1 | 23.2 |
| SK | 52.4 | 30 |
| RO | 52.4 | 25 |
| HU | 50.8 | 26.7 |
| EL | 50.0 | 27.4 |

*Data source: European Institute for Gender Equality, 2015*



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 8



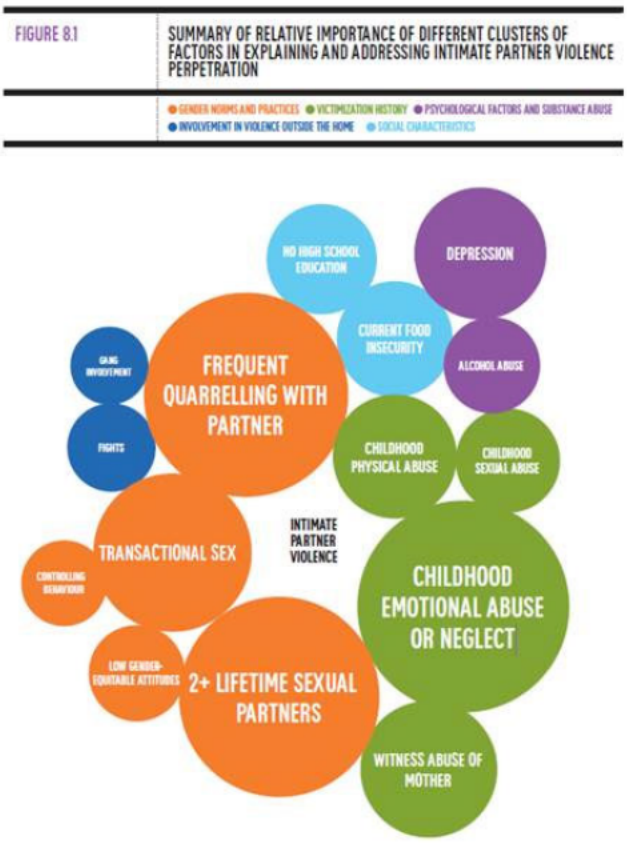
# Data from the Asia-Pacific

*Question for consideration:* If GI is the key factor driving VAW in Australia, why have United Nations-funded studies examining VAW across the Asia-Pacific determined that 'gender inequitable attitudes' are not significantly more correlated with intimate partner violence than other factors (factors such as childhood emotional abuse or neglect and alcohol abuse).

And if this is the finding across the Asia-Pacific, where gender equitable attitudes are less developed, what basis is there to claim that GI is driving VAW in a more socially progressive country like Australia?

**Commented** s 22 think in the Figure below, you should explain that the the circles reflect the importance of the factor in contributing towards the violence. ie. larger circle means it plays more of a causal role in the violence

**Figure 7: Summary of relative importance of different clusters of factors in explaining and addressing intimate partner violence perpetration**




*Source: 'Why do some men use violence against women and how can we prevent it? Quantitative findings from the United Nations Multi-Country Study on Men and Violence in Asia and the Pacific' (2013) report*



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 8



*Note: 'Low Gender Equitable Attitudes' can be observed in the bottom-left hand corner.*

# Other inconsistencies

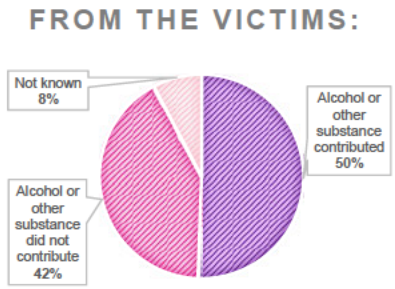
In addition to the National Plan's own tracking data suggesting flawed initial assumptions, other inconsistencies have been identified by the Research and Data Section, Family Safety Branch – inconsistencies sourced from our own datasets developed by the Australian Bureau of Statistics.

## *Hearing the voice of victims of VAW*

*Question for consideration:* If GI is the key factor driving VAW in Australia, why are the victims of VAW telling us there are other key factors at play?

The results of the 2016 PSS, conducted by the ABS and funded by DSS estimates that:

- ***50.3 per cent*** of female victims of sexual assault by a male perpetrator, in Australia, identify that alcohol or other substances contributed to their most recent incident of sexual assault (in the last 10 years). For physical assault by a male perpetrator, the same figure was ***48.8 per cent***.




