

# 2019 ANNUAL DATA REPORT:

Sexual & Domestic  
Violence in Whatcom  
County

**Published:** December 2020

**Data Period:** 2019\*

\*This is the most recent year for which cross-discipline data is available



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**COMMISSION**  
ON SEXUAL & DOMESTIC VIOLENCE

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## Introduction

**Domestic violence (DV)** is a “pattern of behavior that one person in a relationship uses to gain power and control over the other. Abuse is not caused by anger, mental problems, alcohol or other drugs, or other common excuses. **It is caused by one person’s belief that they have the right to control their partner.**”<sup>1</sup>

**Sexual assault (SA)** “occurs when a person is forced, coerced, and/or manipulated into any unwanted sexual activity. [It] is an umbrella term that includes a wide range of victimizations which may or may not involve force or be illegal.”<sup>2</sup>

Sexual assault or sexual abuse often appears in domestic violence relationships. In fact, it has been estimated that **two-thirds of survivors** experiencing intimate partner violence (IPV) **have been sexually assaulted by their abusive partner.**

**In 2018**, as part of our efforts to acknowledge this intersection, the Bellingham-Whatcom County Commission on Sexual and Domestic Violence (the Commission) changed our name and expanded our mission to include addressing sexual assault.

### Our Mission:

The Bellingham-Whatcom County Commission on Sexual & Domestic Violence inspires and coordinates our community’s efforts to address domestic and sexual violence. To fulfill this vital mission, we:

- **Foster** safety, justice, and well-being for survivors and communities.
- **Connect** institutions, stakeholders, and communities to collectively increase understanding and effectiveness of community responses for sexual and domestic violence.
- **Transform** systems to ensure best practice prevention and responses for sexual and domestic violence.



<sup>1</sup> <https://wscadv.org/about-domestic-violence/>; infographic from WSCADV.

<sup>2</sup> <https://www.wcsap.org/help/about-sexual-assault/what-sexual-assault>

**Snapshot Report:**  
**Sexual & Domestic Violence in Whatcom County**  
**2019**

## A Note About Data

In July 2020, at a regular meeting of the Commission on Sexual & Domestic Violence, members and guests discussed the rape report trends reported in the DV Commission’s 2018 Data Report, which was published in November 2019. For many present at the meeting, reviewing the data raised more questions than answers. **Collecting data can present challenges**, such as **different data collection methodology, terminology**, and **accountability** across systems.

This challenge was further highlighted when comparing the data reported in the Washington Association of Sheriffs and Police Chiefs (WASPC) Crime in Washington 2019 Annual Report.<sup>3</sup> That annual report has been the main source of data on domestic violence and sexual assault arrests included in the DV Commission’s Snapshot Report. Each year, the WASPC report includes data from the previous two years for comparison. However, in the 2019 report, the 2018 data included did not match the 2018 data reported in the prior year’s report, with a number of inconsistencies for data from the Bellingham Police Department. Additionally, WASPC uses some terms that are different than those used by local jurisdictions. For example, Bellingham Police Department (BPD) does not use the terms “sodomy” or “peeping tom,” though those are terms used in the WASPC annual report.

In 2021, the DV Commission will connect with individual law enforcement agencies in Whatcom County to assess the feasibility of these agencies providing data directly to the DV Commission for future reports. Hopefully, this will **improve accuracy and help our community to analyze data in a more meaningful way going forward.**

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<sup>3</sup> <https://www.waspc.org/crime-statistics-reports>

## Law Enforcement Calls for Service

### Sexual Assault

In 2019 there were **138** reports of **sexual offenses** to Whatcom County’s law enforcement agencies.<sup>4</sup> These calls for service included **82** reports of rape, **5** reports of sodomy,<sup>5</sup> **38** reports of fondling, **2** reports of incest, **9** reports of statutory rape, and **2** reports of peeping Tom (or nonconsensual voyeurism).

2019 SEXUAL ASSAULT OFFENSES									
	BPD	Blaine	Everson	Ferndale	Lynden	Sumas	WCSO	WWU	Total by Charge
Rape	32	2	0	12	4	1	30	1	82
Sodomy*	1	0	0	0	0	0	4	0	5
Fondling	14	1	0	4	1	0	18	0	38
Incest	1	0	0	0	0	0	1	0	2
Statutory Rape	4	0	0	1	2	0	2	0	9
Peeping Tom	2	0	0	0	0	0	0	0	2
<b>Total by Jurisdiction</b>	54	3	0	17	7	1	55	1	138

Table 1

Bellingham Police Department also uses an additional category: “sex crime investigations.” In 2019, **125 cases were classified as sex crime investigations**. BPD categorizes a report as sex crime investigation when the patrol officer believes that further investigation is needed to determine what if any crime occurred. This category can also include reports that came to BPD through a third party such as the Department of Children, Youth, and Families, but was later determined that the event did not occur in BPD’s jurisdiction, or there was no disclosure from the child. The anonymous Sexual Assault Kits (evidence collected at sexual assault exams) are also included in this category.

<sup>4</sup> These numbers do NOT include reports to Lummi PD. Nooksack Tribal Police Department refers all sexual assault cases to the Whatcom County Sheriff’s Office.

<sup>5</sup> In Washington State, the term “sodomy” is used to report sex crimes where the perpetrator is the same gender as the victim. The terminology for crime statistics used by the WASPC is determined by FBI reporting categories. You can visit this resource to learn more about how Washington State RCWs relate to the categories set forth by the FBI: <https://www.waspc.org/assets/CJIS/trainingmanualsandreference/nibrsexoffensegrid.pdf>. The Commission recognizes the historic and current use of “sodomy laws” to criminalize consensual relationships between members of the LGBTQ+ community. To learn more visit: <https://www.aclu.org/other/why-sodomy-laws-matter>

## Forensic Exams

**In 2019** PeaceHealth St. Joseph's Medical Center performed **126 sexual assault forensic exams**. This includes 40 child sexual assault examinations for children 12 and younger. The remaining 86 exams were for adults and adolescents age 13 and above. Additionally, PeaceHealth St. Joseph's Medical Center performed **10 domestic violence forensic exams**.

Of those sexual assaults where St. Joseph's Medical Center performed an exam and collected evidence:

- **90 occurred in Whatcom County:**
  - 51 occurred in Bellingham
  - 22 occurred in unincorporated Whatcom County
  - 6 occurred in Ferndale
  - 3 occurred in Lynden
  - 3 occurred on Lummi Reservation
  - 2 occurred in Everson
  - 2 occurred in Sumas
  - 1 occurred in Blaine
- 14 of the survivors chose to have an anonymous kit collected, so the location was not recorded
- 10 occurred in Skagit County
- 3 occurred outside Whatcom and Skagit Counties
- 117 total kits collected

Not all survivors who come to St. Joe's for an exam get evidence collected (per their choice). Some survivors choose to get only sexually transmitted infection prophylaxis and laboratory testing.

# Law Enforcement Calls for Service

## Domestic Violence

In 2019 there were **3,127 domestic violence** calls for service to Whatcom County’s law enforcement agencies.<sup>6</sup> Of these calls for service, there were **1,795** incidents that did NOT result in an arrest (**57%**), and **1,332** domestic violence offenses where at least one party was arrested (**43%**). Incidents that do not result in an arrest are sometimes referred to as “DV verbals.” In those calls for service, police determine that no physical violence (or offense warranting arrest) has occurred.

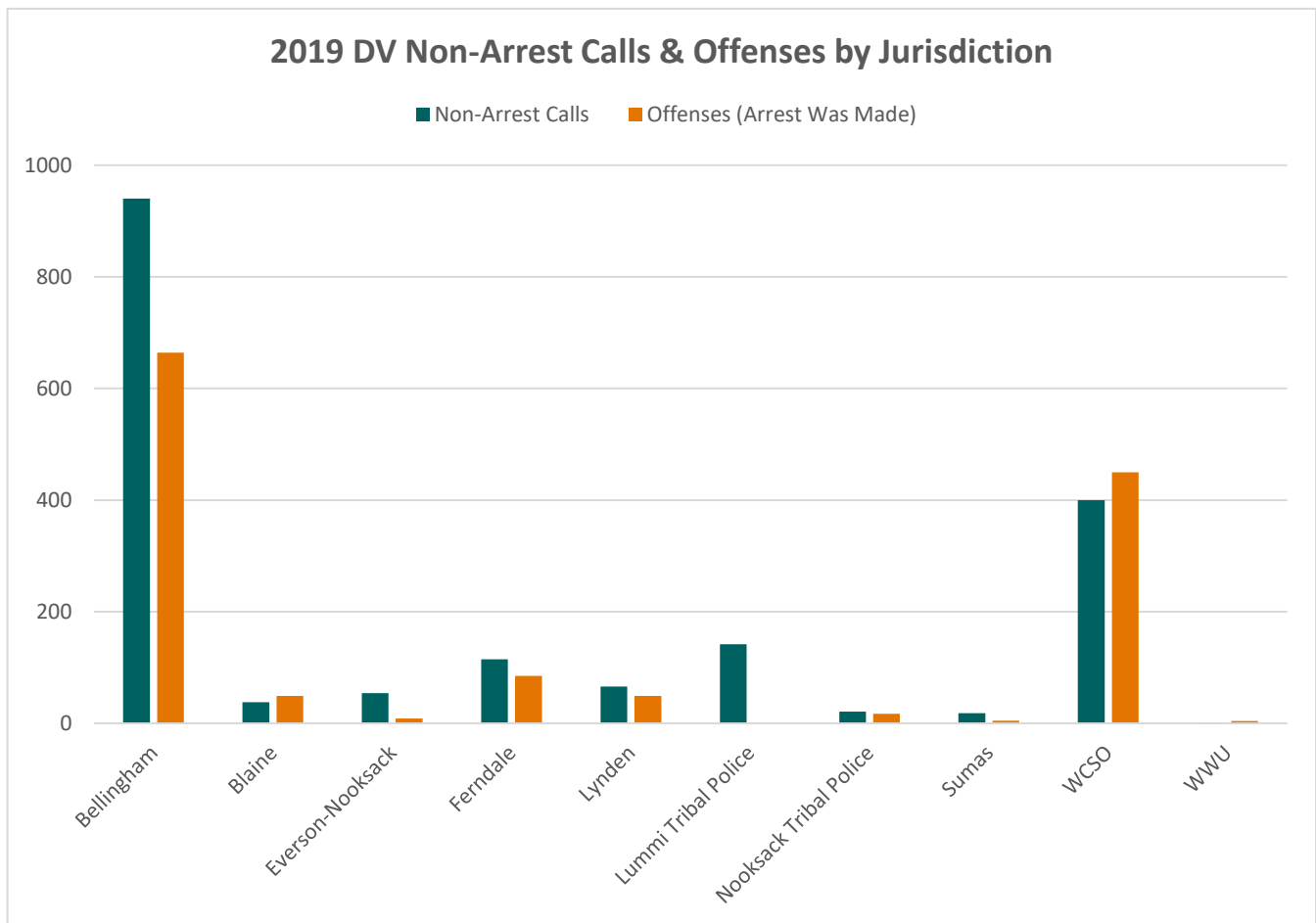


Figure 1

<sup>6</sup> These numbers do NOT include reports to Lummi PD where an arrest was made, but DO include reports to Lummi PD where an arrest was not made.

## Protection Orders

In 2019 there were a total of **248 requests for temporary orders** of protection against domestic violence, sexual assault, and harassment/stalking in Whatcom County.<sup>7</sup> Of those requests, approximately:

- **56% (140)** were granted (became temporary orders)
- **35% (86)** became permanent orders

Temporary protection orders prohibit the **respondent** (typically the offender) from contacting or approaching the **petitioner** (typically the survivor) in the two-week period preceding the court hearing for a permanent order. **Permanent orders** typically last one year, although Judicial Officers have the authority to grant protections for shorter or longer periods of time. **Violations** of temporary or permanent orders can result in criminal charges and/or jail time. Reporting violations is the responsibility of the petitioner.

Of the **86 permanent protection orders** granted in Whatcom County in 2019, approximately:

- **91% (78)** were Domestic Violence Protection Orders (DVPOs)
- **3% (3)** were Anti-Harassment/Stalking Orders (AHOs)
- **6% (5)** were Sexual Assault Protection Orders (SAPOs)

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<sup>7</sup> Reported by Whatcom County District and Superior Courts, and Nooksack Tribal Court. They do not include data from Lummi Tribal Court.



## Intimate Partner Homicides

In **2019** there were **3** intimate partner homicides, **1** abuser suicide, and **1** domestic-violence related murder of a survivor’s new partner in Whatcom County.

