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RURAL BUILDING BLOCKS WEBINAR

**When Victims of Battering are Charged with Crimes:
Exploring Effective Advocacy Responses**
With Cindene Pezzell, National Clearinghouse for the Defense of
Battered women
Wednesday, May 17, 2017

Praxis International - Rural Technical Assistance on Violence Against Women



Webinar details

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Praxis International - Rural Technical Assistance on Violence Against Women



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Who we are, what we do

National Clearinghouse for the Defense of Battered Women

- Assists victims of battering charged with crimes when there is a direct legal relationship between the abuse and the crime for which she is charged;
- Part of BWJP: 800/903-0111, ext. 3



Overview – We will explore



Perception/labeling of defendants

- Suspect
- Perp
- Felon
- Criminal
- Batterer
- Guilty
- She must have done something, after all
- "He knows what he did"



When litigants raise their experiences of abuse in court...

- Liar
- Making excuses
- Bad mom
- Manipulator
- Crazy/unstable person
- Taking things out of proportion
- What else?



Being a victim of battering charged with a crime...

- Not a “real victim”
- Trying to game the system
- The abuse excuse
- Just plain crazy
- Gave as good as she got
- Liar, liar pants on fire

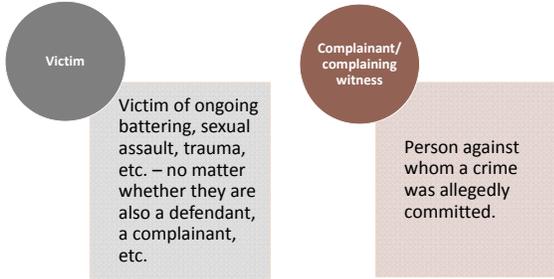


We know all charged victims are disadvantaged

- But consider increased risk to victims further marginalized by race, economic situation, sexuality, physical abilities, immigration status...
- What do these risks look like for rural survivors?



The language we'll be using today

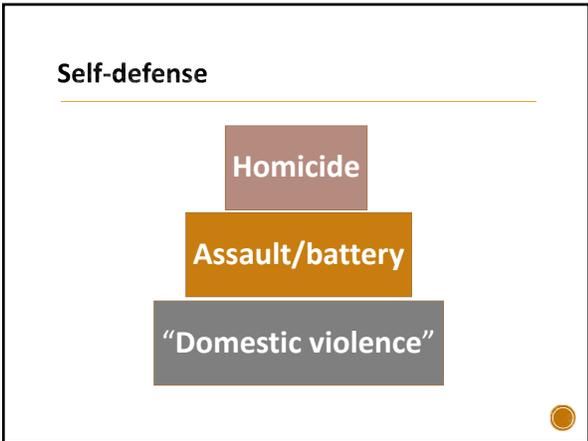


What people think we are arguing...



What we are really saying:

- **battered defendants** – like all defendants – **should get fair trials;**
- **that context really matters;**
- **if our goal is safety and justice for victims, we have to think long & hard about what to do when victims of battering face criminal charges;**
- **that this stuff** – especially when survivors use illegal violence – **can be very complicated.**



- Thinking beyond "self-defense" – how victims are ending up charged and incarcerated**
-
- Parental Kidnapping
 - Failure to protect
 - Drug trafficking
 - Human trafficking
 - Economic crimes
 - Firearms-straw purchasing
 - Prostitution
- What kinds of charges are common in rural areas?

- A need for advocacy, regardless of the case type**
-
- Regardless of the relationship between a victim's history of abuse and her/his criminal case – advocacy may be wanted and needed
 - Rural victim defendants: One of the most in need groups
-

Other kinds of charges victims face

- Drug possession
- Prostitution
- Theft
- Economic offenses
- No finite list



The need for advocacy for charged victims is great

- Most incarcerated women have experienced abuse as a child and/or adult;
- Large, government-sponsored studies have found prior abuse rates of incarcerated women to be about 50%;
- Smaller, more in depth, studies using varied (including qualitative) methodology, have found prior abuse rates as high as 95% (this is the highest found, but most are at least 70-90%);
- Experience of adulthood or intimate partner abuse has been found for anywhere from a third of incarcerated women to 85%.

Being arrested, charged, convicted, and/or incarcerated ALWAYS has a detrimental impact. But these experiences can be even worse for victim-defendants.



Consequences of arrest and/or conviction and how victims of battering are uniquely impacted



“Collateral” consequences of arrest and conviction...

- Employment
- Housing
- Benefits
- Education
- Status in the country
- What else?



Immigrant survivors charged with crimes...

The risks faced by immigrant survivors are enormous. If they are also defendants...

- The abusive partner’s leverage is increased even more (added threat of calling/using ICE)
- If he’s the complainant, ability to coerce by promises not to show up to court
- Ability to control and disseminate information about survivor’s status.
- Resources for immigrants in rural areas?



Consequences impacting finances and housing

- Employment (being barred from certain jobs; licensure problems; general discrimination);
- Public benefits;
- Housing benefits;
- When benefits are unavailable– is batterer the only resource left?