*Case Study*

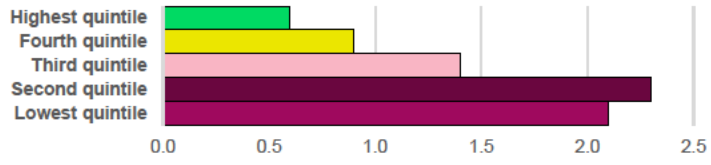
How many actions were dedicated to addressing alcohol and other drugs (AOD), as a contributing factor to VAW, under the Third Action Plan (2016-2019) under the National Plan?

*Answer: None*

## *Recognising the socioeconomic dimensions of VAW*

Furthermore, contrary to the popular opinion that VAW affects women regardless of their socioeconomic status are the findings of the 2016 PSS, which indicate that at least some forms of victimisation cluster towards the lower end of socioeconomic groupings.

**Figure 8: Experiences of sexual violence in the last 12 months, by household weekly income, proportion of females**






Document release under the Freedom of Information Act 1982 (Cth)
by the Department of Social Services

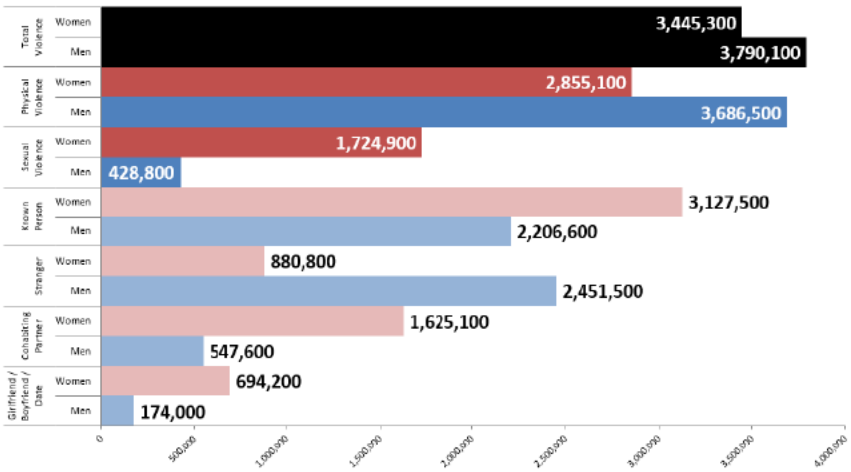
DSS - FOI LEX 56983 - Document 8



*Source: Australian Bureau of Statistics Personal Safety Survey 2016*

*An additional consideration:* If GI is the key factor driving sexual and partner violence against women in Australia, what is the key factor driving physical violence against men? And if another factor can be identified as driving the most prevalent form of violence in Australia, male on male physical violence, why is this factor relegated to second-tier status when conceptualising the potential causes of VAW?

**Figure 9: Victims of violence since the age of 15, by gender, broken down by selected perpetrator types**




*Source: 2016 Personal Safety Survey*

Men Women

*Note: Physical Violence and Sexual Violence counts are included in 'Total Violence', other bars are included within Physical Violence and Sexual Violence counts. Do not add figures together.*

# Questions for policymakers

Given that attitudes towards VAW and VAW perpetration might not be as intimately linked as previously thought:

- was the allocation of $30 million towards media advertisements under the National Campaign to Reduce Violence against Women, managed by the Communication Services Branch, worth it?
- should we not redirect funds away from awareness raising activities towards programs that are more likely to make a difference?
- how do we strike the right balance between continuing to support GI-focussed actions while simultaneously broadening out our scope to target other factors associated with VAW?

**Commented** s 22 Perhaps suggest what other factors should be targeted here



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 8



- do you, as a policymaker, place more value on rigorous evidence-based policy development or pleasing stakeholders with a firmly entrenched view that GI causes VAW?

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 8



# Where to from here?

A sensible approach to evidence-based policy development is one that continuously looks to the latest available research findings and data insights for guidance.

In fact, this is formalised as a legislative requirement for all Commonwealth public servants under Section 10 of the *Public Service Act 1999*:

> "the APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence"
>
> (APS Values, under Impartial)

At the inception of the National Plan in 2010, the best available evidence suggested a unique relationship between attitudes towards VAW and VAW perpetration. Nearly a decade later, the evidence available has improved and as a result our capacity for better judgement has been lifted.

