

# Beyond the Criminal Justice System

A white paper of the Iowa Coalition Against Domestic Violence (ICADV)

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*“The Iowa Coalition Against Domestic Violence seeks to engage all people in a movement to change the social and political systems that perpetuate violence against women. We do this through education, advocacy and quality services.” – Iowa Coalition Against Domestic Violence Mission Statement*

*“Everyone has the right to life, liberty and security of person.” –Article 3, United Nations’ Universal Declaration of Human Rights, 1948*

## Introduction

The words *domestic violence* conjure the image of a closed fist. Yet the conjuration itself mirrors one of the fundamental difficulties of redressing it: the fist dominates, the fist demands focus, but it also obscures what is behind it, distracting attention, like a magician misdirecting the audience from what is truly happening. Other terms are no less misleading: *battering, intimate partner violence, dating violence....*

*Domestic abuse* may come closer to the mark, but then one falls into another trap, for there is nothing *domestic* about it. It is not homey, comfortable, or tame. Persons doing harm do not limit themselves to the confines of the household. They extend their influence outward into the workplace, social networks, and schools, and inward into the most private spheres of another person’s conscience, self-image, and faith. That extension beyond the domestic realm of household tasks opens the door to understanding its full nature: *coercive control*.

A recently released document by the United Kingdom Home Office (Home Office, December 2015), provides this framework for understanding coercive control:

*Controlling behaviour is: a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.*

*Coercive behaviour is: a continuing act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.”*

*Controlling or coercive behaviour does not only happen in the home, the victim can be monitored by phone or social media from a distance and can be made to fear violence on*

*at least two occasions or adapt their everyday behaviour as a result of serious alarm or distress.*

In direct opposition to coercive control, *civil liberties* begin with the integrity of the body, ability to make choices, move unobstructed, be around the people you want to be around, communicate, and create your own identity rather than enacting an identity formed by another and enforced through coercion. What, then, is domestic violence, but a violation of basic human rights?

By any name, domestic violence impacts individuals and families. It grows out of a belief that men have the primary right of control over the lives of their partners and children. Historically, the ownership of women by men, the right to control, discipline, and abuse women's bodies, as well as control their financial and material resources, has been sanctioned in a social and political system known as patriarchy. Family systems mirror larger social constructs; domestic violence is a reflection and extension of male dominance into the private sphere. It is tied to white privilege, heterosexism, and other systems of oppression in which certain categories of people are given privilege over others. Despite social change, these systems remain in existence.<sup>1</sup>

Our conviction that women are fully equal members of society, that they have the right to self-determination and full control over their lives, and are responsible for their choices, is an integral part of our approach to domestic violence. ICADV's membership identifies itself as feminist in resistance to institutional oppression and works towards social justice regardless of gender or ethnicity.

Even with important legislation such as the Civil Rights Act or recent U.S. Supreme Court decision on marriage equity, social change occurs on the community and family level. Government intervention provides standards, vision, and sometimes consequences, but it is not the culmination of justice, in many ways it's only the beginning.

In recognition of this, and of the following context and history of the movement, the **Iowa Coalition Against Domestic Violence is pivoting away from criminal justice solutions to reclaim a human rights agenda and focus our efforts on change in communities and families.**

## **Our History**

The women's rights movement of the 1960s and early 1970s provided a forum for women to connect coercive control in private lives to social norms of male dominance. The battered women's movement began as a grassroots effort to reclaim personal autonomy, safety, and authority by providing safe spaces where survivors could name their experience, exchange strategies, and find support.

By the 1980s, shelters and safe homes had cropped up around the nation as the nascent movement coalesced into a network of small nonprofits, operating on few financial resources. A discussion of the forces at work that led to white, heterosexual, middle class feminists controlling the narrative and leaving out the experiences of women of color, lesbians, and poor women is beyond the scope of this

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<sup>1</sup> ICADV mandates the delivery of direct services to male, trans, and intersexed victims of domestic abuse. Serving those survivors, as well as addressing domestic violence in gay and lesbian relationships, does not contradict a systemic analysis of partner violence rising from a system of patriarchy. Hierarchical models of relationship and oppressive tactics are learned and may be reflected in various family formations.

paper. Suffice it to say, the developing battered women's movement was not immune from the impact of the racialization of poverty<sup>2</sup> (Gilens, 2003) and the power of lesbian-baiting<sup>3</sup> (Pharr, 1997) in the quest for credibility and attention as an issue to be addressed. The construct of a *battered woman* that emerged in our national conversation was meek, helpless, white, straight, had children and was poor but not too poor to be undeserving. While still subject to scorn, at her best this battered woman was an object of pity, a product of poor judgement, lack of education, and bad family backgrounds.

