

Domestic Violence

Investigation & Prosecution,
Determining the Dominant Aggressor

... and how to prevent homicides.

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Lethality Assessment Factors

- Recent Separation
- Presence or Accessibility of Firearms
- Presence of stepchild in the home
- History of Violence
 - Escalation
 - Strangulation
 - Forced Sex
 - Abuse of or Threats to Animals to Maintain Control
- Use or threat of use of weapons
- Following or Monitoring Victim's Activities
- Child or Animal Abuse or threats to children or animals

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At what level of crime does the system have the most impact?

Victim & Children Wellbeing
+
Offender Accountability
at the **Misdemeanor Level**
=
Homicide Prevention

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Missouri Probation & Parole
24/7 Phone Line

800-816-8199

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Section 455.085 requires:

- 1) 1st call for adult abuse or assault
 - *Requires a written report if no arrest is made*
- 2) 2nd call within 12 hours to same address
 - *Requires arrest*
- 3) ANY call where p.c. for abusive violation
 - *Requires arrest*
- 4) Where respondent does not comply with custody order
 - *Requires arrest*

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Section 455.080 requires:

- 1) *Law enforcement officer shall inform the victim of available judicial remedies*
 - *Make sure this is documented in the report*
- 2) *Law enforcement shall provide transportation to a safe place*
 - *Make sure this is documented in the report*

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Section 455.085 requires:

The law enforcement officer *shall consider* any or all of the following in determining the primary physical aggressor:

- (1) The intent of the law to protect victims of domestic violence from continuing abuse;
- (2) The comparative extent of injuries inflicted *or* serious threats creating fear of physical injury;
- (3) The history of domestic violence between the persons involved.

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Why do victims stay?

- Start charming & falls in love
- Economic Control/ Abuse/ Property Damage/ Isolation
 - not recognized as abuse
- Violence can begin suddenly
- The Emotional Rollercoaster
 - demoralizes and desensitizes the victims & their families

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When is a battered person at highest risk?

- when they attempt to leave the relationship

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Victims are more likely to cooperate

- When the case goes faster
- When they feel safer
- When they feel supported
- When they have resources available to meet their basic needs
- When they trust that the abuser will be held accountable by the system

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Emotional effects on **CHILDREN**

- Take responsibility for abuse
- Guilt
- Stress-related illness
- Behavioral
- *Major factor contributing to runaway teenagers*
- Disregulated emotions
- Anxiety
- Fear of abandonment
- Disruption of eating/sleeping patterns
- More likely to be abusers as adults

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Child Witness Interviews



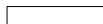
- The Child Advocacy Center wants to help!
- Any child that can verbalize can be interviewed
 - *they are never too young*
 - Variety of ways of coping
- Down on their eye level
 - *who you are and why you are there*
 - *Non verbal cues*
- Open- ended questions
 - *Discuss neutral topics 1st*
 - *If must offer options, this, that or s'thing else*
- Direct quotes in quotes



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The children are victims too:

- Studies show that in roughly half of homes with intimate partner violence the children are abused regularly as well
- Batterers are 700% more likely than nonbatterers to abuse children
 - Lundy Bancroft, "The Parenting of Men Who Batter"
- Mandated reporters



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Missouri Information Analysis Center

miac@mshp.dps.mo.gov

866 362 9950

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What is Evidence Based Prosecution?

*The decision for prosecution is based
on all available evidence
& not solely on the victim's desire to
cooperate with prosecution*

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Meeting the Burden of Proof

- Excited Utterances *plus* documented corroboration/ additional evidence
- Prior Inconsistent Statements
- Eye & Ear witnesses
- Statements of the accused
 - At the time of the crime
 - At the time of arrest
 - To 3rd parties
 - In jail calls, texts and letters



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Meeting the Burden of Proof ... and beating it

- The victim centered approach
 - Every moment she's cooperative- cherished resource
 - "turnovers" can be key
 - Victim is expected to back out until the moment she is on the witness stand
- Basic Investigation
 - Interviews - all available witnesses
 - Written/ Recorded Statements
 - Pictures
 - Seizing potential exhibits
 - Digital evidence

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Special concerns when proving a case without a victim's participation

- 1) Prove that the crime occurred (& that it was a crime)
- 2) Prove the identity of the perpetrator
- 3) Prove the relationship

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Interviewing the Suspect

- *Documenting his true nature*
 - *Record or write down all statements, both before and after Miranda warning*
 - True or false- good for impeachment

"What would (the victim) tell me about what you did?"