On January 31, 2019, near Bellingham, 32-year-old Dustin Wilson was shot by 31-year-old Cody Mitchell Brock, who also shot another person at the scene; that person survived. The Bellingham Herald reported that the two men “had been in a months-long dispute...over intimate and personal relationships each had with a woman, who was present at the shooting.”<sup>8</sup>

On August 7, 2019, near Ferndale, 76-year-old Patricia Whitney-Jones was shot and killed by her husband, 77-year-old Brian Jones, who then killed himself. The Whatcom County Sheriff’s Office shared that notes were found in the home that “suggested the couple couldn’t afford medical care.”<sup>9</sup>

On August 14, 2019, 22-year-old Western Washington University student Stephanie Brenner-Cresswell was shot and killed by her ex-boyfriend, 22-year-old Rigoberto Galvan. Galvan broke into the Bellingham apartment Brenner-Cresswell was visiting and shot her. Brenner-Cresswell had recently ended their relationship.

On December 26, 2019, in their home near Bellingham, 58-year-old Sunnyland Elementary Principal Lynn Heimsoth was shot and killed by her husband, 56-year-old Kevin Heimsoth, who also killed the victim’s service dog and their pet cat. Kevin Heimsoth also shot himself; he survived. In November 2020 the case against Kevin Heimsoth was dismissed because his severe brain injury makes him incompetent to stand trial.<sup>10</sup>

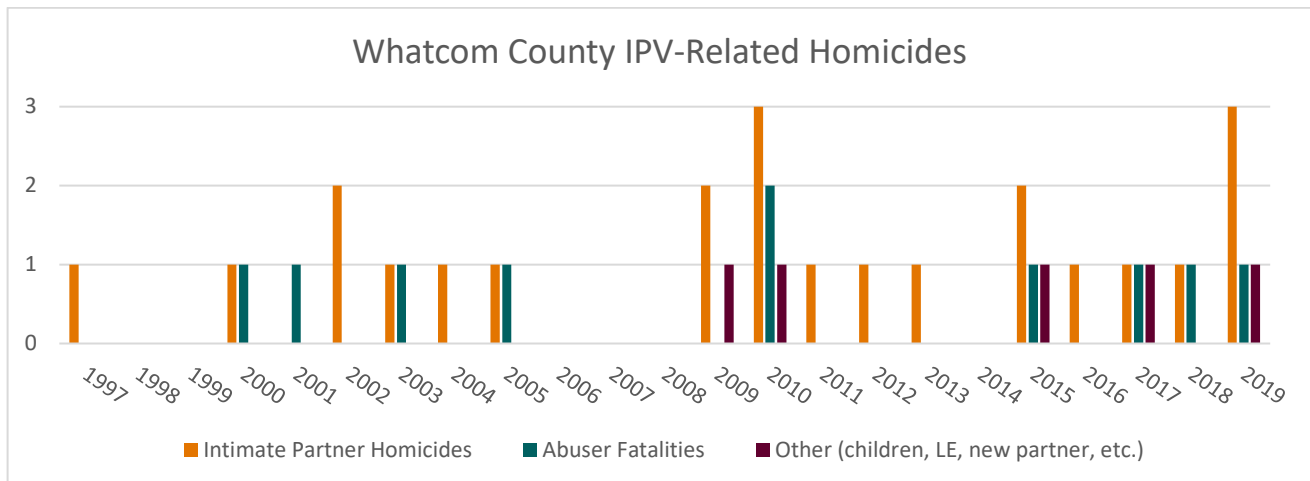


Figure 2

<sup>8</sup> <https://www.bellinghamherald.com/news/local/crime/article231991917.html>

<sup>9</sup> <https://www.bellinghamherald.com/news/local/article233674302.html>

<sup>10</sup> <https://www.bellinghamherald.com/news/local/crime/article247376284.html>

## DV & SA Advocacy Services

### Domestic Violence and Sexual Assault Services of Whatcom County (DVSAS)

served a total of **2,224** clients in 2019. **1,752** of those clients were survivors of domestic violence and **472** survivors of sexual assault or commercial sexual exploitation (SE). In the same year, **154** clients utilized DVSAS’s safe shelter services. Additionally, **1,639** students in Whatcom County received education about consent and healthy relationships.

**DVSAS** services are available for anyone impacted by domestic violence, sexual assault, or sexual exploitation. **DVSAS services include:**

IMMEDIATE HELP	ONGOING SUPPORT	SAFE HOUSING	EDUCATION PROGRAM
<ul style="list-style-type: none"> <li>• 24-hour helpline</li> <li>• Support center walk-in services</li> <li>• 24-hour forensic exam support</li> </ul>	<ul style="list-style-type: none"> <li>• Advocacy counseling</li> <li>• Legal advocacy</li> <li>• Support groups</li> </ul>	<ul style="list-style-type: none"> <li>• Confidential shelter</li> <li>• Homelessness prevention services</li> <li>• Housing case management</li> </ul>	<ul style="list-style-type: none"> <li>• The Empowerment Project: 3-session prevention program for middle &amp; high school students</li> </ul>

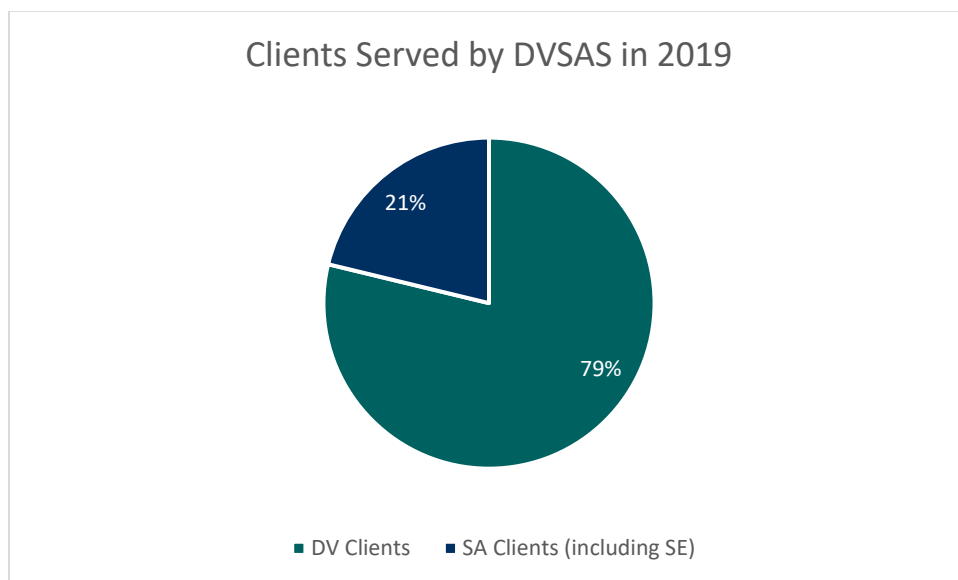


Figure 3

**CASAS Survivor Advocacy** at Western Washington University (WWU) served **180** students impacted by domestic violence and sexual assault in 2019. CASAS helps any WWU student affected by sexual harassment, sexual assault, dating violence, emotional abuse, or stalking recently or in the past.<sup>11</sup> **CASAS services include:**

**ADVOCACY & SUPPORT**

- Support groups
- Reporting options
- Academic support
- Confidential 1-on-1 support
- Sessions with advocate
- Protection orders

**REFERRAL & INFORMATION**

- Medical assistance
- Legal assistance
- Financial aid solutions
- Housing solutions
- Emergency leave
- Counseling referrals

**Lummi Victims of Crime (LVOC)** served **243** survivors of domestic violence and **61** survivors of sexual assault in 2019. LVOC provides help to any adult or adolescent who has been affected by domestic violence, sexual assault, elder abuse, assault & battery, survivor of homicide, child abuse, and sexual assault.<sup>12</sup> **LVOC services include:**

**CRISIS  
COUNSELING**

- In-person or via telephone
- 24-hour hotline
- Safety planning and information
- On-scene advocacy for DV and SA crimes

**LEGAL  
ADVOCACY**

- Court hearings
- Protection and restraining orders

**TRANSPORTATION &  
REFERRALS**

- Therapy referrals – sweats, smudges
- Traditional healing
- Transportation to medical, legal, and therapy appointments

**DOMESTIC VIOLENCE  
SHELTER**

- Ne-Alis Tokw (My Sister’s Place)

**EMERGENCY  
ASSISTANCE**

- Replacement of house door locks and car windshields, broken due to DV incidents
- Boarding up house windows broken due to DV incidents

**EDUCATION**

- Teen Girls groups
- Free annual conferences
- Annual Missing and Murdered Indigenous Women Awareness Walk

<sup>11</sup> <https://pws.wvu.edu/consultation-and-sexual-assault-support-casas>

<sup>12</sup> <https://www.lummi-nsn.gov/Website.php?PageID=399>

## Lethality Assessment Program (LAP)

The **Lethality Assessment Program (LAP)** was developed by the Maryland Network Against Domestic Violence and is based on the research of **Dr. Jacquelyn Campbell**. Dr. Campbell's work showed that women killed by their intimate partners had very seldom been engaged by advocates.

**When** a law enforcement officer responds to a domestic call, the LAP protocol directs them to:

1. Conduct an **11-item lethality screen** with the victim.
2. If the victim screens in at high risk of lethality, the officer makes **immediate contact** with the local domestic violence advocacy agency (DVSAS).
3. The victim is then encouraged, but not required, to speak with the domestic violence advocate. The responding officer and the domestic violence advocate work as partners to provide the victim with **safety planning** and resource information.

Connecting survivors to advocacy services makes a difference: In a study of domestic violence homicides in 11 U.S. cities, **only 4% of domestic violence homicide victims had used a domestic violence hotline or shelter within the year prior to being killed** by an intimate partner.<sup>13</sup>

The LAP program was initiated in all Whatcom County law enforcement jurisdictions in **2014**. Since that time, there has been an overall **downward trend in the percentage of high-risk victims connected with advocacy on-scene** (see Figure 4 on next page). At the time of writing, we do not have enough information to identify a specific cause for this decline. **This is an area that deserves further attention and analysis.**

<sup>13</sup> <https://lethalityassessmentprogram.org/wp-content/uploads/2016/09/lap-public-stats-memo.pdf>

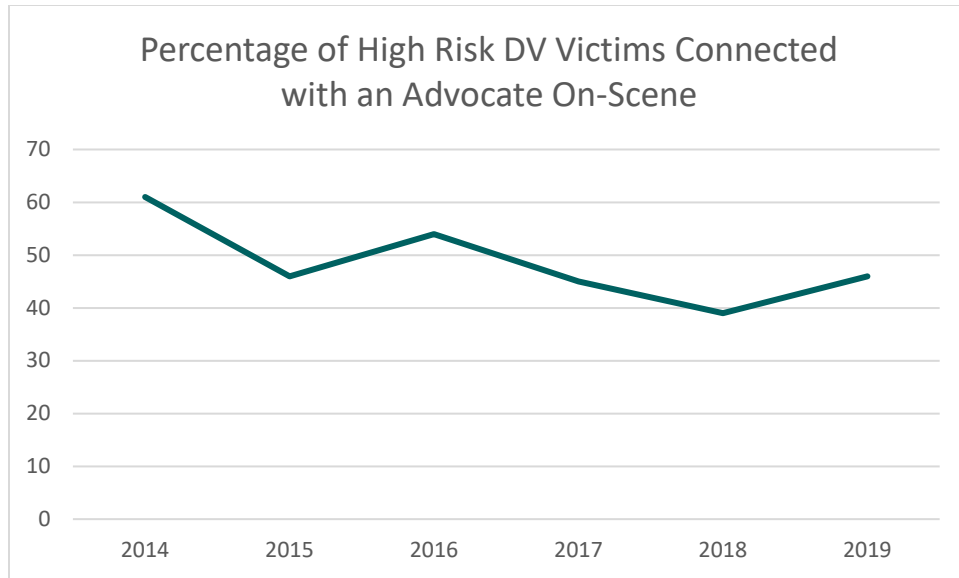


Figure 4

## In 2019:

- **Whatcom County** law enforcement agencies conducted the LAP with **433** survivors of domestic violence.
- **59% screened in as at high-risk for lethality** (see Figure 5 on next page).
- Of these high-risk survivors, **46% spoke to an advocate** for safety planning during the initial law enforcement response (see Figure 6 on next page). Of the LAP forms that showed a survivor screened in as “high risk,” **12% did not provide further information** about whether the survivor was connected to an advocate at the scene.

Some officers wrote notes about why the survivor was not connected, such as “[victim] asked for a call later,” “victim refused to speak to an advocate,” “wanted to go to DVSAS personally tomorrow,” and “has already contacted,” but for the majority of these forms, we do not know why the survivor was not connected to an advocate at the scene.