As raised earlier in the paper, the intention of this analysis is not to suggest that GI is unimportant, nor that it is disconnected from VAW. This paper instead aims to convey the message that if we genuinely want to reduce VAW in Australia, a more balanced and multi-disciplinary approach will likely achieve more than the 'gendered' approach has to date.

Based on the evidence presented in this paper, and informed by the intent of the APS Values, it is recommended:

| Recommendations | |
|---|---|
| 1 | DSS lead a strategic reconsideration of the relative strength of the link between GI and VAW. |
| 2 | As part of the suite of actions put forward under the ~~the~~ Fourth Action Plan (2016-2019) under the National Plan, which is currently being developed, GI focussed actions should be given no more priority than actions associated with other contributing factors referred to throughout this paper **(in particular those at Attachment B)**. |
| 3 | DSS provide a copy of this paper to the Minister's Office, in line with its legislated responsibility to provide Government with advice that is based on the best available evidence |
| 2 | DSS commission primary research, at the highest practicable standard of evidence by a cross-disciplinary university research team, to explore the relationship between VAW perpetration and factors including:<br>• Gender inequitable attitudes<br>• Alcohol and other drugs<br>• Mental health issues<br>• Childhood exposure to abuse and neglect |



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 8



| | |
|---|---|
| | • Family stability<br>• Employment status<br>• Low socioeconomic status<br>• Indigenous status<br>• Religion<br>• Demographic status (including age, country of birth, primary language spoken at home, gender identity, biological sex, sexual orientation, and relationship status) |
| 3 | The National Plan Implementation Executive Group commit to improving the standard of evidence supporting National Plan actions and projects into the future. |



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 8



# References

Australian Bureau of Statistics (2012, 2016), Personal Safety Survey, funded by the Department of Social Services

Council of Australian Governments (2010), National Plan to Reduce Violence against Women and their Children 2010-2022'

European Institute for Gender Equality (2015), data accessible at eige.europa.eu/gender-equality-index/2015/

European Union Agency for Fundamental Rights (2014), 'Violence against women: an EU-wide survey'

Fulu et al (2013), 'Why do some men use violence against women and how can we prevent it? Quantitative findings from the United Nations Multi-Country Study on Men and Violence in Asia and the Pacific'

KPMG (2017), Evaluation of the Second Action Plan of the National Plan to Reduce Violence against Women and their Children 2010-2022, Final Evaluation Report, Overall Assessment.

Our Watch (2015), Change the Story: A shared framework for the primary prevention of violence against women and their children in Australia'

TNS (2015), Reducing Violence against Women and their Children, Research informing the development of a national campaign', commissioned by the Department of Social Services

VicHealth (2009, 2013), National Community Attitudes towards Violence Against Women Survey, 2009 and 2012, funded by the Department of Social Services

# Contacts

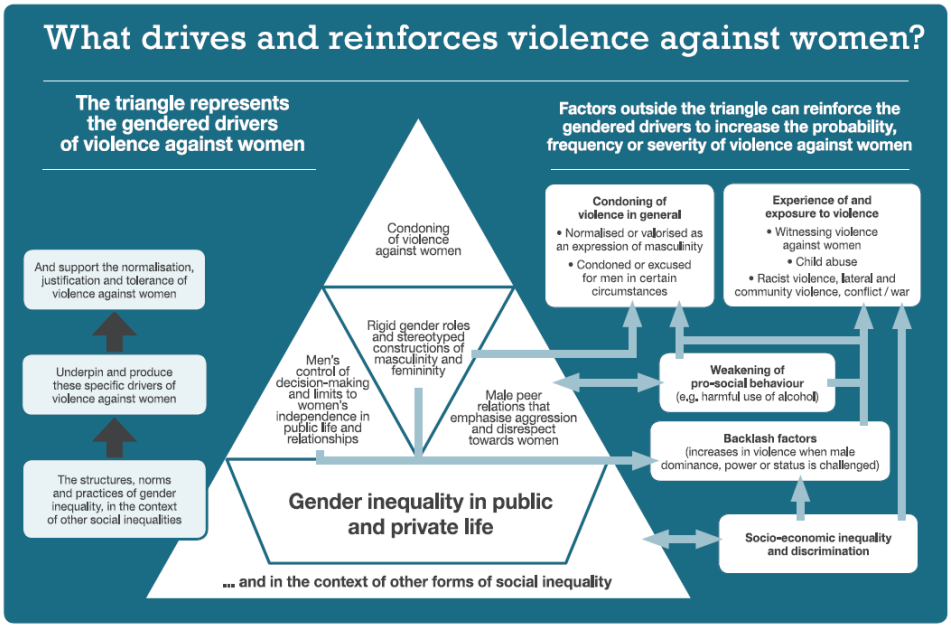
If you have any questions or feedback please contact:

s 22 Data Analyst, Research and Data Section
Family Safety Branch, Families and Communities Reform Group
**Australian Government Department of Social Services**
s 22 | s 22 @dss.gov.au



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

## Attachment A: What drives and reinforces violence against women? From Our Watch's Change the Story






Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 8



## Attachment B: Factors in addition to gender inequality that are associated with, or contribute to, family and domestic violence

| *Factor* | *Evidence* | *Source* |
|---|---|---|
| *Alcohol* | • Alcohol consumption, by either the offender or the victim, preceded over a third (n=179; 37 per cent) of all homicide events from 2010-11 to 2011-12.<br>• Alcohol consumption by an offender was recorded for more than a third of all domestic homicides (n=44; 38 per cent), including intimate partner homicides. | Homicide in Australia: 2010–11 to 2011–12: National Homicide Monitoring Program report, *Australian Institute of Criminology* |
| | • Australians were asked in 2017 if they perceived a link between alcohol and family and domestic violence. An overwhelming majority (92 per cent) of Australians believe there is a link, with 80 per cent of these Australians indicating that governments should be doing more to address the role alcohol plays in family and domestic violence.<br>• One in five (21 per cent) parents or guardians with children under the age of 18 years report that their child has been harmed or put at risk of harm because of someone else's drinking. | Foundation for Alcohol Research and Education, Annual Alcohol Poll, 2017 |
| | • Findings from the panel survey show that alcohol was involved in 34 percent of intimate partner violence (IPV) incidents, and 29 percent of family violence (FV) incidents.<br>• Alcohol-related IPV incidents were more likely to result in either a physical (34.4 per cent) or psychological injury (20.6 per cent) compared with those that did not involve alcohol (19.6 per cent physical; 13 per cent psychological). | Alcohol/Drug-Involved Family Violence in Australia (ADIVA): Final Report, National Drug Law Enforcement Research Fund |
| *Other Drugs* | • Thirteen percent of Intimate Partner Violence (IPV) and 12 percent of Family Violence (FV) incidents were drug-related (i.e. consumed by someone involved in the incident).<br>• Physical violence occurred at more than 57 percent of alcohol-related IPV and 52 percent of FV incidents; and at 60 percent of drug-related IPV incidents, and half of drug-related FV incidents.<br>• Almost double the proportion of drug-related IPV incidents resulted in a physical injury (43 | Alcohol/Drug-Involved Family Violence in Australia (ADIVA): Final Report, National Drug Law Enforcement Research Fund |



Document release under the Freedom of Information Act 1982 (Cth)
by the Department of Social Services

DSS - FOI LEX 56983 - Document 8



| | | |
|---|---|---|
| | per cent) compared with drug-unrelated incidents (22 per cent). | |
| | • Research has shown that abusive males with alcohol or drug problems inflict violence against their partners more frequently, are more likely to inflict serious injuries, are more likely to be sexually assaultive and are more likely to be violent outside the home than abusers without a history of substance abuse. | Parliamentary Library: Parliament of Australia, *Domestic, Family and Sexual Violence in Australia - An Overview of the Issues*, 2014 |
| *Gambling* | • Research by the Australian National University and Southern Cross University suggests a link between the number of poker machines in an area and levels of domestic violence.<br>• The research, published in October 2016, found a statistically significant correlation between poker machine density and police-recorded domestic violence rates among postcodes. This relationship existed even after accounting for the contextual factors listed above.<br>• In terms of relative risk, the police recorded 20 per cent fewer family violence incidents and 30 per cent fewer domestic violence assaults when postcodes with no poker machines were compared with postcodes with at least 75 poker machines per 10,000 people.<br>• Similar patterns were evident when the number of poker machine venues was analysed instead of the number of poker machines. | 'The relationship between electronic gaming machine accessibility and police-recorded domestic violence: A spatio-temporal analysis of 654 postcodes in Victoria, Australia, 2005–2014', Francis Markham, Bruce Doran, Martin Young, 2016 |
| | • Meta-analyses revealed that over one third of problem gamblers report being victims of physical IPV (38.1 per cent) or perpetrators of physical IPV (36.5 per cent) and that the prevalence of problem gambling in IPV perpetrators is 11.3 per cent.<br>• Although the exact nature of the relationships between problem gambling and IPV is yet to be determined, the findings suggest that less than full employment and clinical anger problems are implicated in the relationship between problem gambling and IPV victimization and that younger age, less than | Problem Gambling and Intimate Partner Violence: A Systematic Review and Meta-Analysis, Dowling et. al., 2016 |