Part of the truth, in defendant's own words

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Excited Utterances

- Made at or near the time of the exciting event
 - *How much time had passed between the assault and the statement?*
- Still under the duress/ influence/ shock of the exciting event
 - *What was declarant's physical & mental condition at time of the statement?*
- About the exciting event
- Minimal independent corroboration

State v. Gyushaney, 592 SW3d 836 (ED 2020)

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If the victim doesn't testify...

- 1) Statements must have been made to address an *ongoing emergency*
 - Best if there is an explanation & a trial court finding of why the situation continued to be unstable at the time the statements were made

OR

- 2) Statements must have been made to a non-governmental actor
 - Family & friends
 - Neighbors or other 3rd party Witnesses
 - Medical professionals

OR

- 3) Prior Cross Examination

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Or Forfeiture of Confrontation Rights

- Giles v. California, U.S. Supreme Court (2008)
 - *If Defendant causes victim's absence by his own wrongdoing then he forfeits his right of confrontation.*
 - *Must show the abuser "intended" to cause the victim's absence BUT ... evidence of the continuing isolation & intimidation of the typical abusive relationship may be enough*

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Otherwise Inadmissible Statements Admissible

§491.016

- After a hearing, court finds by a preponderance
- Defendant's wrongdoing or acquiescence to wrongdoing
- With the purpose of causing unavailability
- Caused or substantially contributed to the witness' unavailability
- State exercises due diligence or witness deceased
- Witness fails to appear

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A New Investigation

"When the victim/ witness recants, that is the beginning of another phase of the investigation."

- *Russell Strand, 2013*

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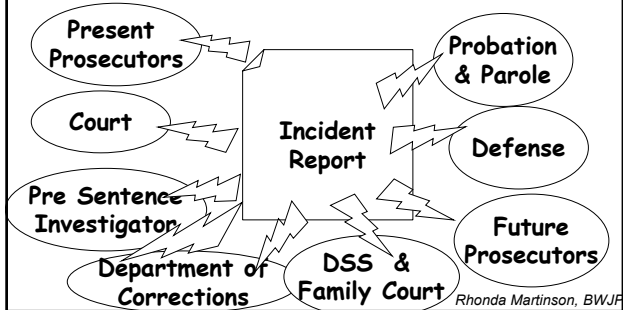
Sources of Information

- History of Isolation/ Intimidation
- Prior statements of Victim/ Defendant
- Emergency contacts/ friends/ family
- Jail calls/ VMs/ Other Audio Files
- Social media/ SMS
- Surveillance (stalk the stalker)
- Probation officer(s)
- Other team members
 - CD/ DSDS - School/ SRO
 - CAC - *Anyone else?*
 - Juvenile Office

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Multiple Readings of an Incident Report

Who reads your reports?



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Don't Forget the Basics

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Documenting Injury

- Even minor injuries can be significant if specifically described
- Precise description of injuries in report
 - *even if pictures taken*
- Exact nature of swelling described
 - *Location and degree*
 - *How they know this is not the shape of her face*
- Signed medical release
- Pictures
 - Face shot always
 - a universal object included
e.g. a quarter or a business card



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Documentation

- Corroborating details
 - *E.g. pieces of hair on floor*
 - *Dent in the wall*
- Scene photos
 - *Messed up room*
 - *Chair that he threw her into*

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Seize & photograph

Defendant kicked the victim in the stomach.

- Victim was pregnant.

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More & More Pictures

- At the scene
- At the hospital/ shelter/ place where she ends up that night
- At the warrant application / the next day
- Check for scars at Preliminary Hearing/ Grand Jury
- Ask about old scars/ marks from prior abuse

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Remember the Children

- Pedigree information of children present at scene included in the report even if they don't speak to the officers
- Every child photographed

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Domestic Assault 2nd

after January 1, 2017

- 565.073 (Class D Felony, up to 7 years)
- Knowingly causes physical injury by any means
- Including but not limited to
 - Dangerous instrument
 - Choking or strangulation
- To a domestic victim

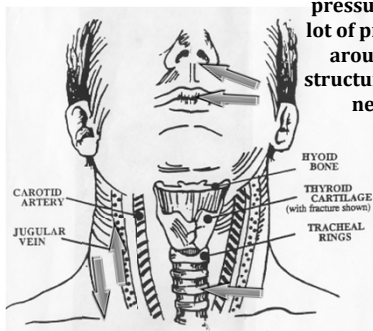
556.061 (36) "Physical injury", slight impairment of any function of the body or temporary loss of use of any part of the body;

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Neck Anatomy

Carotid Arteries:
Major vessels that transport oxygenated blood from the heart and lungs to the brain

Jugular Veins:
Major vessels that transport deoxygenated blood from the brain back to the heart



Vulnerable to just slight pressure, Not a lot of protection around the structures of the neck...