### DV Victims Screened by Law Enforcement as High Risk in Whatcom County in 2019

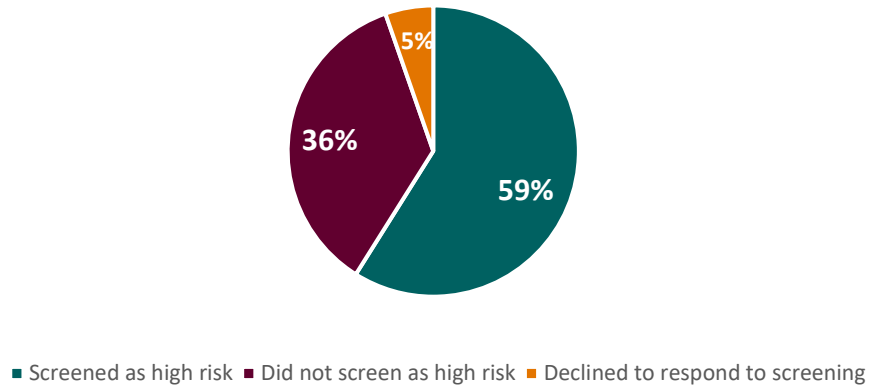


Figure 5

### High Risk Victims Connected with an On-Scene Advocacy in Whatcom County in 2019

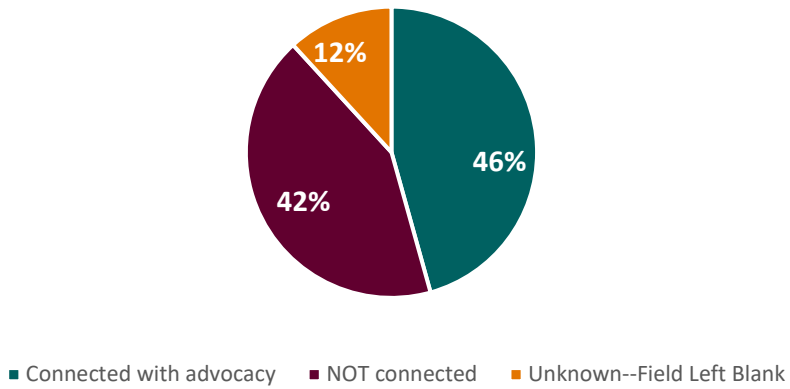


Figure 6

## Domestic Violence High Risk Team (DVHRT)

**The** Domestic Violence High Risk Team (DVHRT) is a multidisciplinary model designed to enhance our community's response to intimate partner violence offenders who pose the greatest risk of committing lethal or near-lethal assault.

DVHRT focuses on examining risk factors and behaviors of offenders, identifying offenders who are at-risk for committing homicide or seriously injuring someone, and creating monitoring plans across disciplines to deter or minimize future assaults.

**The** purpose of the DVHRT is to:

- **Facilitate early identification** of the most dangerous domestic violence offenders through research-based risk assessment.
- **Establish clear channels of communication** across all disciplines involved in responding to domestic violence.
- **Provide coordinated, multi-disciplinary responses** to highly lethal domestic violence cases.

**Core** members of the DVHRT include representatives from:

Law Enforcement

Parole

Prosecution

Batterers' Intervention

Victim Advocacy

Child Protective Services

Probation

Other Community Partners  
(invited to participate, as needed)

**In 2019:**

- **12** domestic violence offenders were accepted for monitoring by the DVHRT.
- **55** domestic violence offenders were actively monitored by the DVHRT for all or part of the year.

## Domestic Violence & Homelessness

For the 2019 Whatcom County Point-in-Time Count census of Homeless Residents, **22%** of respondents experiencing homelessness or housing insecurity **identified domestic violence as one of the reasons they were homeless.**<sup>14</sup>

In 2019, **more than half of young adults (18-24)** who utilized the housing program with Northwest Youth Services shared that they **had experienced domestic violence** at some point, and **nearly one third reported that they were fleeing domestic violence.**

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<sup>14</sup> A HOME FOR EVERYONE Whatcom County Coalition to End Homelessness 2019 Annual Report:  
<https://www.opcco.org/wp-content/uploads/2019/06/Final-Whatcom-2019-homeless-count-report.pdf>



## Summary of Survivor Input

*“Support is one of the biggest things that helped me. Someone that cared.”*

### Goal

To seek survivor input to assess and advise our community’s institutional response and prevention practices.

### Method

- In April 2020 the Commission launched a call for survivor stories. We asked community partners, including DVSAS, LVOC, local faith communities, and prosecution-based advocates, to share this opportunity with the people they work with. Because of the COVID-19 pandemic, we were unable to pursue other planned opportunities to publicize our call for input, such as posting flyers and inviting participants from local survivor support groups.
- Participants could choose to complete the online survey or request to provide input by phone or both.
- Participants could choose to provide input anonymously or to provide their names.
- Input from survivors was collected April – September 2020.
- Themes from the collected input are below.

### Participants

24 individuals shared their stories of sexual and domestic violence.

- 19 completed the online survey (1 shared additional information via phone).
- 5 shared story via phone interview.

*“Dealing with the police felt traumatizing, but I fought for my case to be sent to the prosecutor’s office, and I succeeded.”*

## What has been most helpful? (21 participants responded)

Response	Number of Participants	Percentage of Participants
Supportive friends and/or family members	13	62%
Therapy or counseling	12	57%
Support group and/or hearing other's stories	4	19%
Church	1	5%
Medication	1	5%
Sharing my story	1	5%
DVSAS	1	5%

## Helpful actions

When sharing about what was helpful, participants described ways in which responses from others made a positive difference in their lives, including:

- Described the violence/abuse as wrong
- Believed me; understood me; accepted me
- Told me it was not my fault
- Respected my boundaries; allowed me to heal at my own pace
- Provided concrete knowledge about steps to take to obtain legal help or seek justice
- Provided information about the psychological impact of trauma and appropriate treatment

## Unhelpful actions

When sharing what was helpful, participants also described responses from others that were *not* helpful to them. These included:

- Helper lacked necessary knowledge
- Helper was dismissive of participant, said there was nothing that could be done, seemed unwilling to help
- Lack of continued services over time
- The help offered or given was not what was most needed
- Helper did not understand or believe the participant
- Lack of justice via criminal justice system

***“The message I got from family was ‘This happens to everyone in our family, so it’s not important.’”***

## **Consequences of unhelpful actions**

- Lack of trust in provider or system
- Delay in attempting to seek help again
- Retraumatized by the experience

## **What could make things better?**

***“I wish the sex positive community understood more about rape and I wish the sexual assault counselors understood more about sex positivity.”***

- Information for survivors
  - Where can survivors go for help?
  - Who can children and adolescents call for help?
  - What kind of help is available at different agencies?
- Changes for providers/agencies
  - DV/SA advocates need to be more knowledgeable about legal options for survivors, and when they do not know something, they need to admit that
  - DV/SA advocates need to keep track of clients so they do not have to repeat information each time they contact the agency and so they do not feel unimportant or forgotten
  - DV/SA agencies should learn more about sex-positivity
  - Law enforcement needs training on how to interact with sexual assault survivors
  - Fair consequences for the perpetrator would help victims feel validated and supported
  - Family courts need to be trauma-informed
  - Therapists need to understand the dynamics of domestic violence, including psychological and emotional abuse
  - Need more therapists in the community with specialized training in trauma
  - Need more long-term support for survivors

- Need more Spanish-speaking therapists in the community
- All agencies should demonstrate that they are supportive places for trans community-members
- Education in the community
  - Teach children and adolescents about healthy relationships, consent, etc.
  - Raise awareness about sexual and domestic violence, including sex-trafficking, in the community

## Type of violence experienced

(5 participants reported more than one type of violence)

Type of Violence	Number of Participants	Percentage of Participants
Sexual Violence	13	54%
Domestic Violence	7	29%
Childhood Abuse	3	13%
Witnessed DV as a Child	6	25%

*“I did not anticipate how much [the sexual assault] would put a wrench in my experience of coming out.”*

## Where did your experience happen?

Location	Number of Participants	Percentage of Participants
Whatcom County	9	38%
Someplace Else	13	54%
Both	2	8%

## Did you go to any agencies for help? (24 Participants responded)

*“My advocate was very responsive, even if her response was ‘I don’t know,’ I was never left feeling like I wasn’t heard.”*

Agency/Resource	Number of Participants	Percentage of Participants
DVSAS or similar	12	50%
Law Enforcement	4	17%
Mental Health Agency	3	13%
University Counseling Center	1	4%
Youth Agency	1	4%
Did not contact any agency or resource*	6	25%

\*Reasons given for not contacting agency or other resource:

- Was not aware the behavior was abusive at the time
- Did not think anyone would be supportive or helpful
- Was not sure where to find help

*“I think if I could've reported in a way that was meaningful, I would have liked to. I just didn't expect anything to come of a police report.”*

**For future data collection on survivor input,** in order to look at the relationship between participant input and changes in community response, the DV Commission will also gather additional information such as:

- When did the participant experience sexual and/or domestic violence?
- When did the participant have contact with local services, agencies, etc.?



## Spotlight Report: Survivor-Defendants

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# Survivor-Defendants

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## Executive Summary

Survivors of domestic violence are sometimes themselves arrested and charged with domestic violence, or crimes related to their experience of abuse. These survivors, called “survivor-defendants,” may have used violence in self-defense or retaliation against their abuser, participated in crime as an opportunity for economic independence, or been forced into crime by an abuser. Survivor-defendants may also experience an abuser lying in order to have them arrested. Arresting and charging survivors causes long-lasting harm, decreases their safety, empowers abusers, and virtually eliminates justice in their case.

Differences in how the legal system defines domestic violence and how survivors experience abuse are at the root of this issue. Behaviors abusers use to control their partner are often legal, and methods a survivor might employ to resist abuse may be illegal. This report explores how professional stakeholders in Whatcom County view the issue of survivor-defendants.

Three major themes emerged from interviews with stakeholders and additional research:

- 1) Arresting and charging survivors causes long-term and complex harm:** loss of freedom; risk of further violence and trauma; potential loss of child custody, housing, employment, benefits and more
- 2) Misconceptions about how victims look and behave can impact who is arrested and charged with domestic violence:** normal responses to trauma that deviate from cultural ideas of a “good victim,” as well bias and oppression (including racism, sexism, transphobia, homophobia, ableism, and classism) impact who is perceived as a victim
- 3) Context matters:** the incident-focused criminal legal system, in particular Washington’s mandatory arrest law (RCW 10.31.100), do not consider domestic violence in the context of a pattern of both legal and illegal abusive behaviors

As our community, and our nation, considers the history and the future of the criminal legal system, we must ask: What is the role of the criminal legal system in providing safety to survivors of domestic violence? The harmful impacts of arresting survivors are too great to continue to allow this issue to go unaddressed. Our community will benefit from further inquiry, with a focus on survivors’ stories and ideas for improving our systems’ response to domestic violence.

***“That’s a really sad possibility, that the true victim, who might need the help, is not getting it and the true perpetrator is still just in control of the situation.”***

## Introduction

The way the criminal legal system defines illegal behavior is inconsistent with the ways survivors experience abuse from their partners.

Community-based advocacy organizations (those not aligned with the criminal legal system) define domestic violence as “a pattern of behaviors used by one partner to maintain power and control over another partner in an intimate relationship.”<sup>1</sup>

In Washington State, RCW 26.50.010<sup>2</sup> defines domestic violence as "(a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, sexual assault, or stalking as defined in RCW 9A.46.110 of one intimate partner by another intimate partner; or (b) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, sexual assault, or stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.”

This difference in definitions means that many behaviors abusers use to control their partner are often legal, and methods a survivor might employ to resist abuse may be illegal. The handout created by NW Network (see page 27) shows this tension between definitions of domestic violence and related terms including survivor, victim, abuser, and perpetrator.

**Arresting survivors of domestic violence is an example of how society can doubly fail survivors. Communities fail to protect survivors from abuse, fail to support them in accessing safety, and then incarcerate them in a system that is designed to punish—in potentially dangerous, dehumanizing conditions.**

Arresting survivors means treating them without dignity and demonstrating that they are not worthy of protection under the law. It forces them to obey yet another entity (this time the legal system), with enduring and complex consequences for their freedom, their family, their economic opportunities, and their place in the community.