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 8



| | | |
|---|---|---|
| | full employment, clinical anger problems, impulsivity, and alcohol and substance use are implicated in the relationship between problem gambling and IPV perpetration. | |
| *Family Breakdown* | • 60 per cent of separated parents reported a history of emotional abuse and/or physical violence before/during separation, and this continued for a slightly lower proportion after separation, with a longer term insight suggesting that problematic dynamics continue for 25 per cent of separated parents, up to five years after their separation. | Australian Institute of Family Studies, *Experienced of Separated Parents Study*, October 2015 |
| *Separation* | • For women who are experiencing family and domestic violence (FDV), the high risk periods include immediately prior to taking action, and during the initial stages of or immediately after separation.<br>• Victims who stay with the perpetrator because they are afraid to leave often accurately anticipate that leaving would increase the risk of lethal assault.<br>• The data on time-since-separation suggests that women are particularly at risk within the first two months. | Fact Sheet 5: Key Risk Factors (Family and Domestic Violence), Western Australia Department of Child Protection, |
| *Life Transition - Pregnancy* | • The 2012 Personal Safety Survey identified that of women who had experienced partner violence since the age of 15:<br>○ 21.7 per cent of women had experienced violence perpetrated by their current partner while pregnant (78.3 per cent had not); and<br>○ 53.9 per cent of women had experienced violence perpetrated by their previous partner while pregnant (46.1 per cent had not). | 2012 ABS Personal Safety Survey |
| *Childhood Trauma* | • Women who have experienced abuse during childhood are one and a half times more likely to experience violence in adulthood than those who did not. | *Mouzos, J & Makkai, T., Women's experiences of male violence: findings from the Australian component of the International Violence Against* |



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 8



| | | |
|---|---|---|
| | | *Women Survey (IVAWS), 2004* |
| *Non-Fatal Strangulation* | • This study identifies and quantifies Non-fatal strangulation (NFS) risk factors in female sexual assault and highlights the strong association with intimate partner sexual assault.<br>• Of women assaulted by an intimate partner, 22.5 per cent gave a history of NFS compared to less than 6 per cent of women assaulted by other assailant types.<br>• Of all sexual assaults with NFS, intimate partners were the assailant in 58.2 per cent of cases, whereas in sexual assault cases without NFS, intimate partners were the assailant in 15.9 per cent of cases.<br>• The likelihood of NFS was 8.4 times higher in women sexually assaulted by an intimate partner than women assaulted by an acquaintance/friend and 4.9 times higher than women assaulted by a stranger. | Zilkins, R.R, et al., *Non-fatal strangulation in sexual assault: A study of clinical and assault characteristics highlighting the role of intimate partner violence*, 2016. |
| | • Research indicates that women who have experienced NFS by a perpetrator in the last year were twice as likely to be killed as women who had not. | Block, C., *Reducing Intimate Partner Homicide Rates: What are the Risk Factors for Death when a Woman is being Abused?*, 2009. |
| *Socioeconomic Disadvantage* | • In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture. The low social and economic status of women can be both a cause and a consequence of this violence. | Chapter 6: Violence against women, The World's Women 2010, *United Nations, 2010* |
| | • The risk of IPV varies greatly across the community. Factors associated with a higher risk of IPV included being younger, Australian-born, having a long-term health condition, lacking social support, experiencing financial stress, having previously been a victim of child abuse, and having experienced emotional abuse by an intimate partner.<br>• The associations with domestic violence have been the subject of extensive research. The | Intimate partner violence against women in Australia: related factors and help-seeking behaviours, NSW bureau of Crime Statistics and |