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Domestic Assault 3rd

- 565.074 (Class E Felony, up to 4 years)
- Attempts to cause physical injury *or*
- Knowingly causes physical pain or illness*
- To a domestic victim

556.061 (36) "Physical injury", slight impairment of any function of the body or temporary loss of use of any part of the body;

*Physical pain & illness are *not* defined in the new Code.

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Signs of Strangulation

- Often *very faint*
- Red marks, scratches or moon-shaped fingernail markings
 - *usually only the defensive wounds show*
- Petechial hemorrhages
- Hoarseness
- Shortness of breath
- Confused or altered mental state
- Loss of consciousness
- Ask victim if she experienced "rush to the head"
- Or loss of bodily function
- Or difficulty swallowing
- Or swelling of neck (measure) or face
- Determine precise manner of injury

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Dr. Smock's Top 25 Medical Consequences

- | | |
|---------------------------------|---|
| ■ Acute Death (3 ways to die) | ■ Jugular Venous Thrombosis |
| ■ Delayed death | ■ Airway Swelling/ Respiratory Failure |
| ■ Acute ischemic stroke | ■ Thyroid Storm |
| ■ Delayed cryptogenic stroke | ■ Vocal Cord |
| ■ Acute Anoxic Encephalopathy | ■ Fracture of the Hyoid Bone |
| ■ Delayed Anoxic Encephalopathy | ■ Thyroid or Cricoid Cartilage Fx |
| ■ Cervical Spine Injury | ■ Dysphagia/ Odynophagia |
| ■ Seizures | ■ Hypopharyngeal Rupture |
| ■ Sphincter Incontinence | ■ Tinnitus |
| ■ Carotid Artery Dissection | ■ Acquired Glottic/ Subglottic Stenosis |
| ■ Carotid Artery Hematoma | ■ PTSD |

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Domestic Assault 4th
565.074

- Attempted to cause physical injury, pain or illness
- Recklessly caused physical injury
- Caused offensive contact
- Placed in apprehension of immediate physical injury
- Caused the isolation of victim by unreasonably & substantially restricting or limiting his or her access to other persons, telecommunication devices or transportation

(Other options available)

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Stalking 2nd
565.227

- 1) Purposely disturbs or follows with intent to harass/ disturb another
- 2) Disturbs = Course of Conduct that:
 - Has no legitimate purpose
 - Causes a reasonable person *under the circumstances* to be:
 - Frightened, intimidated or emotionally distressed
- 3) Course of Conduct = 2 or more acts
 - Over a period of time, no matter how short
 - Continuity of purpose

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Stalking 1st Degree
§565.225

- Credible threat to:
 - Self OR family OR household members OR animals
 - Kill OR cause physical injury OR kidnap
- At least 1 of the acts in the course of conduct violates:
 - An order of protection OR
 - Condition of parole OR probation OR pretrial release
- At any time during the course of conduct
 - Victim is <17 years old & Defendant is > 21 years old
- Defendant previously found guilty of:
 - Domestic assault OR Violation of An Order of Protection OR
 - Any other crime where this victim was the victim before
- *As of August 28, 2016*, if victim is member of Safe at Home program and Defendant knowingly accesses victim's address.

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Harassment 1st

565.090

- 1) Without good cause
- 2) Engages in any act
- 3) With the purpose to cause emotional distress to another
- 4) Such act causes emotional distress

Class E Felony

"Emotional distress", something markedly greater than the level of uneasiness, nervousness, unhappiness, or the like which are commonly experienced in day-to-day living;

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Harassment 2nd

565.091

- 1) Without good cause
- 2) Engages in any act
- 3) With the purpose to cause emotional distress to another

Class A Misdemeanor

"Emotional distress", something markedly greater than the level of uneasiness, nervousness, unhappiness, or the like which are commonly experienced in day-to-day living;

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Kidnapping 1st

565.110

(most commonly used option)

- Removed from a location for the purpose of terrorizing
- Confined for a substantial period for the purpose of terrorizing
- *NOT Kidnapping 2nd* (formerly known as Felonious Restraint)

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Defenses to Parental Kidnapping & Child Abduction

565.160

It shall be *an absolute defense* to the crimes of parental kidnapping and child abduction that:

- (1) The person had custody of the child pursuant to a valid court order granting legal custody or visitation rights which existed at the time of the alleged violation, except that this defense is not available to persons charged with child abduction under subdivision (5) of subsection 1 of section 565.156;
- (2) The person had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond his or her control, and the person notified or made a reasonable attempt to notify the other parent or legal custodian of the child of such circumstances within twenty-four hours after the visitation period had expired and returned the child as soon as possible; or
- (3) The person was fleeing an incident or pattern of domestic violence.