## Advocacy Model Language vs. Criminal Legal System Language<sup>3</sup>

Advocacy Model Language		Criminal Legal System Language	
A person who experiences a pattern of power and control by another.	Survivor	Victim	A person against whom a crime of battery has been committed.
A person who establishes a pattern of power and control over another.	Abuser/Batterer	Perpetrator	A person who has been convicted of committing a crime of battery.
<p>The advocacy model understands that people who abuse their partners may:</p> <ul style="list-style-type: none"> <li>• Establish a pattern of control that occurs 24-7,</li> <li>• Control/exploit their partner over time,</li> <li>• Use a number of tactics—some of which are illegal, <b>most of which are legal</b>,</li> <li>• Rely on systems of oppression and social inequalities to maintain their control over their partner.</li> </ul>		<p>Meanwhile, the criminal legal system:</p> <ul style="list-style-type: none"> <li>• Is designed to address specific incidents and determine if they are legal or illegal,</li> <li>• Evaluates “moments in time,” not patterns of abusive control,</li> <li>• Ignores bias and posits everyone as agents under the law—regardless of institutional inequalities.</li> </ul>	

This handout is offered to outline the difference between these two approaches/ understandings of domestic violence. We are encouraging people to become clear about when they use each of these words because **the definitions of these words, as they are applied in these two contexts, are VERY different.**

In this handout, we are not attempting to offer a critique of the words based on the connotations of “survivor” and the connotations of “victim”, or the connotations of the words “abuser”, “batterer” or “perpetrator”. We offer this handout because the denotations of these words are different and describe different things.

Because these two approaches clearly describe different things, it is critical that we do not use these words interchangeably. For example: many times the domestic violence movement definition of “survivor” and the criminal legal system definition of “victim” apply to the same person—*but often they do not.*

**When this language is used interchangeably, programs can find themselves obligated to provide survivor advocacy services, information and support to a person who is legally a victim and who is clearly the abuser—the person who is using a pattern of power, control and exploitation to hurt their partner. When this happens, the survivor (even a survivor who has been legally identified as a perpetrator) is put at greater risk.**

Used with permission from [The NW Network of Bi, Trans, Lesbian and Gay Survivors of Abuse](#)

## Who is a survivor-defendant?

This tension between lived experience and the criminal legal system, depicted in the chart on the previous page, is the heart of this report's topic: survivor-defendants.

**Survivor-defendants are survivors of domestic violence who have been arrested and/or charged with a crime related to intimate partner violence. This can mean they used “violence in defense or retaliation,” participated in crime as an opportunity for economic independence, were forced into crime by an abuser, and/or an abuser lied in order to have the survivor arrested.**<sup>4</sup>

Most of the stakeholders interviewed and most of the research cited in this report refer to survivors who have been arrested for domestic violence (rather than other crimes), either because the survivor actually used violence or because the law enforcement believed the survivor had used violence.

This report will use the “advocacy model” language from the NW Network handout, regardless of whether the person has been arrested for any crime: survivor means “a person who experiences a pattern of power and control” and abuser means “a person who establishes a pattern of power and control.”<sup>5</sup> You will also see the term “victim-defendant” used by interviewees and publications quoted in this report. One stakeholder who works in the criminal legal system called this phenomenon “reverse DV [domestic violence].”

***“The victim-defendant issue is a big, huge problem. I’m not saying the numbers are huge, but any time it happens, it can be devastating”***

**-Local Family Law Attorney**

Interviewees had a range of opinions about how frequently survivors are arrested for domestic violence or other related crimes. This report was not able to provide a quantitative analysis of how frequently survivors are arrested, but professionals who work in the field are able to provide a frame of reference. When asked “how frequently are survivors arrested?” responses included:

- I think that can happen, absolutely...[but] I don't think it happens that often
- It is not a rampant problem
- It's hard to say, but it's not one of the things I see as terribly problematic

- I do not believe this occurs frequently...I do feel this is very low
- I feel that law enforcement has a pretty good system to help identify abusers and survivors
- Not necessarily frequently
- It's not a scenario that would come up consciously for a prosecutor [because they would dismiss the case]
- I don't know how often they arrest the wrong person
- It happens more often than people would think
- I can't say we catch all of them; there are [cases we miss]; we do a pretty good job, I think
- I've seen the gamut of several cases like that
- It's not uncommon
- It's not uncommon [to see abusers trying to use the criminal legal system to gain power]
- In a not insignificant number of times the police are not able to make a determination
- I think it's a problem
- I don't have any question about it--that's a real issue...this is not unusual, I would say it's typical
- It happens quite a lot I think
- It happens regularly
- Often, often...I see them quite frequently

Community-based advocates and stakeholders working in probation reported seeing more survivor-defendant cases than professionals in other disciplines. Law enforcement and prosecution were more likely to think this happened rarely. Some of these responses reflected the nuances of the definitions of domestic violence as a pattern of behavior which may include abusive behavior that is legal, and the legal definition of domestic violence. Thus, someone may not think it is “wrong” that a survivor was arrested if there is probable cause that they did commit a crime according to the legal definition of domestic violence.

## **Arresting and charging survivors with domestic violence or other crimes related to their experience of abuse decreases their safety, causes long-lasting and exponential harm, and virtually eliminates justice in their case.**

In 2003 the King County Coalition Against Domestic Violence called for leaders in the community to “view this issue as a significant concern.”<sup>6</sup> Stakeholders across systems must further examine and address the issue of survivor-defendants in order to work toward fostering safety, well-being, and justice for all survivors of domestic violence.

## Methodology

The DV Commission conducted semi-structured interviews with professional stakeholders across disciplines, including officers from multiple law enforcement agencies, city prosecutors (City of Bellingham and small city), probation (Whatcom County and small city), community-based and tribal-based advocates, public defenders, nonprofit housing assistance agency staff, child welfare staff, a family law attorney, prosecution-based advocates, and one survivor who had been arrested for domestic violence. The DV Commission also conducted a focus group that included domestic violence perpetrator treatment providers, probation officers, and prosecution-based and community-based advocates.

## What This Report Covers

This report explores how professional stakeholders think about the issue of survivor-defendants in Whatcom County. Interviewees represented disciplines across the criminal legal system and social services. Whatcom County is not the only community confronted with the tension between legal and advocacy definitions of domestic violence. This report incorporates national and regional data, as well as analysis by experts in the field to provide additional context.

## Three major themes emerged from interviews with stakeholders and additional research:

**Theme 1: Arresting and charging survivors causes long-term and complex harm**

**Theme 2: Misconceptions about how victims look and behave can impact who is arrested and charged with domestic violence**

**Theme 3: Context matters**

Finally, this report offers specific recommendations for different roles and systems so our community can transform systems and connect institutions, stakeholders, and communities to foster safety, well-being and justice for survivors.

## Background

This is not the first time the DV Commission has considered the issue of survivor-defendants. In a 2005 report, “Review of Arrests of Women on Domestic Violence Related Charges,” the DV Commission reviewed 55 cases from Bellingham Police Department and Whatcom County Sheriff's Office where a woman was arrested and the victim was male. The report found that “In general, it does not appear that arrests of women for domestic violence related incidents is a ‘problem’ with the Bellingham Police Department and the Whatcom County Sheriff’s Office. The majority of cases reviewed did appear to be consistent with the intent of the mandatory arrest and primary aggressor law.” This 2020 report contends that while officers may be following the law, **the law itself, and the consequences of arresting survivors, are in fact significant problems.**

In depth reviews of local and state domestic violence related fatalities have addressed the issue of survivor-defendants. The DV Commission’s 2013 local fatality review “It Happened in Our Town” reviewed a case where the person who had been murdered by their intimate partner had previously been arrested for domestic violence. The fatality review panel “agreed that being arrested probably made this victim less likely to call police for help in the future, and that she may have assumed that victim services, including domestic violence advocacy, were not available to her.”<sup>7</sup> The review recommended improved identification of survivor-defendants by public defenders, advocacy agencies, and weekly prosecutors’ meetings.

The 2010<sup>8</sup> and 2016<sup>9</sup> Washington State fatality reviews also addressed survivor-defendants. The 2010 review featured the case of a woman murdered by her female partner and who had been previously arrested for domestic violence. In another case, a woman later murdered by her partner had not called the police for earlier incidents of violence because she feared she would be arrested herself. This fear echoes concerns identified in this report by community-based advocates that survivors are often afraid to call the police even if they have never been arrested, and backed up by data published in 2015 report from the National Domestic Violence Hotline.<sup>10</sup> The 2016 state fatality review found that 7% of 563 victims killed by abuser 2006-2015 had previously been charged with a domestic violence offense.<sup>11</sup>

## Survivor-Defendants and Movements for Racial Justice

We cannot separate the issue of survivor-defendants from movements to defund police, abolish prisons, and radically transform the criminal legal system. Activist groups, such as INCITE! Women of Color Against Violence, have long been critical of how the mainstream anti-violence movement has

pushed the criminal legal system as the primary response to domestic and sexual violence, and have advocated alternative strategies outside this system.<sup>12</sup>

**Historically, the mainstream anti-domestic and sexual violence movement has advocated for “increased policing, prosecution, and imprisonment as the primary solution to gender-based violence” even though that has not been what Black, Indigenous, and survivors of color have advocated.**<sup>13</sup>

In fact, the federal Violence Against Women Act (VAWA) relies significantly on “more police and introduced more punitive sentencing in an attempt to reduce domestic violence.”<sup>14</sup> At the founding INCITE! Conference in 2000, Angela Y. Davis challenged the mainstream anti-violence movement, saying that as it has become “institutionalized and professionalized, the state plays an increasingly dominant role in how we conceptualize and create strategies to minimize violence against women.”<sup>15</sup>

Across the nation, the anti-violence movement has historically failed to acknowledge the risk of police violence against marginalized women.<sup>16</sup> The mainstream movement’s reliance on the criminal legal system is an example of “carceral feminism,” which, through that reliance on the criminal legal system, “ignores the ways in which race, class, gender identity, and immigration status leave certain women more vulnerable to violence and that greater criminalization often places these same women at risk of state violence.”<sup>17</sup>

Most communities, including Whatcom County, have a “structural relationship” between anti-violence community-based organizations and law enforcement and prosecution.<sup>18</sup> In some communities “The community-based advocate can appear to be working for the prosecutor--or allied with the prosecutor--rather than standing as an independent advocate who works on behalf of victims of battering.”<sup>19</sup> While this was not a problem identified by stakeholders interviewed for this report, it may be worthwhile to consider if this perception exists in our community, especially because this report focused on interviews with professionals in these systems, not on interviews with survivor-defendants.

In her 2017 book *Invisible No More: Police Violence Against Black Women and Women of Color*, attorney and activist Andrea Ritchie describes the relationship between the anti-violence movement and state violence: “confronting systemic violence against women of color at the hands of a system that so frequently justifies its existence by taking on the mantle of ‘protecting’ women also brings racial profiling and police violence against women of color squarely and directly within the frame of



movements against gender-and sexuality-based violence. In so doing, it calls into question our approaches to violence and safety, and demands that we radically reimagine them.”<sup>20</sup>

The same year Ritchie’s book was published, the Office on Violence Against Women (OVW) released a report on the “impact of criminalizing policies on African American women and girls,” which highlighted the concern that “stereotypes of Black women as domineering, assertive, and masculine contribute to the invisibility of Black women as victims of sexual and domestic violence.”<sup>21</sup>

Experiences of intimate partner violence are common for incarcerated women. In a 1999 Department of Justice study (the most recent study of its kind), one half to two-thirds of women in state and federal prisons reported that they had previously been abused by an intimate partner.<sup>22</sup> 43% of women in local jails reported that they had been abused by an intimate partner.<sup>23</sup>

## **Not all survivors are treated equally by the systems they interact with. Evidence suggests that Black survivors, Indigenous survivors, and survivors of color do not feel safe calling the police.**

A national study found that 43% of survivors felt they had been discriminated against by police; 22% of those felt it was due to their race, ethnicity, or immigration status.<sup>24</sup> A survivor interviewed for that study said, “police shoot people of different races or those who are mentally ill, of which my family has both.”<sup>25</sup> Native women “are often disbelieved based on stereotypes focused on actual or perceived alcohol use.”<sup>26</sup> In the spring of 2020, Lummi women who reported harassment by men on a beach “were questioned...about drinking” and one woman was breathalyzed, though police took “no action” regarding the harassers.<sup>27</sup>

Lesbian, gay, bisexual, transgender, and queer survivors; immigrant survivors; survivors with disabilities; unsheltered survivors; and survivors experiencing poverty can also face discrimination and bias. Systems must recognize that these marginalized identities can and do overlap, so some survivors are facing multilayered bias. “Theme 2: Misconceptions about how victims look and behave...” in this report, further describes how systems and individuals may treat survivors differently based on the survivor’s identity.