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 8



| | |
|---|---|
| available evidence strongly suggests that women are more likely to be subjected to assaults if they experienced violence as a child, if they are sole parents, if they live in a relationship where alcohol is a problem, if they have a current partner who is domineering or controlling, or if their partner witnessed IPV perpetrated by their fathers (ABS, 2006; Coumarelos & Allen, 1998; Ferrante, Morgan, Indermaur, & Harding, 1996; Johnson, 2006; Johnson et al., 2010; Mouzos & Makkai, 2004).<br>• A number of studies have also found that the risk of physical and sexual violence is higher among women experiencing economic and personal stress (Benson, Fox, DeMaris, & Van Wyk, 2003; Cunradi, Caetano, & Schafer, 2002; Lauritsen & Schaum, 2004; Smith & Weatherburn, 2013; Van Wyk, Benson, Fox, & DeMaris, 2003; Weatherburn, 2011) and lower among women who can call on others for practical and emotional support (Smith & Weatherburn, 2013; Van Wyk et al. 2003; Weatherburn, 2011). | Research: Stavrou, E., Poynton, S. & Weatherburn, D, November 2016 |
| • Women were more likely to have experienced physical violence if they reported personal or financial stress, poor social networks or heavy alcohol consumption or were not married (or widowed) or were young. These associations were true both cross-sectionally and longitudinally. Changes in personal stress, financial stress and partner status were also found to be associated with changes in the risk of experiencing physical violence.<br>• Financial stress is not the only form of stress known to be associated with a higher risk of violence against women, though it has attracted the lion's share of attention. Cano and Vivian (2001) reviewed 17 studies that examined the relationship between life stressors (e.g. divorce or separation, death of a family member/close friend, serious illness, serious accident, mental illness, serious disability, inability to get a job, involuntary loss of job and gambling problems) and husband-to-wife violence. Thirteen of the studies found a strong relationship between these stressors and husband-to-wife violence. In his analysis of the GSS, Weatherburn (2011) also found a strong positive relationship between the number of personal stressors experienced by a | Personal stress, financial stress, social support and women's experiences of physical violence: A longitudinal analysis, NSW bureau of Crime Statistics and Research: Nadine Smith and Don Weatherburn, Contemporary Issues in Crime and Justice, Number 168, March 2013 |

**Commented** s 22 Not sure if this paragraph belongs here?

Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 8



| | | |
|---|---|---|
| | woman in the previous 12 months and the risk of violent victimisation. | |
| *Natural Disasters* | • In this research [about relationships following the 2009 'Black Saturday' bushfires in Victoria, Australia], family violence was present for 16 women.<br>• For nine women, it was a new experience since Black Saturday and for six, the violence had escalated or had been an isolated incident many years earlier.<br>• Of the 16 women who experienced violence since the fires, 15 women stated they were afraid of their partner. | 'The way he tells it…' Relationships after Black Saturday, Women's Health Goulburn North East: Parkinson, D |
| | • Two years after Hurricane Katrina, rates of lifetime intimate partner violence increased by 21 per cent compared to a decline in lifetime experiences of non-intimate partner sexual violence (Anastario, Lawry & Shehab 2009). | Domestic violence and natural disasters, Australian Domestic & Family Violence Clearinghouse: Sety, M. |
| *Age* | • Research suggests that inexperience, age differences in relationships, and lack of access to services exacerbate younger women's vulnerability to violence. | Flood, M and Fergus, L, *An assault on our future: the impact of violence on young people and their relationships*, 2008 |
| | • 13 per cent of women aged 18 to 24 years had experienced violence in the 12 months prior to the 2012 ABS Personal Safety Survey, a rate decreasing with age to less than 2 per cent of women aged 55 years and over. | Australian Bureau of Statistics, *4906.0 Personal Safety Survey*, Australia, 2012 |
| *LGBTI* | • While drug and alcohol misuse, mental disorders and intimate partner violence are associated with both opposite-sex and same-sex intimate partner homicide, sexual stigma, discrimination and marginalisation may be associated with an increased risk of such issues among same-sex attracted persons | *Gannoni, A and Cussen, T., Same-sex intimate partner homicide in Australia, 2014* (see Carvalho et al. 2011; House et al. 2011; GLBTI MAC 2009; Ritter, |