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Rape, Sodomy & Sexual Abuse in the First Degree

566.030, 566.060 & 566.100

- Sexual Intercourse, Deviate Sexual Intercourse or sexual contact with another person who
 - Is incapacitated,
 - Is incapable of consent, or
 - Lacks the capacity to consent, or
 - By the use of forcible compulsion

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Trafficking for Sexual Exploitation 566.209

- knowingly recruits, entices, harbors, transports, provides, **or obtains by any means**, including but not limited to,
 - use of force,
 - fraud or deception,
 - coercion,
 - blackmail, or
 - causing or threatening to cause financial harm...
- for the use of such person in
 - sexual conduct, a sexual performance, or the production of explicit sexual material **without his or her consent**,

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Violation of Adult Abuse Act

455.085

- Valid Full Order of Protection or Ex Parte Order of Protection
- Actual notice given to suspect
- Violation pertains to:
 - 1) Initiating communication
 - 2) Abuse/ threat of abuse
 - 3) Entering the dwelling unit, place of employment or school*
 - 4) Stalking
 - 5) Child custody
 - 6) being within a prohibited distance of petitioner or child of petitioner*

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Victim Tampering

575.270

- Attempt to prevent or dissuade the victim
- From assisting in the prosecution of defendant or another
- Class C Felony or Class A Misdemeanor
- No possibility of parole

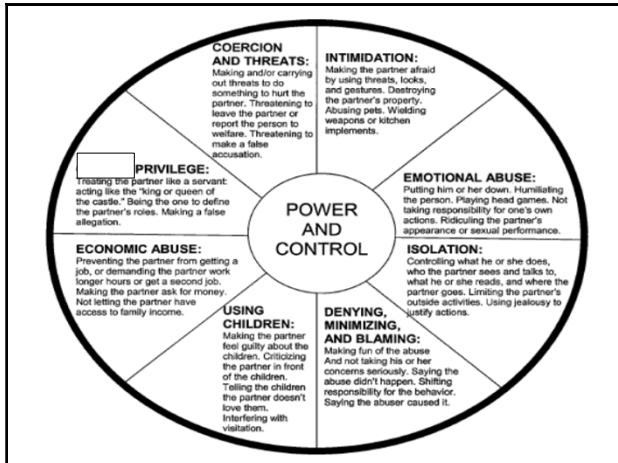
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Animal Abuse

578.012

- Intentionally kills
- Purposely causes injury or suffering
- Knowingly fails to provide adequate care or control of an animal in his custody
- A *felony if*:
 - prior conviction for animal abuse
 - torture inflicted while animal was alive

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What is mutual combat?

Combat between equally situated parties who have made a conscious choice to engage in violence

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What is Coercive Control?

- 1) Acts perceived by recipient as threatening
- 2) Recipients' fear of retaliation
- 3) Threats alternated with kindness
- 4) Pushing the recipient's boundaries

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Property Damage

569.100 *or* 569.120

- Knowing damages property of another
- “Of another” = another person or entity has a possessory or proprietary interest *556.061* (
- State v. Brushwood, 171 S.W.3d 143 (Mo.App.W.D. 2005)
- *Felony if:*
 - damage exceeds \$750

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Power and Control Tactics

How might investigators see these?

ISOLATION...

- Won't let the officer in the residence
- Children told to hide or leave
- “My wife is in the shower”

INTIMIDATION...

- Following officer from room to room
- Aggressive stance
- Reading the body language

Rhonda Martinson, BWJP

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Batterers are more likely to...

- Abduct their children
- Fight for custody of their children
- Subject their children to risky behavior
- Abuse their children
- Disregard the child's well being

Mo Therese Hannah, PhD. & Barry Goldstein
J.D.
Domestic Violence , Abuse & Child Custody
(2010)

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Endangering the Welfare of a Child 1st

568.045, Class D Felony (up to 7y)

- Knowing

- Acts in a manner that creates a substantial risk to the life, body and/or health of a child <17yo
- Engages in sexual conduct with a child <17yo over whom the def has care/custody/ control
- Encourages/ aids/ causes a child <17yo to engage in a violation of Chapter 579
- Manufacture/ attempts/ possesses/ analyzes amphetamines or methamphetamine

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Endangering the Welfare of a Child 2nd

568.050, Class A Misdemeanor (up to 1y)

- creates substantial risk to life/ body/health
 - with criminal negligence
- encourages/aids/ causes child to
 - engage in behavior/ associations injurious to self or others
 - violate certain ordinances/ laws (see §211.031.1.3)
- enter in public nuisance

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Section 455.085 requires:

- **No law enforcement officer ... shall threaten the arrest of all parties** for the purpose of discouraging requests or law enforcement intervention by any party.
- Where complaints are received from two or more opposing parties, **the officer shall evaluate each complaint separately** to determine whether he should seek a warrant for an arrest.