The first batterer intervention programs such as Emerge (Adams, 1988) and the Domestic Abuse Intervention Project (the Duluth Model) (Paymar, 1993), placed domestic violence within a framework of oppression and social hierarchy and elucidated the wide range of non-violent controlling strategies involved. Nevertheless, along with placing the source of the problem within the symbolic *battered woman*, the national mainstream framework also located the problem within the personal failings of the person doing harm. A *batterer* was someone who had problems with alcohol, anger, communication, attachment, PTSD, depression, self-esteem, impulsivity, and a similar trifecta of poor judgement, lack of education, and bad family backgrounds.

Meanwhile, financial resources for community mental health services were being gutted, and -- partly as a consequence -- chronic homelessness was on the rise (E. Fuller Torrey, 2013). Trickle-down economics took control of policy and the *war on poverty*, which had halved the poverty rate during its initial decade, derailed into what many have called a *war on the poor* (Gustafson, 2011) (Gans, 1996). Furthermore, in reaction to gains in political power made by people of color in previous decades, and shifting demographics, white anxiety around loss of privilege led governing systems to seek new strategies to limit further change. (Alexander, 2012)

By the 1990s, the United States was primed for an explosion of criminal justice involvement and incarceration as the foremost method of responding to social concerns, from violence to drug abuse, mental health issues, homelessness, poverty, and ongoing racial tensions. The ground was also ripe for the battered women's movement to grab national attention. Framing domestic violence as a criminal issue allowed advocates to gain an audience and access to political influence unprecedented up to that point. The Violence Against Women Act, ratified in 1994, linked demands for women's justice to formal systems in what, at the time, was a victory for advocates.

### **Unintended Consequences**

No social movement makes smooth progress toward its goal; they are marked by a series of successes, defeats, dead-ends, and unintended consequences. Framing domestic violence as a criminal issue naturally led to regarding the criminal justice and correctional systems as the primary means for solving

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<sup>2</sup> The *racialization of poverty* refers not only to growing gaps in socioeconomic status between whites and communities of color, but also the changes in media representation of poverty: portraying poverty as a black and Latino problem. This not only reinforces stereotypes, it also shifts cultural views of people living in poverty, framing them as undeserving of assistance or concern.

<sup>3</sup> *Lesbian baiting* is an attempt to control women by capitalizing on homophobia and misogyny by stigmatizing lesbians and then linking acts of independence to the fear of being labeled a lesbian. Lesbian baiting is a tactic to silence women speaking out against oppression.

the problem. Starting in the 1990s, public monies were directed toward training law enforcement, prosecutors, and courts, on catching, convicting, and punishing perpetrators of domestic violence.

Today, mandatory arrest laws have flourished, requiring law enforcement to make an arrest if they have probable cause to believe a domestic abuse assault has occurred. Unfortunately, because the crime of domestic violence is defined as a physical act (or the threat of such), officers do not have the authority to intervene: when physical violence does not leave evidence for probable cause; pre-emptively to prevent an assault; or in the ongoing daily non-violent coercive control strategies that typify domestic violence. Arrest has not even been proven to have a major impact on stopping domestic abuse (J. David Hirschel, 1992) (L. Broidy, 2015).

Because mandatory arrest removes discretion from both officer and victim, it mirrors the control of the offending partner, creating tension between law enforcement and victims, and decreases the rate at which battered women report abuse (Dugan, 2006). Mandatory arrest policies are connected to increased retaliation by the abuser for being arrested (Iyengar, 2009); arrest leading to deportation of the abuser, survivor, or both; financial hardship resulting from the partner's arrest and incarceration; increased arrests of battered women; child welfare involvement and loss of children (Schechter, 2000); and increased isolation in communities of color through ostracism for turning yet another person over to a biased criminal justice system (Novisky, 2015). States with mandatory arrest have a higher intimate partner homicide rate than those without. (Iyengar, 2009)