## **Battered Woman Syndrome**

Even people outside the criminal legal system or anti-domestic violence field may have heard the term “Battered Woman Syndrome” which can “evoke the image of a woman who ends up ‘snapping’ and killing her abusive partner.”<sup>28</sup> Survivors’ use of violence is an important element to explore in an analysis of survivor-defendants. The term “battered woman syndrome” was coined in the 1970s to

characterize behavior of women who had experienced domestic violence and explain, for example, why a woman might stay in an abusive relationship.<sup>29</sup>

However, today, some experts see the use of battered woman syndrome as “both misleading and potentially harmful.”<sup>30</sup> In 1996, the U.S. Department of Justice and U.S. Department of Health and Human Services jointly published a report on battered woman syndrome as required by the federal Violence Against Women Act. The report offers this analysis:

“Among the most notable findings was the strong consensus among the researchers, and also among the judges, prosecutors, and defense attorneys interviewed for the assessment, that **the term ‘battered woman syndrome’ does not adequately reflect the breadth or nature of the scientific knowledge now available concerning battering and its effects.** There were also concerns that the word ‘syndrome’ carried implications of a malady or psychological impairment and, moreover, suggested that there was a single pattern of response to battering [emphasis added].”<sup>31</sup>

## Mandatory Arrest

***“What used to happen in the bad old days is Officer Friendly would say ‘calm down, go to bed’ and someone would get killed.”***

**–Local Criminal Defense Attorney**

In the 1970s and 80s anti-domestic violence activists called upon state legislatures to take domestic violence seriously. In 1979, the Washington State Legislature adopted new laws addressing domestic violence, starting the chapter with this statement:

“The purpose of this chapter is to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. The legislature finds that the existing criminal statutes are adequate to provide protection for victims of domestic violence. However, previous societal attitudes have been reflected in policies and practices of law enforcement agencies and prosecutors which have resulted in differing treatment of crimes occurring between cohabitants and of the same crimes occurring between strangers. Only recently has public perception of the serious consequences of domestic violence to society and to the victims led to the recognition of the necessity for early intervention by law

enforcement agencies. It is the intent of the legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior is not excused or tolerated. Furthermore, it is the intent of the legislature that criminal laws be enforced without regard to whether the persons involved are or were married, cohabiting, or involved in a relationship.”<sup>32</sup>

Washington’s mandate to arrest domestic violence perpetrators can be found in the laws addressing arrest without a warrant (RCW 10.31.100):

“The person is eighteen years or older and within the preceding four hours has assaulted a family or household member or intimate partner as defined in RCW ((10.99.020)) 26.50.010 and the officer believes:

- (i) A felonious assault has occurred;
- (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or
- (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that family or household members or intimate partners have

assaulted each other, the officer is not required to arrest both persons. **The officer shall arrest the person whom the officer believes to be the primary physical aggressor.** In making this determination, the officer shall make every reasonable effort to consider:

- (A) The intent to protect victims of domestic violence under RCW 10.99.010;
- (B) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and
- (C) the history of domestic violence of each person involved, including whether the conduct was part of an ongoing pattern of abuse”<sup>33</sup> [emphasis added].

It is important to note that while the laws of the Lummi<sup>34</sup> and Nooksack<sup>35</sup> Tribes differ from those of Washington State, both Tribes have similar mandates to arrest in domestic violence incidents. Lummi law does specify that “If a law enforcement officer determines that one person was the predominate physical aggressor, the officer need not arrest the other person, even if the officer has probable cause to believe that the other person has committed a crime involving domestic violence against the predominate physical aggressor.”<sup>36</sup>

While the intention may have been to take domestic violence seriously and reduce the discretion of responding officers, scholars and critics question the impact of similar “mandatory arrest” laws across the country. Andrea Ritchie argues that in fact, officers do still have discretion over which party to arrest<sup>37</sup> and expresses concern over “the growing number of arrests of survivors of violence under such policies.”<sup>38</sup> In the 1980s most states implemented mandatory arrest laws or pro-arrest policies for domestic violence cases. Over the next decade, domestic violence arrests for women increased in many states, some by as much as 35%.<sup>39</sup> Data on the impact of Washington’s mandatory arrest laws on arrests of women is unavailable because Washington State Patrol did not track domestic violence arrests by sex.<sup>40</sup>

Scholars David Hirschel and Philip McCormack studied “primary aggressor” laws over ten years.<sup>41</sup> These laws were introduced to mitigate the impact of mandatory arrest (the word “shall,” as in Washington’s RCW 10.31.100, quoted above, indicates a mandate), which had increased dual arrest (where both parties were arrested) and the arrests of women for domestic violence.<sup>42</sup> Hirschel and McCormack found that domestic violence arrest rates were down almost 25% in states with primary aggressor laws (such as Washington), compared to states without these laws. They speculated that this could indicate a reluctance of police to arrest anyone rather than arresting one or both parties.

Washington’s current mandatory arrest laws create the structure for police to face a dilemma, described in more detail in Theme 3: Context Matters. Even if officers have a deeper, more nuanced understanding of domestic violence, including coercive control, they are likely to follow the mandate to arrest the person who technically violated the law, even if that person is a survivor who will be further endangered by an arrest. The information that could provide context and tell an officer who the “primary aggressor” are likely legal behaviors (emotional abuse, isolation, financial abuse, etc.).

Additionally, **the law uses the phrase “primary physical aggressor”** [emphasis added]. One could interpret this to mean that one person can be the primary verbal aggressor and another person can be the primary physical aggressor.

Experiencing domestic violence raises the risk of arrest for survivors.<sup>43</sup> Lawyer Cindene Pezzell, an expert on survivors arrested for domestic violence, explains that experiencing abuse increases the potential for police intervention, either self- or neighbor-initiated; survivors may use strategies to survive that are illegal (theft, selling drugs, selling sex, physically fighting back); and experiencing abuse makes them more vulnerable to addiction, increasing their likelihood of possessing illegal drugs or driving under the influence.

In 2019, the Washington State Legislature called upon the State Supreme Court Gender and Justice Commission to continue their workgroup on a Domestic Violence Risk Assessment. The group examined the potential use of a risk assessment in various stages of the criminal legal system, including whether a risk assessment could replace mandatory arrest. In a previous report, this group

expressed concern that a risk assessment can be racially biased.<sup>44</sup> Many risk assessments currently in use also rely on examining past arrests, creating a cycle that could continue to make it difficult for officers to identify survivors at the scene.

In their 2018 Report, the workgroup recommended “that before revising or adopting new laws concerning mandatory arrest, the legislature fund research to better understand the impacts of mandatory arrest laws in Washington, including the potential impacts to offenders and victims of using an evidence-based risk assessment as an alternative to mandatory arrest.” The workgroup’s most recent report, released October 2020, reiterates this message, saying “removal of or amendments to Washington’s mandatory arrest law should only be considered in concert with additional study undertaken by an appropriate research entity.”<sup>45</sup>

## Challenge: Lack of Quantitative Data

Quantitative data would improve a local analysis of survivor-defendants. Unfortunately, we do not have up-to-date quantitative data on survivor-defendants in our community. The Washington Association of Sheriffs and Police Chiefs, which publishes an annual “Crime in Washington” Report, does not provide information on the gender of victims or offenders, except in domestic violence homicide cases, meaning we cannot look at arrest trends related to gender with data from that report alone.

## Theme 1: Arresting and Charging Survivors Causes Long-Term & Complex Harm

*“A horrible, cascading effect of bad things can happen.”*

—Local Family Law Attorney

*“How do you help them without jeopardizing their safety?”*

—Local Probation Officer

Interviews with stakeholders across disciplines, including one survivor, revealed a litany of negative impacts survivors experience as a result of being arrested, charged, and/or convicted of domestic violence or other crimes related to their experiences of abuse. These impacts are reflected in other research on survivor-defendants.

Impacts of arrest and/or conviction included:

- Decreasing survivor’s safety and freedom
- Increasing abuser’s coercive control
- Causing further trauma
- Losing standing in the community
- Losing housing or unable to access housing
- Losing custody of children (either to the abuser or to the child welfare system)
- Losing access to employment or certain careers
- Denial of public benefits
- May not be able to serve on a jury<sup>46</sup>
- Becoming ineligible to vote
- Becoming ineligible for life insurance
- Deportation
- May not be able to serve as a foster parent, even if they are a relative of the child(ren)
- Being pushed further into criminalized survival economies<sup>47</sup> such as sex work or selling drugs

## Abusers Increase Control & Survivors Are Less Safe

***“I’ve seen over the years people who are left with a feeling of no other way out of the relationship—the system won’t help them, or the advocates won’t help them, the cops won’t help them, the lawyers won’t help them.”***

**—Local Criminal Defense Attorney**

Abusers use the immense power of the criminal legal system as a threat, in a pattern of coercive control. Community-based advocates reported that even before any law enforcement involvement, their clients’ abusers threaten to call the police and lie in order to have the survivor arrested for domestic violence, frequently tying this to a threat that the survivor will never see their kids again.

Once a survivor has been arrested, these threats become more tangible. Stakeholders report abusers threatening to have the survivor arrested and threatening to report true or false probation violations. These threats can be used to coerce a survivor into unwanted sexual activity<sup>48</sup> and generally exert control. One community-based advocate paraphrased the threats her client heard from her abuser: “Don’t slip up, don’t make me mad, because I could have you arrested.”

A national qualitative study of survivors who had been arrested and convicted of domestic violence found that after the survivor was arrested, the abuser's controlling behavior increased, including sexual violence, threats, stalking, monitoring, encouraging or coercing the survivor to use alcohol and drugs to increase control, and threats to call probation to report violations (such as drug or alcohol use).<sup>49</sup>

## Housing, Jobs, and Finances

Arrests, charges, and convictions have huge impacts on survivors' access to employment, housing, and financial support. "Whatever financial independence they did have, they lose it. Their jobs, their cars, their houses" says one community-based advocate. A survivor may be displaced because of a criminal No Contact Order barring them from the home they share with the abuser. Landlords have the right to refuse to rent to people with criminal records. According to a local housing provider, "felony records make it almost impossible to secure employment and housing." This can lead to homelessness or having to live in unsafe conditions.<sup>50</sup>

Convictions can impact a survivor's current and future career. First, a survivor may have to miss work because they are in jail or to appear in court.<sup>51</sup> A survivor-defendant may not be able to get, keep, or renew a necessary professional license.<sup>52</sup> Women dominate "caring profession" jobs, including childcare and care for older adults in homes or healthcare facilities.<sup>53</sup> The number of people of color and immigrants in that industry is rapidly growing.<sup>54</sup> This means that people who are already marginalized for their gender, race, and/or immigration status can be at further risk of losing their jobs if they are arrested for domestic violence.

These barriers to housing and economic independence increase a survivors' dependence on their abuser.<sup>55</sup> Stakeholders reported that survivors who are arrested often "just don't have any other option and they go back to their abuser."

## Civil Legal Needs: Parenting Plans & Protection Orders

Stakeholders across disciplines, including criminal defense attorneys, family law attorneys, community-based advocates, and probation officers, identified the negative impact arrests, charges, and convictions can have on a survivors' civil legal needs. This can include the parenting plan which decides child custody, joint decision-making, and visitation. The survivor may even end up having to do supervised visits with their children. Fear of mandatory minimum sentences<sup>56</sup> and a desire to wrap-up the case quickly<sup>57</sup> can motivate survivor-defendants to plead guilty, though they may not recognize the long-term impacts of that plea.<sup>58</sup> If a survivor pleads guilty or settles a case, it can significantly impact their family law matter. An arrest can make it even harder to get a civil protection order to protect them against their abuser. Very few low-income people have access to family law

representation, so they do not have a lawyer to advise them on how to frame a criminal conviction during civil proceedings.

## Risk of Further Violence & Trauma

***“I was kind of expecting more of a patrol car with the sensitivity-trained police for domestic violence situations.”***

**—Local Survivor-Defendant**

An arrest, charge, conviction, and incarceration can increase a survivor’s experience of trauma. The survivor is already coping with the trauma of the specific incident for which they were arrested and the trauma of the ongoing abuse that is an intrinsic part of domestic violence. Stakeholders recognized that for survivors who have been arrested, it can be an emotional setback. One community-based advocate said they have seen survivors fall into addiction again after an arrest.

Survivors are at risk of continued violence upon involvement with the criminal legal system, from police officers, jail and prison guards, and other inmates. The US Department of Justice, Office of Violence Against Women identified that “While in prison, the routine activities of pat downs, body cavity searches, lack of privacy, and exposure to violence while in confinement can be triggering experiences that continue to harm the survivors and sometimes lead to reactive behaviors for which additional punishment is meted out.”<sup>59</sup> To a survivor, the monitoring of probation or parole can feel similar to the control an abuser had over them.<sup>60</sup>

## Burden of Involvement with the Criminal Legal System

***“It’s not just a couple of nights in jail and you’re fine. There are so many other court dates, repercussions, requirements, court mandated things they have to do. They’re just running around continually treated like a criminal.”***

**—Local Community-Based Advocate**

For professionals in the criminal legal system who work daily with people who have been arrested, arrest can look like a normal part of people’s lives. Some interviewees minimized the impact of an



arrest. One stakeholder emphasized that “the arrest is *not* the end of the situation. The person gets an attorney. There are a lot of different levels after that--prosecution, judge, jury, to decide what the truth is.” While an arrest certainly does not guarantee a conviction, involvement with the criminal legal system can cause further trauma, create huge burdens, and impact a survivors’ willingness to seek help from police again in the future.