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The Law of Self- Defense

- User of force reasonably believed force was necessary
- Belief based on what a reasonable person in the same situation would believe

Tell me (what you can) about what you were thinking when that happened.

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Self Defense Relevant Factors

- Who was initial aggressor
- Whether initial aggressor retreated and communicated retreat
- Whether one person had a reputation for violence & other person knew about it
- Prior arguments, threats or acts of violence between the persons

Has anything like this (or anything violent or scary or weird) ever happened before?

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Section 455.085 requires:

The law enforcement officer *shall consider* any or all of the following in determining the primary physical aggressor:

- (1) The intent of the law to **protect victims** of domestic violence from **continuing abuse**;
- (2) The comparative extent of injuries inflicted *or* **serious threats** creating fear of physical injury;
- (3) The **history of domestic violence** between the persons involved.

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Considering the Intent & Purpose of the Law

- Who does the law **aim to protect**?
- Will the **purpose of the law** be accomplished by charging/prosecuting this person?
- How **will charging affect the future safety** of the parties, the power dynamics in the relationship and future litigation?

-- Erin House, Women Who Use Force

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Additional Factors to Consider

- Potential for injury as opposed to actual injury inflicted.
- The location of incident causing one party to be backed into a corner and unable to flee.
- The belief that one party was unable to flee.
- The presence of any substances (alcohol or drugs) that might have influenced the situation and the behavior of the parties involved.
- The mental and emotional state of each party during the incident.
- The context of the altercation, such as the presence of children or other vulnerable individuals in the household.
- Any attempts made by one party to de-escalate the situation or seek help before law enforcement arrived.

Gerald Fineman, DV Tin of the Week, July 21, 2023

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21.03 & 22.04. Warrant of Arrest - When Issued

(a) When...sufficient facts have been stated ... a summons **shall** be issued unless the court finds there are reasonable grounds to believe:

- (1) The defendant **will not appear** upon the summons; or
- (2) The defendant **poses a danger** to a crime victim, the community, or any other person.

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22.03. A statement of probable cause shall

- (a) State the name;
- (b) State the date and place of the ...
- (c) State the facts
- (d) If a warrant will be requested, state the facts, if any, that support a finding of reasonable grounds to believe the defendant **will not appear** upon a summons or the defendant **poses a danger to a crime victim, the community, or any other person;**

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Lethality Assessment Factors

- Recent Separation
- Presence or Accessibility of Firearms
- Presence of stepchild in the home
- History of Violence
 - Escalation
 - Strangulation
 - Forced Sex
 - Abuse of or Threats to Animals to Maintain Control
- Use or threat of use of weapons
- Following or Monitoring Victim's Activities
- Child or Animal Abuse or threats to children or animals

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Probable Cause Best Practices

- Presence of lethality & risk factors
- Facts of the offense(s) that support a continuing danger to the victim or any other person.
- Defendant's known history of violence,
 - going beyond cases whether Defendant was previously arrested or charged.
- Proximity & access to the victims/ witnesses
- Possession of weapons
- Prior bond/ probation violations
- Prior attempts to escape or failure to obey orders
- Threats or hostility to law enforcement or others

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A Proactive Response to Repeat Calls

- Use risk assessment tools. ... These tools help us organize our thoughts and ask better questions to identify valid and reliable risk factors.
- Dispatchers must know as much about domestic violence as officers. They can start the ball rolling by identifying high-risk calls and then alerting officers and sergeants for safe and effective response.
- Sergeants must play a key role in domestic violence-related responses – not just for repeat calls for service but also in managing high-risk calls. Officer safety must be a key concern, followed by risk assessment and comprehensive reporting.
- Collaborate with outside organizations for effective follow-up services such as counseling, shelter and restraining orders. The sooner victims get connected to resources the safer they will be.

[Report details how one police department addresses domestic-related repeat calls for service \(police1.com\)](#)

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Keeping in Mind

- More sources of information the better
- **Gold Standard => Victim**
We can never underestimate victim's concern but a victim may underestimate their own danger
- "Hair on the back of your neck" factor
- Vigilance is key

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By holding offenders
accountable at every level,
we preserve justice & save lives.

**Every day you go to work, you make a difference
in a real person's life ...
one call & one case at a time.**

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