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 8



| | | |
|---|---|---|
| | | Matthew-Simmons & Carragher 2012). |
| | • A high proportion of same-sex attracted persons had experienced intimate partner violence (33%). This was most commonly reported among female same-sex attracted persons (41% *cf* 28% of male same-sex attracted persons. | Pitts M, Smith A, Mitchell A & Patel S., *Private lives—A report on the health and wellbeing of GLBTI Australians*, 2006, Monograph series no. 57. Melbourne: Australian Research Centre in Sex, Health and Society |
| | • Of the 1,536 intimate partner homicide incidents recorded from 1989–90 to 2009–10 in Australia, approximately two per cent were classified as same-sex intimate partner homicides (n=31).. 97.9% (n=1,505) were classified as opposite-sex intimate partner homicides. | Same-sex intimate partner homicide in Australia, Trends & issues in crime and criminal justice no. 469, *Australian Institute of Criminology, March 2014* |
| *Poor Mental Health* | • Studies suggest a strong link between mental health conditions and the perpetration of family violence. In Moracco's study, 40 per cent of interviewees reported that their partners had a mental health condition.[3]<br>• Research by Shorey showed high rates of post-traumatic stress disorder, generalised anxiety disorder, panic disorder and social phobia in men arrested for family violence.[4]<br>• Further the research indicated that increased depressive symptoms were strongly related to increases in rates of perpetration of family violence by men.[5]<br>• The most predominant type of disability reported in Victoria Legal Aid (VLA) data was a mental health issue. This was similar across all categories of clients (Duty lawyer/legal advice, | Characteristics of respondents charged with breach of family violence intervention orders, *Victoria Legal Aid, November 2015* |

[3] Moracco, K., et al, p. 1211
[4] Shorey, R., et al , p. 741
[5] Ibid , p. 742



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 8



| | | |
|---|---|---|
| | single grants and multiple grants of assistance).<br>○ Of the 25 per cent of duty lawyer/legal advice clients who reported a disability, 61 per cent reported having a mental health issue.<br>○ Of the 26 per cent of single grant clients, 59 per cent reported having a mental health issue.<br>○ Of the 27 per cent of multiple grant clients, 57 per cent reported having a mental health issue. | |
| *Education Levels* | • The risk to pregnant women has found to be greatest among those women with lower levels of education, from disadvantaged communities and with unintended or unwanted pregnancies (Taft 2002). | Key issues in domestic violence, Research in Practice no. 7, *Anthony Morgan and Hannah Chadwick, Canberra: Australian Institute of Criminology, December 2009* |
| *Indigenous Status* | • In 2014-15, hospitalisation rates for Aboriginal and Torres Strait Islander family violence-related assaults were 530 females per 100 000 female population and 191 males per 100 000 male population. After adjusting for differences in population age structures, this was 32 times the rate for non-Indigenous females and 23 times the rate for non-Indigenous males. | Productivity Commissions: Steering Committee for the Review of Government Services, *Overcoming Indigenous Disadvantage: Key Indicators*, 2016 |
| | *Financial Stress*<br>• In 2013, 19.5 per cent of families experiencing multiple financial hardship also experienced partner violence compared to 11.2 per cent of families experiencing little or no financial hardship.<br>*Education Levels*<br>• Although there was no relationship between mother's education level and experience of | Partner violence in the Longitudinal Study of Indigenous Children (LSIC), *National Centre for Longitudinal Data, Department of* |



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 8



partner violence, there was a significant relationship between father's education level and partner violence.

- If fathers had an education level of year 10 or above (Wave 6), 11 per cent of mothers reported partner violence, but if fathers had a year 9 or below education, that percentage increased to 23 per cent.

*Employment*

- Partner violence was also significantly related to employment for both fathers and mothers. In 2013, mothers who were not employed were more likely to be victims of partner violence than mothers who were employed.
- Mothers whose partner was not employed were twice as likely to experience domestic violence as mothers whose partner was employed. This pattern was the same in 2010.

*Geographic Remoteness*

- Families living in remote areas were significantly more likely to rate family violence in the community as a big problem.
- For example, in very remote areas, 29.2 per cent of respondents said family violence was a big problem (happens all or a lot of the time); however, 17.5 per cent said it was a big problem in outer regional areas, and 7.5 per cent said it was a big problem in major cities.