A criminal defense attorney described survivor-defendants as “maybe trying to figure out a way out of the relationship, trying to figure out how to get help, trying to figure out how to get control of their life back and stand up for themselves, and what a blow to your ego to find yourself in jail. Maybe your children are now in the care of that significant other, and you might be the person who is restrained from going back to your own home with your children, meanwhile they’re in the care of someone you don’t trust to care for them. This stuff can take time to sort out. Best case scenario, we can get an NCO [no contact order] changed within a few days, but even that is rare. It’s hard sometimes to get these modified.”

If a survivor-defendant is low-income and therefore unable to pay for a private lawyer, they have the right to be represented by a public defender. However, depending on the jurisdiction, it can sometimes be weeks before a defendant is connected with a public defender. The Whatcom County Public Defender’s Office stated that it is their policy to assign a lawyer as soon as possible: a public defender appears at the “first appearance” hearing the day following an arrest and those cases are typically assigned the day after that. For those who do have to wait to speak with a lawyer, one interviewee said **“that’s a really sad possibility, that the true victim, who might need the help is not getting it and the true perpetrator is still just in control of the situation.”** Even when a survivor is represented by a public defender, interviewees stated that defendants sometimes cannot reach their attorney because “public defenders are overloaded.”

When prosecutors and judges identify a survivor-defendant, the survivor may be required to get help with a safety plan from a community-based advocacy organization. Unfortunately this requirement stands in contrast with Washington Administrative Code (WAC) 388-61A-1000<sup>61</sup>, which defines advocacy as involvement “in individual or group sessions with a primary focus of safety planning, empowerment, and education of the client *through reinforcement of the client’s autonomy and self-determination*” [emphasis added]. Community-based advocates cannot adequately support a survivor’s autonomy and self-determination if the survivor has effectively been given no other option but to seek those services.

## Theme 2: Misconceptions about How Victims Look and Behave

Practitioners' misconceptions about how a victim will look and behave impact who is arrested and charged with domestic violence or other crimes. Sociologist Amy Leisenring, in her study of domestic violence victim identity, observed that "Because female victims of violence are often understood as helpless, terrified, and passive, if a woman acts in ways that counter these images--by engaging in verbal and/or physical violence, damaging property, failing to show fear, etc.—she is less likely to be viewed as a legitimate victim by officers."<sup>62</sup> In addition to perceptions of "unvictim-like" behavior, perceptions of trauma responses, as well as stereotypes and systems of oppression, all contribute to how survivors and abusers are identified.

Like Leisenring in her study, local stakeholders also identified that misconceptions about survivors' behavior are likely a factor in who is arrested. Several non-law enforcement stakeholders identified survivors who appear "unlikeable" as a probable challenge for responding officers. As one stakeholder described, the survivor "could be yelling and screaming and enraged because she was trying to defend herself, yeah he has marks. It still doesn't mean that she was not the victim." Stakeholders said survivors may appear "wound-up," "hysterical," "sharp-talking," "angry," and "caustic." One stakeholder specified that sometimes these "unlikeable" behaviors are a "protection-mechanism for the survivor," both from their abuser and from the potential repercussions of law enforcement involvement in the incident. "So the hysterical-ness that law enforcement sees when they show up isn't because that person is the aggressor," said one stakeholder, "it's just because the situation overall is so stressful." Conversely, abusers often appear to be "cool, calm, and collected when law enforcement show up." "Usually it's because the aggressor is very manipulative," said one stakeholder.

A survivor fighting back to protect themselves from violence can also impact practitioner's perceptions of them: **"Despite the constant pathologizing of women who don't 'fight back' against rape and other forms of violence, women who defend themselves are also denied protection by police because their behavior is perceived as a deviation from a gender-normative, defenseless response."**<sup>63</sup>

A survivor-defendant in our community who protected themselves from a physical attack and was subsequently arrested for a domestic violence assault, recounted their experience talking to the responding officer: "I tried to answer [the police officer], and I talked a lot. It's the same thing that I told you, but more rambling and more disjointed because I was in shock. I was really upset...I wasn't

giving the police the answer he wanted. I could tell by his tone and the look on his face that he did not believe me.”

Practitioners may also believe that survivors should leave the abusive relationship and fully cooperate with the criminal legal system to hold their abuser accountable.<sup>64</sup> One stakeholder explicitly expressed their frustration with victims not participating in prosecution, saying “rates of victim recantation are so high” and while they acknowledged the significant challenges to this, they said “the remedy [rather than using violence in self-defense] is to leave the situation, of course.” They jokingly stated that they wished they could ban survivors from being in romantic relationships.

In a high profile case in New York state, “the prosecutor called [the survivor] a ‘master manipulator’ who concocted the abuse; he also said that if abuse did occur, [the survivor] should have left.”<sup>65</sup> This belief does not begin or end with the criminal legal system. A survivor interviewed for this report shared that when seeking medical attention for injuries sustained during the attack for which they were subsequently arrested, a medical professional lectured them about not dating abusive partners. People who have historically and presently been targets of police violence (see section on Oppression and Bias below) may also be less likely to cooperate with the police. Cooperating, or not, with police and the criminal legal system cannot itself determine who is a survivor.

Criminal legal system professionals may perceive normal responses to trauma as indications that the survivor is not credible. Because domestic violence is a pattern of behavior, the survivor has likely been experiencing emotional, sexual, and/or physical abuse for some time before the initial law enforcement response. Someone who has experienced trauma may not be able to tell a linear story, and/or may have a flat affect.<sup>66</sup> An advocate described the complex scene:

“the police come and the victim just got away, was going through a traumatic event and is freaking out. The abuser is calm: ‘look at this crazy person over here.’ [The survivor is] not able to speak up for themselves or advocate for themselves. Often, they’re triggered because the cops are often men, or even if they’re not men, cops are scary and intimidating. Often the abuser will have marks on them because if someone is trying to get away, you grab, scratch, whatever you can reach, whereas the abuser, who is in control, can grab you in places you don’t see, or not leave marks because they can be more controlled. That’s a huge factor.”

Interestingly, some stakeholders recommended that police interview both parties more thoroughly, as one stated, “We all know when you’re lying you don’t usually get things straight.” However, this may be a common misunderstanding as someone can behave in ways associated with lying when in fact they are responding to ongoing trauma as well as an actively traumatic event.

## Oppression and Bias Impact Perceptions of Victimhood

*“We learned so much about jail—a dynamic where people who are poor end up in jail whether they are guilty or not.”*

—Community-based advocates who facilitated support groups in the jail

### **Racism, sexism, transphobia, homophobia, ableism, and other forms of oppression impact who is perceived as a victim.**<sup>67</sup> These

identities can and do overlap, intensifying and complicating the bias survivors may experience.

The mainstream anti-domestic violence movement has often presented the typical survivor as “a white, heterosexual, middle class woman who had no experience with violent policing or prisons and was not perceived as engaging in criminalized activities.”<sup>68</sup> Stereotypes of Black women as “angry or aggressive” can lead practitioners to dismiss their experiences of abuse.<sup>69</sup> One interviewee, when asked why survivors are arrested, said “racism is a huge, huge part of it.”

Lesbian, gay, bisexual, transgender, and queer survivors also face bias and are at risk of being arrested for domestic violence, or violence from police. In 2017, the National Coalition of Anti-Violence Programs reported that 60% of LGBTQ and HIV positive survivors of intimate partner violence had interacted with police, either because they or someone else had called. Of those, 11% reported that law enforcement was hostile and 47% reported that law enforcement was indifferent.<sup>70</sup> Forge, a national organization advocating for the rights of transgender people, reports that “Nearly all trans survivors have substantial fears of being re-victimized by the individuals and agencies who are supposed to offer help and support”<sup>71</sup> and that for many, that fear becomes reality: “22-38% of trans people have been harassed by police, with upwards of 15% experiencing physical abuse and 7% being sexually assaulted by law enforcement.”<sup>72</sup>

In a national study, even controlling for the seriousness of the offense, same-sex couples are both less likely than heterosexual couples to have either party arrested *and* were much more likely to have both parties arrested. Same-sex female couples were 39 times more likely than heterosexual couples to both be arrested, while same-sex male couples were 53 times more likely than heterosexual couples to both be arrested.<sup>73</sup> In a study of community-based advocacy agencies that specifically serve LGBTQ survivors, “Most agencies (69%) estimated that less than 90% of the survivors they worked with were correctly identified as survivors [by the criminal legal system].”<sup>74</sup> If police and other criminal legal system professionals do not understand the power and control dynamics of a

domestic violence relationship, or are unable or unwilling to take the time to evaluate the circumstances,<sup>75</sup> they may not accurately identify who is the survivor and who is the abuser.

Survivors with disabilities can experience negative impacts from systems, including criminal legal and medical systems. A survivor-defendant interviewed for this report said that police and jail personnel refused to take them to the hospital, even though the survivor sustained injuries during the incident and has a permanent physical disability putting them at greater risk of long-term harm from injuries. One stakeholder shared that for some survivors with mental illness in our community, “the police are not an option at all” because the police will not respond to their calls. Mental illness (real or perceived) intersects with racial discrimination because “women of color are already understood as ‘mentally unstable,’ regardless of whether or not they are actually ‘disabled.’”<sup>76</sup> “This kind of racialized able-ism,” argues attorney and activist Andrea Ritchie, “inherently informs how police (and society at large) interact with Black and Indigenous women, and women of color.”<sup>77</sup>

## A Chain of Events

A responding officer’s impression of who is a “real victim” sets off a chain of events. Throughout the criminal legal process, who practitioners believe has long-lasting impacts on survivor safety and abuser accountability. Even in other systems, as in the example above of a healthcare provider chiding a survivor for having experienced abuse, judgments of who is a “good victim” can undermine survivors’ wellbeing.

**If these perceptions are based on stereotypes rooted in oppression, misunderstanding of normal trauma responses, misinterpretation of behavior not typically associated with survivors, or a combination, then survivors who do not fall into a narrow narrative are at risk of systems not only failing to protect them, but also potentially punishing them through the powerful criminal legal system.**

## Theme 3: Context Matters

At the heart of this complex issue is the tension between definitions of domestic violence used by the criminal legal system and more expansive definitions used by community-based advocates. Throughout interviews with stakeholders, it became clear that how practitioners define domestic

violence had an impact on whether or not they thought there was a problem in our community with survivors being arrested for crimes related to their experience of abuse.

## Dilemma for Police

***“I think it can be very difficult to be a police officer and know there’s so much more to it than what you see.”***

—Local Housing Service Provider

***“Those officers at 3 am have my sympathies, there can’t be a worse situation to go into.”***

—Local Criminal Defense Attorney

Stakeholders outside of law enforcement expressed a great deal of empathy for the difficult position of responding officers at a domestic violence call. Working with survivors who are angry and abrasive, for example, “blocks our ability to be empathetic. Instead we bristle. I think sometimes when that happens in an arrest situation, in the middle of the night, when things are intense and stressed...I’m sure it’s challenging” said one stakeholder.

Almost every stakeholder interviewed recognized the impossibility of officers ever having a full picture of an incident, let alone the full story of what led to that incident over time. Said one defense attorney, “unfortunately [officers] have to make the best judgement call they can with very limited snapshot of information. And they know they don’t always get it right, but they’re doing the best they can.”

Officers respond to a call with very little information about what has been reported. Responding to a domestic violence call, one officer said, “[officers] do not know the full history between the parties involved.” Another officer shared that “when we go to any incident, we’re given a tiny, tiny bit of info about what just happened [from dispatch].” Dispatch may tell the officer if there is a history of domestic violence calls to that address or if there is a protective order protecting one party from the other.

To assess a situation, one officer explained, “We spend a lot of time interviewing all involved parties and any witnesses before we can determine a primary aggressor. We look at the evidence on scene, such as injuries and broken items. We dig into what is reported to us, to find any inconsistencies or parts of the story that do not add up.” An officer from another jurisdiction described the way they

typically approach these cases. Separate officers talk with each party, “hopefully where [the parties] cannot see or hear each other” in order to gather more information about what happened. They may also “trade” and have each officer speak with the other party as well. The officers will look at and ask questions about any injuries. Detectives and investigators have more training on the evidence of strangulation, so responding officers may request a detective or investigator to examine the evidence further if they suspect strangulation.

An officer from yet another jurisdiction said taking time and building rapport is important in getting information about what happened. This officer outlined how they ask questions to elicit a narrative rather than short answers to better understand the larger context. They ask about the person’s activities that day, about the last time violence occurred, and about a time that really sticks out in their mind. The officer explained that they are trying to determine if this was an isolated incident or part of a pattern of abuse.