Consequences impacting custody

- Current or future civil cases – especially custody – what if charges are DV related? Batterer may appear to be the good parent
- May also effect ability to opt out of mediation or receive spousal support;
- If survivor is incarcerated, her parental rights could be terminated;
- Batterer may control incarcerated survivor’s access to children.



Consequences impacting how the survivor is perceived by the community

- Type of service she must receive (mandated “batterers” groups);
- How she is labeled (perpetrator, offender, batterer);
- Possible denial of services (some BW’s orgs will not assist battered women who have been arrested).



Overall increase in risk

- **Batterer has a lot more leverage;**
- **Subsequent help-seeking behavior;**
 - the survivor’s credibility (either formally or informally) when she seeks protection;
 - If she called the police before and was arrested herself, will she ever call again?
- **Inability to flee danger for fear of violating conditions of bail, probation, sentence, etc.**



Rural victims are burdened even more

- Reporting to probation
- Complying with probation requirements (employment, etc)
- Isolation/small support system
- Challenges to successful reentry
- People from urban/suburban areas may reenter to rural areas
- Everyone knows everyone
 - Complying with "treatment" orders
 - Asking for help



Is there agreement?

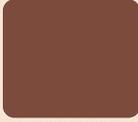
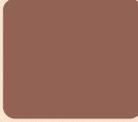
- **Victims of ongoing battering should not be treated the same as batterers;**
- **Context particularly matters in an incident-based criminal legal system;**
- **Different experiences and realities require different interventions;** fair treatment may not mean the same treatment.



Advocacy strategies for victim-defendants



A Just and Effective Response considers:

		
What do you need to do in your community to prevent inappropriate arrests and prosecutions of victims?	How can you improve the quality of representation battered defendants receive?	How can you help battered defendants get through the process?



Any resistance/barriers to working with survivors charged with crimes?

- Historical relationships w/ police & prosecutors and fears of jeopardizing those relationships;
- Fear of being accused of being biased (only supporting women; only believing women);
- “We don’t work with perpetrators;”
- Funding restrictions and/or pressure from funders and/or community members.



What can community-based advocates do?

- Reach out to defense bar and let them know how you can help;
- Know the law; its realities and its limitations. Know the process in our own communities;
- Develop community-specific intervention strategies and protocols that can assist battered women charged with crimes;
- Work with law enforcement to help reduce the number of BW being arrested



Advocacy strategies, cont'd

- **Identify and access BW early**
 - establish contact as soon as possible after an arrest;
 - accept collect calls from battered women in jail & prison;
 - create revolving bail funds.
- **If possible, consult with the defense attorney before talking with the defendant;**
- **Avoid discussing the facts of the case with her;**
- **Consult with the defense attorney before talking with the prosecutor.**



Avoid talking about the facts of a defendant's criminal case

- Do you know your advocate confidentiality law?
- Even in states with strong laws protecting communications between advocates and survivors, it is risky for defendants to talk about what led to their criminal charges.



What advocates CAN talk about

- Talk with defendant about the history of abuse (while avoiding facts of the case)
- Explain the legal process in your community from a defense-based perspective
- Offer general support and information



Going to the prosecutor without having the defense attorney on board could...

- Reveal potentially harmful information to the prosecutor;
- Undermine the defense strategy;
- Create a culture in which prosecutors only really consider a defendant's experiences of abuse when approached by an advocate. In other words, are the people who aren't receiving our services being marginalized even further?



Advocacy strategies, cont'd

- **Maintain confidentiality always;**
- **Keep women's safety central** — esp. in assault cases — and help defense counsel better understand the realities of battered women's lives;
- **Continue to develop working relationships with law enforcement, jail personnel, prosecution, probation;**
- **Think critically about groups for arrested battered women.**



But they always plead!

- **Strategies for early identification of BW defendants** (advocates & defense counsel)
- **Information in jails** (about programs that will assist);
- **Information about what to do if arrested given to women seeking services in community;**
- **Relationships with local law enforcement** (including jail staff).



Forging relationships with defense counsel

- Who already has a good relationship w/ defense counsel?
- What are barriers to having good relationships?
- What are strategies to develop improved connections?
 - Develop strategies – in collaboration with defense counsel – for early identification of victim defendants



Defense counsel, continued

- Cross-training opportunities with public defender offices
- Relationships with public defender social workers
- Cold calls
- Inviting defense attorneys to participate in CCR meetings
- Clarity of community-based advocate's role in court
- Identifying the barriers to good relationships



Other key people

- Probation/Parole
- Prosecutors
- Police
- Civil Attorneys
- Jail and Prison Staff
- Expert Witnesses
- Other Service Providers
- Prisoner Rights Organizations
- Re-Entry Programs



Are you working with a victim defendant?

Contact us if you:

- Are interested in working with victim-defendants,
- Work with victims for re-entry from jail or prison,
- Want more information on defense-based advocacy



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Thank you!



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