*Socioeconomic Disadvantage*

- Perceptions of family violence in the community were also significantly related to the Socio-Economic Indexes for Areas (SEIFA) Index of Relative Socio-Economic Disadvantage.
- Among families living in the lowest SEIFA decile (where 43.4 per cent of LSIC families live), 23.5 per cent identified family violence as a big problem in their community, while only 8.8 per cent of families living in higher deciles (2–10) said the same.

*Social Services, 2015*



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

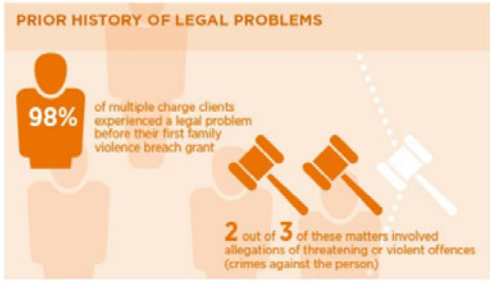
| | | |
|---|---|---|
| *Employment and Disability Status* |  | Characteristics of respondents charged with breach of family violence intervention orders, *Victoria Legal Aid, November 2015* |
| *CALD Status* | • Twenty-one per cent (21%) of respondents born overseas, including men and women, from a Non-Main English Speaking Background (NMESB), agreed with the statement 'A woman cannot be raped by someone she is in a relationship with'.<br>• For Australian-born respondents, five per cent (5%) agreed with this statement. | 2013 National Community Attitudes towards Violence Against Women Survey, *VicHealth* |
| | • Research has shown that women from CALD backgrounds are less likely to report domestic violence victimisation to police or to access mainstream services because of a perception that these services would not understand their particular situation and respond appropriately (WA Department for Communities 2006).<br>• Besides perceptions of being misunderstood, other factors may prevent victims from CALD backgrounds from accessing important services. The limited availability of culturally sensitive translator and interpreter support services can prevent victims with English as a second language from seeking help and removing themselves and their children from dangerous situations (Runner, Yoshihama & Novick 2009).<br>• Access to support services for refugees or newly emigrated persons can be further limited in instances where the victim is dependent on the perpetrator for residential or citizenship status (WCDFVS 2006). Insufficient knowledge of English is often used as a tool of power and control by perpetrators (NCRVWC 2009a).<br>• Recent research has indicated that the level of understanding and awareness of domestic violence in CALD communities has increased due to a combination of community education | Key issues in domestic violence, Research in Practice no. 7, *Anthony Morgan and Hannah Chadwick, Canberra: Australian Institute of Criminology, December 2009* |



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services

DSS - FOI LEX 56983 - Document 8



| | | |
|---|---|---|
| | and generational change, but that further work is required (Marcus & Braaf 2007). | |
| *Prior Offending* | • Analysis of the final dataset showed that approximately two-thirds (69 per cent, n=1,369) of Family Violence Perpetrators (FVPs) had been reported to the police for family violence offending and/or other types of offending during the preceding six year period.<br>• A larger number of FVPs had been reported to the police for non-family violence-related offences than family violence offences.<br>• Almost two out of five FVPs (39 per cent, n=769) were reported to the police on at least one prior occasion during the preceding six year period for family violence offences (hereafter referred to as prior FVPs). Fifty-nine percent (n=1,166) of the sample had been apprehended by police on at least one prior occasion for a non-family violence-related offence (hereafter referred to as prior other offenders).<br>• Prior other offenders were most commonly apprehended for traffic offences (76 per cent), other violent offences (45 per cent), disorder offences (44 per cent) and drink driving offences (43 per cent). Less common offence types were breach of violence orders (16 per cent) and drug-related offences (23 per cent).<br>• Over a quarter of the sample (29 per cent, n=566) had been reported to the police for both family violence offences and other offences during the preceding six year period. | Prior offending among family violence perpetrators: a Tasmanian sample, *Australian Institute of Criminology: Boxall, H., Payne, J. & Rosevear, L.* |
| |  | Characteristics of respondents charged with breach of family violence intervention orders, *Victoria Legal Aid, November 2015* |



Document release under the Freedom of Information Act 1982 (Cth) by the Department of Social Services