Officers are working within the framework of RCW 10.31.100, [Washington’s mandatory arrest law](#), described in more detail in the Background section. In her analysis of predominant physical aggressor language for the Battered Women’s Justice Project, Trish Erwin describes a challenge with these laws: “The law and legal system are confusing, contradictory, and above else, constantly changing.”<sup>78</sup> Police used to have a lot of discretion, then in many jurisdictions, that discretion was removed with mandatory arrest laws. Then, through additions of “primary aggressor,” or, as in Washington State’s case, “primary physical aggressor” language to mandatory arrest laws, police were given more discretion by asking them to decide “who was really in danger when intimate partners use violence or force.”<sup>79</sup>

“Predominant physical aggressor language is, in some ways, trying to make the law do what it does not want to do” says Erwin. “It is designed to remedy power differentials in the use of violence within intimate relationships, but it is at odds with the goal of the law in providing a neutral legal standard upon which to determine a legal action, e.g. a probable cause.”<sup>80</sup>

Officers view domestic violence dynamics from a legal standpoint. Therefore it follows that an officer would observe, as one officer interviewed did, that “the primary aggressor would be the person who slaps the other one because hitting another person changes the dynamic of interaction from a verbal argument to a physical assault.” This analysis neglects the complex patterns of coercive control that could have led to that act of violence. This same officer did recognize that sometimes “when a survivor finally decides to leave their aggressor...the aggressor knows how to push their buttons, causing a reaction from the survivor, which can lead to [the survivor’s] arrest.” From that officer’s perspective, even though it was the abuser who “pushed [the survivor’s] buttons” the responsibility to not engage in physical violence falls to the survivor.



## Contextualizing Violence and Other Crimes

***“There are a lot of things that the criminal justice system can’t deal with that may be just as bad as the things it can.”***

**—Local Criminal Defense Attorney**

The core of responding officers’ dilemma is the difficulty of putting violence into context at the scene. As described in the introduction, the Washington State law and the criminal legal system generally, define domestic violence in a way that does not match the complex forms of power and control abusers use toward survivors. Stakeholders across disciplines identified that the criminal legal system is focused on an incident, whereas other systems, like community-based advocacy, housing, and child welfare “get to look more holistically.” One officer who responds to domestic violence calls said “If a crime has been committed, we’re dealing with just what we are responding to—not what happened yesterday, or last week, or last year when we were there.” “A psychological victim of being in a bad relationship doesn’t mean you’re a criminal victim” explained one prosecutor.

Another officer observed that “There often can be triggers for people stuck in the DV cycle. If this trigger is set off, they can become aggressive to protect themselves when it isn’t warranted, which can lead to their arrest.” Even when police officers understand the complexity of living in an abusive relationship, the criminal legal system does not allow them to put a survivors’ use of violence in a larger context and still uphold the law as written. “Laws are written in black and white” said a probation officer. A prosecutor identified the limitations of the criminal legal system trying to address abuse in intimate relationships. “The real problem is the emotional relationship” they said, “Sometimes people are in truly bonded relationships that we would not choose to be in, but you’re not going to break it. I can put a No Contact Order in place, but if the two of them are hell-bent on defying it, they’re going to defy it.”

In *A Toolkit for Systems Advocacy on Behalf of Victims of Battering Charged with Crimes*, the National Clearinghouse for the Defense of Battered Women argues that: “The poor fit between the incident-driven criminal law and the patterned nature of battering is one barrier [to systemic change]”<sup>81</sup>:

*“Context is everything...”*

- Not all violence between intimate partners is the same
- Not everyone who uses violence against an intimate partner is a batterer



Applying this understanding is essential to reducing the number of victim defendants and to providing meaningful services for those in the system.

Questions to help establish context:

1. Is this behavior part of an **ongoing pattern**?
2. Is this pattern of behavior **intended to instill fear**?
3. Is this pattern of behavior linked to **domination and control**?<sup>82</sup>

-from *A Toolkit for Systems Advocacy on Behalf of Victims of Battering Charged with Crimes*

## Why Do Survivors Use Violence?

Of course, not all survivors use violence against their partners, but those who do may do so for a number of reasons. A survivor interviewed for this report shared that their partner had never used physical violence before the incident for which the survivor was eventually arrested. However, the survivor did describe a pattern common in abusive relationships: incidents of explicit abuse, where the abusive person would yell, throw things at the survivor, and call them names, followed by “honeymoon” phases, where the abusive person would express feelings of guilt and try to smooth things over by offering to help the survivor financially. As the survivor described, when the abuse escalated to physical violence in this incident, the survivor, who knew they were particularly vulnerable to physical injury due to their disability, “decided I needed to do something because it was getting worse. I was worried he was going to start hitting my head or that he’d get me on the ground and start kicking me, or grab me by my hair and slam me into the ground.”

Stakeholders described additional reasons why a survivor might use violence:

- “Victims of domestic violence that experience trauma at the hands of their abuser over time often ultimately come to a conclusion that the only way out is to defend themselves against their abuser in some fashion, whether it’s an assault or a fatality.”
- “When you tolerate, especially sexual violence, I feel like, when you tolerate it long enough, people eventually, frequently enough, just lose it on the [person who has harmed them].”
- “Sometimes if someone has engaged in violence, it was in self-defense.”
- “I’ve seen over the years people who are left with a feeling of no other way out of the relationship.”
- “[paraphrasing a survivor] he was standing in the doorway, he took my phone, he was screaming at me, I was afraid and so I hit him,’ but then you’re the one who actually did the illegal thing. Everything else up to there was actually legal.”

- “The survivor might be frustrated and react, and striking someone can be an assault. It’s unfortunate. It’s 1% of what has happened and 99% has happened to the survivor—it can be a small snapshot of the bigger picture.”
- One stakeholder described a scenario they have seen multiple times, where a survivor “felt safe enough with the police there to fight back,” but then an officer must make an arrest because “I just witnessed an assault.”
- “When I have these [clients] that are largely female victims and they’re in my office bawling their eyes out and they’re saying, you know, I shoved him because he started it. I shoved him out of frustration; you know I threw a picture frame across the room because I’m tired of him controlling my life. So it really hits home how obvious it is that, no, it’s not OK to shove someone but when you see why this person did it, it becomes pretty obvious that they shouldn’t have been arrested.”

One stakeholder dug deep into the complex dynamics of an abusive relationship, including both why a survivor might stay in the relationship and why a survivor might use violence. They recognized how much finances and isolation play a role in the abuser maintaining control, saying that the survivor “can’t make it on their own, or they don’t think they can. You have to recognize that that’s part of it.” This stakeholder has seen survivors who refuse to participate in the prosecution of their abuser because they are afraid that the abuse will get worse. Then, if the survivor is arrested, **“How do you navigate that? Their whole world changed—they decided to call the police, or the police were called [and they are the one who got arrested].”**

Two other reasons cited by stakeholders were “toxic relationships” and alcohol. Unfortunately, it was not clear how the stakeholder defined a toxic relationship or how that differed from the pattern of abuse found in domestic violence relationships.

In her report for the Battered Women’s Justice Project, Trish Erwin noted that a survivor “who has been battered and knows the signs of an impending attack may assault her partner first in order to either go toe-to-toe with him or try to head off a more serious attack.”<sup>83</sup> This matches what a local community-based advocate described as a common experience in abusive relationships where abusers can give their partner a certain “look” or use other body language that threatens violence. Survivors may sense that an incident of physical violence is about to occur or will occur soon, even without an explicit verbal threat.

Two stakeholders emphasized the impact of abusers filming survivors acting violently. They both described these as a way for abusers to “set up” the survivor. The abuser “knows how to push the

other person's buttons." While this does not explain violent behavior, cases where one party records another may need additional inquiry into the context.

Using violence against their partner is not the only crime for which survivors may face arrest. One stakeholder shared that they have seen survivors face shoplifting charges because "when you're controlled and you don't have access to your own finances because they're being managed by someone else, it's a quest for independence." Additionally, this stakeholder described cases where a survivor was arrested for stealing makeup because their abuser did not want them wearing makeup. Controlling how a partner dresses and whether or not they wear makeup is a form of abuse that is not illegal. In another case, the stakeholder saw a survivor who had been arrested and charged with driving under the influence, but the police and prosecutor had not initially realized that she had been fleeing an abusive incident at the time.

Domestic violence can also impact cases of child abuse and neglect. Reviewing a report of alleged neglect, one stakeholder learned that the mother "was so emotionally beaten that she couldn't care for herself or her children. Even after the perpetrator was removed from the situation, she couldn't function because she was so emotionally abused."

## **Whatcom County Service Providers Do Use Context**

Many of the stakeholders interviewed recognized the complexity of domestic violence dynamics, fully acknowledging that physical violence is not the only form of abuse, even if other forms of abuse are legal. They shared ways they try to gain insight into the relationship dynamics, asking about patterns of behavior, asking what led up to the incident, and even when "there was probably lashing out on both parts," asking questions to better understand **"Who has power in this relationship? Whose life is smaller because of this behavior?"**

As law enforcement investigate an alleged crime, evidence offers clues. One officer shared how "Experience helps me recognize how a victim may have scratch marks on their throat and they may be their own fingernails--from clawing at someone's hands who was holding their throat." A probation officer noted that "the physical behavior is seen, but that might be the tip of the iceberg. What is not seen, inside the house or inside the relationship?" A defense attorney said "You look for a reason [for the crime]. Why did this happen? Protecting yourself? Someone else? Drugs? Drunk?" One probation officer described trying to "get as much history as I can." A prosecutor shared how important the victim advocate is in uncovering context about civil cases such as divorce or parenting plans in progress between the parties. Prosecution-based advocates in particular showed a deep understanding of both the legal definition of domestic violence and the power-and-control dynamics that can include both illegal and legal behavior. Working in partnership with prosecutors, who have

the discretion to dismiss cases, prosecution-based-advocates can influence the outcome of a case by bringing that nuanced perspective of power-and-control.

A number of stakeholders, including those in law enforcement, prosecution, and child welfare, use criminal history to offer context. “Are there DV charges? That cues us that we need to pay more attention” said one social service provider. Looking at past arrests of each party can be problematic however. First, because not all assaults are reported. A 2015 Report by the National Domestic Violence Hotline found that 3 in 4 survivors of domestic violence who had never called the police were either unsure or would not call the police for partner abuse or sexual assault.<sup>84</sup> A significant majority (86%) of survivors who had previously contacted the police were either unsure or would not call the police again.<sup>85</sup> That report also found that 1 in 4 survivors surveyed “had been arrested or threatened with arrest during a partner abuse incident or while reporting a sexual assault incident to the police.” As that data shows and this report argues, survivors are sometimes arrested for domestic violence, so using arrests is not an accurate measure of who has the power and control in a relationship.

## Conclusion

Nationally and locally we are grappling with the question: What is the role of the criminal legal system? Narrowing our focus to survivor-defendants compels us, as the individuals who form the institutions that respond to domestic violence, to ask: What is the role of the criminal legal system in ensuring safety and justice for survivors of domestic violence?

The harmful impacts of arresting survivors, whether they used violence or not, are too great to continue to allow this issue to go unaddressed. Our community will benefit from further inquiry, with a focus on survivors’ stories and ideas for improving our systems’ response to domestic violence. The recommendations below offer learning opportunities, areas of discussion, and action steps to help our community work toward increased safety for survivors.

## Recommendations by Discipline

### All Community Members

- Consider and discuss these complex questions:
  - How do we define harm? Is harm only physical or sexual abuse? What about coercive control? How should our community respond to harms that are not illegal?