The addition of primary physical aggressor or predominant aggressor laws have little impact on correcting the numbers of battered women who are arrested and convicted along with the perpetrator, (Miller, 2001) (McCloskey, 2007). Once in custody, battered women are likely to plead guilty and agree to whatever they believe will get them out and home to their families as soon as possible. On the chance that they do speak with a defense attorney, that attorney is rarely versed in domestic abuse or the long term consequences that battered women face once they have a violent conviction, and typically encourages them to plead. Those consequences fall more heavily on women than on male offenders (National Clearinghouse for the Defense of Battered Women, 2008). Violent offenses bar people from employment in the fields with predominantly female workers: child care, education, nursing, etc. They also impact eligibility for public assistance, housing, immigration status, and education assistance programs. Because women with violent convictions, including self-defending victims, are seen as more aberrant than men with similar records, mothers are more likely to lose custody of children in divorce or child welfare proceedings than fathers with convictions.

U.S. courts are well aware of the systemic gender and racial bias within them (Schafran, 2000) (Conference of State Court Administrators, 2001) (Kang, 2009) (Thompson, 2002). Once arrested for domestic abuse, battered women of color face particular challenges in presenting a defense case, fighting not only prosecution evidence but racial stereotypes of aggressive behavior, less overall credibility, and being seen as less deserving of society's concern. When the courts exert social control over framing identity, women of color can experience it as but one more intersection of oppression on par with the coercive control of their partners (Potter, 2008).

Mandatory sentencing and *third strike*-type penalties for domestic violence offenses have gone hand in hand with mandatory arrest as part of the *get tough* stance on criminal behavior, with similar unintended consequences on survivors and few positive outcomes (Kamin, 2001). Longer sentences for violent crimes have not proven to have a deterrent effect (Wright, 2010). Victims call the police to

interrupt the violence but additional prison time for abusers isn't what many victims want, (Hart, 1992) (Kim, 2010 ) especially those vulnerable victims whose economic survival is placed in jeopardy by removal of the perpetrators current income and future economic prospects.

Endeavoring to save time and money and secure the most convictions, prosecutors use severe penalties to pressure defendants to plead to lesser charges, thereby circumventing the intent of the legislation while sending a message to both victim and perpetrator that the behavior isn't a *serious* matter.

Mandatory sentencing prevents judicial discretion regarding the context of a behavior, increasing the likelihood that self-defending victims will receive inappropriate and onerous sentences. Also, some people arrested for using force against their partners did so for the first time; it was context specific, and not part of an ongoing campaign of coercive control. They are inappropriately sentenced to one-size-fits-all batterer treatment and exposed to high risk offenders, increasing the likelihood that these people receiving *treatment over-dose* will repeat their offense. In fact, whether low or high risk, prison has been shown to increase recidivism for offenders (Cullen, 1999) (Braun, 2012) (Goggin, 1999) (Shapiro, 2007), including, specifically those convicted of domestic abuse, (Steiner, 1999) (George, 2010).

This is partly due to using the prison setting itself as a place for intervention and treatment. Gender segregated settings encourage misogyny. (Don Sabo, 2001) (Richie, 2012) Traits inherent to prison institutions reflect and model the same control tactics that treatment programs are aimed at correcting; in other words, they use coercion and threats; isolation; emotional abuse; status; blaming; children; access to food, clothing, and medical care; and physical force against offenders. Incarceration itself, along with high rates of prison sexual assault and other demeaning and threatening experiences, does not create an environment that encourages pro-social change.

Besides its lack of deterrent or treatment effect, incarceration fails in even warehousing violent offenders away from survivors because: one) the offender is able to extend their influence past the prison walls, using outside cohorts to monitor, report on, coerce, control, and assault survivors; and two) eventually, the vast majority of domestic abuse offenders *will return* to communities. Extensive prison time can decrease the amount of time under community supervision and undermines efforts to improve offender accountability overall.