- What does accountability look like for survivors who use violence? How can holding survivors accountable for their behavior refrain from simultaneously empowering abusers?
- Recognize that survivors are vulnerable to “both state and interpersonal violence.”<sup>86</sup>
- Watch Marissa Alexander’s TEDx Talk “[Not Another Victim -- I’m an Empowered survivor-defendant](#)”
- Utilize resources outside of the criminal legal system, including:
  - Washington State Coalition Against Domestic Violence “[Friends & Family Guide](#)”
  - Washington State Coalition Against Domestic Violence “[Talking to Someone About Their Abusive Behavior](#)”
  - [Toolkit to Respond to Sexual & Domestic Violence](#)
- Envision and build alternatives to criminal legal system responses to domestic violence
  - Recognize that the criminal legal system cannot adequately respond to domestic violence.
    - Because so many of the abusive behaviors involved in the pattern of domestic violence are not illegal,
    - Because the criminal legal system cannot fully contextualize survivors’ use of violence due to limitations of the law, and
    - Because without a full understanding of context, criminal legal responses can cause further harm to survivors and give abusers more power.
  - Instead of asking, “How can we reform policing to keep survivors safe?” ask, “What do survivors need to be safe? What do community members need to be safe?”<sup>87</sup>
  - Society has offered law enforcement and community-based advocacy agencies as the main responses to domestic violence. How do other institutions and community members take on this responsibility? For example, “Prioritizing policies and approaches that increase survivor and community access to resources, education, and services.”<sup>88</sup>

## Community Leaders

- Continue to develop a thorough understanding of domestic violence dynamics, including coercive control.
- Develop a thorough understanding of the ways racial oppression impacts experiences of domestic violence, arrest, and criminal legal interventions, and explore ways of mitigating these impacts.
- Develop a thorough understanding of the ways oppression against LGBTQ survivors impacts experiences of domestic violence, arrest, and criminal legal interventions, and explore ways of mitigating these impacts.
- Regard the arrest and conviction of survivors of domestic violence as “a significant concern.”<sup>89</sup>

- Build alternatives to criminal legal system response to domestic violence, including “Prioritizing policies and approaches that increase survivor and community access to resources, education, and services.”<sup>90</sup>
- Foster more understanding between jurisdictions, including city, county, and tribal courts.
- Prioritize policies and funding that ensure survivors can be economically independent from abusive partners.
- Prioritize policies and funding for domestic violence perpetrator treatment.
  - Ensure funding for low-income people required to complete treatment.

## Commission on Sexual & Domestic Violence

- Conduct an in-depth quantitative and qualitative study of survivor-defendants in Whatcom County with a focus on survivor voices, including analysis of arrests, charges, and convictions, as well as interviews with survivors who have been arrested for domestic violence or related crimes.
- Conduct an in-depth quantitative and qualitative study of local survivors’ vision of justice, to inform continued efforts to provide justice within and outside the criminal legal system, depending on survivors’ wishes.

## Community-Based Advocates

- Actively acknowledge and address impacts of oppression on survivors’ experiences. Build capacity for addressing these oppressions through training and partnerships with other systems and organizations.
- When safety planning with survivors, address survivor’s use of violence<sup>91</sup>
  - including what to do if they are arrested
    - Right to remain silent
    - What to do regarding employment, bail, kids, etc. if arrested
- Coordinate with the Whatcom County Jail to ensure all people booked into jail (on any charge) know how to contact an advocate on the 24-hour hotlines in our community.
- In order “to protect [the survivor’s] legal rights and options,” do NOT discuss the facts of the case with survivors. Instead, focus on feelings, the criminal process and what to expect, safety planning, and impacts of incarceration.<sup>92</sup>
- When working with a survivor-defendant in an open criminal case, do NOT contact the prosecutor, even though community-based advocates may have longstanding relationships with prosecution,<sup>93</sup> as this could:
  - “undermine the defense strategy,” and
  - “create a culture in which prosecutors only really consider a defendant’s history of experiences of abuse when approached by an advocate”<sup>94</sup>
- Be prepared to describe the legal process for a defendant:<sup>95</sup>

- Will the judge talk to the survivor-defendant?
- Who are the “players”? (judge, prosecutor, court staff, etc.)
- Will the survivor-defendant be assigned a lawyer? If not, what is the process for accessing a lawyer?
- Will the abuser be present at court proceedings?
- What should the survivor-defendant wear to court? If in jail, can they wear their own clothes?
- Build relationships (or continue developing relationships) with defense counsel:
  - Identify and implement cross-training opportunities (e.g. Role Clarity, Domestic Violence 101/Criminal Defense 101).<sup>96</sup>
  - Recognize shared values and principles:<sup>97</sup>
    - Self-determination
    - Freedom and liberty
    - Both advocates and defense attorneys are often the only person supporting that individual—it’s an honor to be in that position
  - Invite a defense attorney to serve on the agency’s Board of Directors, if applicable.<sup>98</sup>
  - Work with defense attorneys “to strategize about ways to make sure that battered defendants are identified as early in the process as possible.”<sup>99</sup>
- Use [Working with Battered Women in Jail: A Manual for Community-Based Battered Women’s Advocates](#)
- Remember that “Survivors of abuse who do bad things that can’t be easily explained or mitigated by their experiences of abuse need support and advocacy too.”<sup>100</sup>
- Complete the Agency Assessment in [A Toolkit for Systems Advocacy for Victims of Battering Charged with Crimes](#)
  - Then read the Toolkit and implement additional strategies to support survivor-defendants
- Contact the [National Clearinghouse for the Defense of Battered Women](#) for technical support as needed<sup>101</sup>
- Continue or implement support groups in jail.
  - Consider engaging a professional therapist to co-lead the groups.
  - Offer a group for men and a group for women, ensuring groups are inclusive of trans and genderqueer people.
- Train patrol officers in each Whatcom County law enforcement jurisdiction on what happens when an officer connects a survivor with an advocate. As one officer shared for this report, knowing more about the process and services “might make us better salespeople” in recommending community-based advocacy services.
- Foster more diverse leadership in domestic violence and sexual assault organizations.<sup>102</sup>

- Ensure that survivor-defendants and survivors released from incarceration know that advocacy services are available to them and that they “won’t be turned away from services [due to having] a criminal history.”<sup>103</sup>
- Continue to gain skills and use assessment tools to screen clients for which person has power and control in the relationship. The Northwest Network offers training and more: [Northwest Network Assessment Tool](#)
- Develop a clear policy on serving survivor-defendants and not serving both parties
- Provide re-entry support after a survivor returns to their community after a jail or prison sentence, including:
  - “bridges to other services (recovery centers, culturally specific organizations, etc.)”<sup>104</sup>
  - Support group for formerly incarcerated survivors<sup>105</sup>

## Law Enforcement

- Continue to develop a thorough understanding of domestic violence dynamics, including coercive control, and understand each intimate-partner domestic violence case in that context.
- Provide context in reports to provide prosecution and victim advocates with additional information. See the [Model Policy: Domestic Violence](#) by the International Association of Police Chiefs for more detailed report writing procedures.
- When concerned that they may have arrested a survivor, contact the prosecutor’s office to communicate the concerns. Prosecutors have discretion to dismiss cases.

## Prosecution

- Continue to develop a thorough understanding of domestic violence dynamics, including coercive control, and evaluate each intimate-partner domestic violence case in that context.
- Use prosecutorial discretion to dismiss cases against survivor-defendants.
  - See RCW 13.40.077 <https://app.leg.wa.gov/rcw/default.aspx?cite=13.40.077>
- Develop procedure to provide feedback to law enforcement. As one officer shared “I want to know what I could have done different, I don’t want to mess it up.”
- Consider how a No Contact Order (NCO) could be used by an abuser “victim” to gain power and control in a survivor-defendant case and rescind NCOs in these cases to promote safety for survivors.

## Prosecution-Based Advocates

- Continue to develop a thorough understanding of domestic violence dynamics, including coercive control, and evaluate each intimate-partner domestic violence case in that context.
- Continue to build partnerships with community-based advocates.



- Develop procedure to coordinate with advocates from Lummi Victims of Crime and/or Nooksack Victims of Crime early in a case to provide culturally-responsive support to survivors, including survivor-defendants.
- Create policies or procedures for screening cases for survivor-defendants to ensure that current practice is institutionalized.

## Defense Attorneys

- Continue to develop a thorough understanding of domestic violence dynamics, including coercive control, and evaluate each intimate-partner domestic violence case in that context.
- Build relationships (or continue developing relationships) with community-based advocates:
  - Identify and implement cross-training opportunities (e.g. Role Clarity, Domestic Violence 101/Criminal Defense 101)<sup>106</sup>
  - Recognize shared values and principles<sup>107</sup>
    - Self-determination
    - Freedom and liberty
    - Both advocates and defense attorneys are often the only person supporting that individual—it’s an honor to be in that position
  - Volunteer to serve on a community-based advocacy agency’s Board of Directors.<sup>108</sup>
  - Work with community-based advocates “to strategize about ways to make sure that battered defendants are identified as early in the process as possible.”<sup>109</sup>
  - Understand services of local community-based advocacy organizations, including Lummi Victims of Crime, Nooksack Victims of Crime, and Domestic Violence & Sexual Assault Services.
    - Refer survivor-defendants to these services early in their case.
- Review [“FAQ’s for Defense Attorneys Community-Based Domestic Violence Advocates: A Resource for Battered Women Charged with Crimes”](#)
- Contact [National Clearinghouse for the Defense of Battered Women](#) for technical support as needed

## Judges

- Continue to develop a thorough understanding of domestic violence dynamics, including coercive control, and evaluate each intimate-partner domestic violence case in that context.
- “Be alert to the possibility that some DV defendants are domestic violence survivors”<sup>110</sup>
- Review [“Some Issues for Judges to Consider When Domestic Violence Survivors Are Charged with Crimes”](#)
- Do not sentence survivor-defendants to domestic violence perpetrator treatment<sup>111</sup>
- Do not sentence survivor-defendants to receive services from community-based advocacy services (Lummi Victims of Crime, Nooksack Victims of Crime, Domestic Violence & Sexual

Assault Services). WAC 388-61A-1000 requires these services to reinforce survivor’s “autonomy and self-determination” and cannot do so if the survivor is required to receive services.

- Review and utilize the “[Domestic Violence Manual for Judges](#)” published by the Washington State Supreme Court Gender and Justice Commission.

## Jail Staff

- Develop policies and procedures to ensure all people who are incarcerated know that community-based advocacy is confidential and available to all survivors of sexual and domestic violence.
- Develop policies and procedures to ensure all people who are incarcerated know how to connect with these services and ensure that access is readily available upon request.
- Continue to partner with community-based advocacy agencies to offer in-jail support groups.

## Child Welfare

- Continue to develop a thorough understanding of domestic violence dynamics, including coercive control, and evaluate each intimate-partner domestic violence case in that context.

## Family Law Attorneys

- Continue to develop a thorough understanding of domestic violence dynamics, including coercive control, and evaluate each intimate-partner domestic violence case in that context.
- Be prepared to explain this dynamic to a judge in a family law case, especially in cases where a survivor has been arrested for domestic violence or a related crime.

## Probation

- Continue to develop a thorough understanding of domestic violence dynamics, including coercive control, and evaluate each intimate-partner domestic violence case in that context.
- Continue to address the safety and well-being of survivor-defendants, including collaboration across discipline to minimize further harm.

## Appendix: List of Contributing Agencies

- Bellingham Police Department
- Blaine Police Department
- Blaine Prosecutor's Office
- Washington State Department of Children, Youth, and Families
- City of Bellingham Prosecutor's Office
- City of Bellingham Victim-Witness Unit
- Domestic Violence and Sexual Assault Services
- Domestic Violence Resource Network
- Ferndale Probation Office
- Lummi Nation Police Department
- Lummi Victims of Crime
- Nooksack Victims of Crime
- Northwest Justice Project
- Opportunity Council
- Public Defender for the Cities of Blaine, Everson, and Sumas
- Whatcom County Probation
- Whatcom County Prosecuting Attorney's Office Victim-Witness Unit
- Whatcom County Public Defender's Office
- Whatcom County Sheriff's Office
- Whatcom County Superior Court

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## Bellingham-Whatcom County Commission on Sexual & Domestic Violence

December 2020

### Community Appointments:

Riannon Bardsley  
*Washington State Office of Homeless Youth*

Beth Boyd  
*PeaceHealth Medical Center*

Christina Kobdich  
*Unity Care Northwest*

Ken Levinson  
*Nooksack Tribe*

Byron Mannering  
*Brigid Collins Family Support Center*

Moonwater  
*Whatcom Dispute Resolution Center*

Emily O'Connor  
*Lydia Place*

Katie Plewa Olvera  
*Licensed Psychologist*

Chris Roselli  
*Western Washington University*

Garret Shelsta  
*Christ the King Church-Bellingham*

Krista Touros  
*PeaceHealth*

Raquel Vernola  
*Whatcom Community College*

Mary Welch  
*Northwest Justice Project*

### Government Representatives:

David Doll  
*Bellingham Police Chief*

William Elfo  
*Whatcom County Sheriff*

Starck Follis  
*Whatcom County Public Defender*

Greg Hansen  
*Mayor, City of Ferndale*

Erika Lautenbach  
*Whatcom County Health Department Director*

Darlene Peterson  
*Bellingham Municipal Court Administrator*

Linda Quinn  
*Ferndale School Districts*

Dave Reynolds  
*Whatcom County Superior Court Administrator*

Eric Richey  
*Whatcom County Prosecutor*

Katrice Rodriguez  
*Nooksack Tribe*

Peter Ruffatto  
*Bellingham City Attorney*

Donnell Tanksley  
*Blaine Police Department*

Bruce Van Glubt  
*Whatcom County Probation Administrator*