In summary, most survivors of domestic abuse avoid the use of the criminal courts, and once involved with them, do not experience it as the solution to their situation. Certainly more can be done to improve the criminal justice response, particularly when offenders return to communities. However, continuing to prioritize a criminal response to domestic violence denies justice to the overwhelming number of victims who do not or cannot seek safety or find justice in the criminal justice system. We have invested decades and the majority of resources to the criminal justice approach with limited success. **Improving victim safety and even ending domestic violence requires a fundamentally different approach.**

## **A Call for Human Rights**

*“Interventions in domestic violence situations are pivoted on the idea of creating safety for battered women and their children. Safety planning is nearly always placed at the center of all advocacy and systems change interventions. New advocates are insistently taught that victim safety must be the most important*

*concern in their work. Yet, we have only begun to recognize that safety cannot be arranged formulaically. What might appear to be definite safety—such as a woman leaving an abuser—may not translate to actual safety for all victims.” – Shamita Das Dasgupta (Dasgupta, Creating Sustainable Safety for Battered Women, 2016)*

Domestic abuse is the extension of male domination into the private sphere. Reduction to acts of physical violence moved the framework for intervention into the court system and relocated the source of the problem in individual men who crossed a normative boundary of how male dominance should be enforced.

This framework also separates domestic abuse from women’s experiences of racism, anti-immigrant bias, poverty, and other oppressions. Battered women do not have the luxury of parsing their lives in this way. Addressing the intersectionality of oppression is integral in not only creating safety but in restoring the fundamental human liberties due to survivors as individuals in a free society.

The *deserving-ness* of battered women was and continues to be a central issue. *What did she do to deserve this? Were her self-protective acts justified? Who is worthy of social concern?* Women of color, poor women, lesbian and trans women, first nations women, immigrants, women in sex work, find themselves short on this measurement before they even enter the criminal justice system. These survivors need stability and economic justice; they need resources. They need respect for their human dignity. They also need a battered women’s movement that engages society to demand fulfillment of the promise of their civil liberties.

*“Neither the law nor other institutional service systems are neutral arbiters in interpersonal relationships, but instead exercise considerable power in shaping these affairs. If these systems currently prefer to weigh in against partner violence but not against the exercise of male domination in personal life and insist that women can be protected from harm only if they concede they are victims rather than free persons entitled to a liberatory response, this is merely because state actors are misinformed about the true nature of women’s oppression. It is also because this approach to woman battering accommodates an obvious social wrong – violence against women – without threatening, indeed by reproducing the prevailing sexual hierarchy.” – Evan Stark, Coercive Control (Stark, 2007)*

Today, the criminal justice system isn’t equipped to address domestic abuse as a human rights issue, and, however helpful, more federal laws will not eliminate the need for grassroots social change efforts, much as the Civil Rights Act of 1964 did not eliminate racism. ICADV can do that work now within communities without waiting for politicians and systems to fall into place. Rather than focusing on batterer containment and taking a violence management approach, we seek the liberation of the survivor.

In some ways this work looks similar to what we are currently doing. In 2012, Iowa changed our model of service delivery away from sheltering to address economic justice and housing stability

In some ways this work looks like what we did before. When we changed to a focus on housing first and mobile advocacy, going out into communities, we retained some shelter-based services, knowing that for some survivors, emergency shelter remains critical to meeting their needs. In the same way, there is an important minority of women for whom the criminal justice system is a viable option to help restore their personal agency and safety, therefore ICADV must maintain an interest in that system. The goal is not to collapse options for battered women but to expand them and make them accessible, functional, safe, and emancipating.

In some ways this work looks familiar to us in terms of recognizing the work of other social justice movements as having similar missions. In some ways we see with new eyes that ending systems of racial, heteronormative and other oppressions is integral to the liberation of battered women. We move from recognition to aspiring allyship. By focusing on those survivors facing the greatest restriction of civil liberties, and committing our resources to persons who have been pushed out to the margins of our society, our communities, and our movement, we create space where all battered women can find freedom.

This means listening to those battered women who need care for their physical injuries but also those who say that the emotional abuse is the hardest to endure; those who ask for help keeping their children away from persons doing harm; but also those that ask for help to heal their families, not part them. This means acknowledging and owning that no one can be thrown away or sacrificed, including those who cause harm. We have been working under a delusion that those individuals could somehow be cleanly excised from communities and families. That has never been the reality for survivors. Batterers and the people, systems, and institutions that support them, *are* our communities and families. That is where we must issue the call for battered women's human rights.

In some ways we have no idea what this work looks like. We will engage with persons doing harm. We will seek accountability through extended family, formal and informal community connections. We will promote non-violent problem-solving, empowerment for marginalized people, and cultural humility. We will claim women's right to personal agency and choice, including when they choose to subsume or incorporate those rights into the roles of partner or mother. **We will draw from the strategies of other civil rights movements. We will make space for people harmed by family and societal oppression to speak their experience and create their own solutions and we will learn from them.**

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