

SPECIAL REPORT

**Predominant Aggressor Policies:
Leaving the Abuser Unaccountable?**



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SAVE: STOP ABUSIVE AND VIOLENT ENVIRONMENTS

Intimate partner violence is a widespread and complex problem that defies simplistic explanations or easy stereotypes.

In about half of cases, the violence is one-way. In other cases, however, the aggression is bi-directional, meaning both persons are exchanging blows.¹ One national study of persons ages 18–28 found that 50% of violent couples were mutually aggressive,² and a survey of American university students found that 70% of partner aggression was reciprocal in nature.³

And in some instances of apparent mutual violence, one person turns out to be acting solely in self-defense, a scenario that occurs in fewer than one in five cases.^{4,5}

These situations pose a thorny challenge to law enforcement personnel responding to a call for help. If the officer decides that arrest is in order, which party should be arrested? Or should both persons be detained?

Legal definitions provide a basis for unraveling the intricacies of such situations. According to *Black's Legal Dictionary*, the aggressor was traditionally defined as:

One who first employs hostile force. The party who first offers violence or offense. He who begins a quarrel or dispute, either by threatening or striking another.⁶

Many would view that definition as relatively straightforward. But during the late 1990s, persons in the domestic violence field came to believe the first aggressor concept was a poor gauge of culpability. In her early paper, San Diego Assistant City Attorney Gael Strack proposed consideration of a broad range of criteria:⁷

- Age, height & weight of the parties
- Criminal history
- Domestic violence probation
- Corroboration
- Presence of fear
- Offensive/defensive injuries
- Seriousness of injuries
- Motive to lie
- Strength and skill
- Use of alcohol or drugs
- 911 reporting party
- Timing of citizen's arrest
- Demeanor of parties
- Existing protective orders
- Detail of statement
- Self defense, defense of others/property

But this California case illustrates the problems inherent in relying on criteria such as seriousness of the injury:

*A knife-wielding woman raised her hand, preparing to stab her husband. The man quickly raised his arms in self-defense. The woman then struck the man with such force that her forearm sustained a fracture. The man only experienced minor contusions and abrasions.*⁸

This Special Report probes the historical background, current legal status, and controversies that surround predominant aggressor policies for domestic violence.* The Report concludes with recommendations to prevent civil rights abuses, reduce undue burdens on law enforcement personnel, and facilitate appropriate abuse-reduction interventions.

Origin of the Predominant Aggressor Concept

Beginning in the mid-1980s, states began to enact mandatory arrest laws for domestic violence. Knowing that at least half of all cases of partner aggression are mutual, these policies triggered sharp increases in the number of arrests of men and women. In California, mandatory arrest policies caused the number of arrests of men to increase by 37%, while the number of arrested women soared by 446%.⁹

Advocates began to complain that the law was being enforced too aggressively, arguing arrested women were being “re-victimized” by the system. In response, the DoJ Office of Violence Against Women modified its grant requirements. Beginning in 2001, application kits for funding under the Violence Against Women Act asserted that dual arrests “trivialize the seriousness of domestic violence and potentially increase danger to victims.” Thereafter, grant recipients would need to “demonstrate that their laws, policies, or practice and their training programs discourage dual arrest of the offender and the victim.”¹⁰

This requirement spurred the adoption of the “predominant aggressor” concept in states around the country.

Summary of Predominant Aggressor Policies

Twenty-three states now have domestic violence laws that encompass predominant aggressor provisions: Alabama, Alaska, California, Colorado, Florida, Georgia, Iowa, Maine, Maryland, Missouri, Montana, Nevada, New Hampshire, New Jersey, New York, Ohio, Rhode Island, South Carolina, South Dakota, Utah, Virginia, Washington, and Wisconsin. These provisions are shown in Appendix A.

A review of these provisions reveals four states—Alaska, Iowa, Nevada, and Rhode Island—employ statutory definitions that are consistent with *Black’s* legal definition of aggressor as the person “who first employs hostile force.” In four other states—Florida, Maryland, South Carolina, and Utah—the domestic violence statutes refer to “predominant aggressor” or “primary aggressor” without defining the terms or providing identification criteria.

* Some persons distinguish between primary aggressor and dominant aggressor laws, the former referring to the initial physical instigator, the latter referring to the “most significant” aggressor. In practice, these terms are not consistently used or clearly defined. Therefore, this Special Report employs the umbrella term, “predominant aggressor.”

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In the remaining 15 states, policies enumerate specific criteria to assist law enforcement personnel in identifying the predominant aggressor. In Maine¹¹ and New Hampshire¹², the predominant aggressor criteria are defined by policy documents, not statutory language.

These predominant aggressor criteria are presented in descending order of frequency:

	Criteria	States Using Criteria
1	Prior complaints or history of domestic violence between the parties	AL, CA, GA, ME, MO, MT, NH, NJ, NY, OH, SD, VA, WA, WI
2	Relative severity/extent of injury inflicted on each person	AL, GA, ME, MO, MT, NH, NJ, NY, OH, SD, WA, WI
3	Whether one of the parties acted in self-defense	AL, CA, GA, ME, MT, NY, OH, VA, WI
4	Intent of the law is to protect victims of domestic violence from continuing abuse	CA, MO, NH, SD, VA
5	Threats creating fear of physical injury	CA, MO, MT, NY, WI
6	Risk or potential of future injury	AL, GA, ME
7	Persons' fear of physical harm	NH, OH, WI
8	Witness statements	MT, VA, WI
9	Amount of force was appropriate and reasonable	ME
10	Power and control dynamics of the couple	ME
11	Relative size/apparent strength	MT
12	"Any other relevant factors"	NJ
13	"Other observations"	VA

The table reveals the two most commonly used criteria are Prior complaints or history of domestic violence, and Relative severity/extent of injury.

In Alabama, Colorado, and Georgia, the criteria are essentially identical, as are the criteria used in Missouri, South Dakota, and Washington. But these similarities are overshadowed by the overall lack of consistency. Clearly, there are no standard criteria to identify the predominant aggressor.

Do These Criteria Identify the True Wrongdoer?

Research suggests predominant aggressor policies can succeed in reducing the number of mutual arrests for domestic violence.¹³ *But the critical question is whether the criteria correctly identify the culpable party.* A review of the above criteria casts doubt on this proposition.

Five of the criteria are subjective and vague, thus precluding their consistent application:

1. Amount of force was appropriate and reasonable
2. Persons' fear of physical harm
3. Intent of the law is to protect victims of domestic violence from continuing abuse
4. "Other observations"
5. "Other relevant factors"

Two other criteria may appear reasonable, but turn out to be difficult to implement:

1. Whether one of the parties acted in self-defense[†]
2. Threats creating fear of physical injury

In practice, assessment of these criteria relies heavily on the statements made by the identified victim. But complainants' statements and allegations cannot always be accepted at face value. One survey of law enforcement personnel asked about their level of agreement with the following statement, "DV victims often exaggerate the amount of violence involved." In response, 40.5% of respondents agreed, 25% disagreed, and 34.5% neither agreed nor disagreed.¹⁴

And four of the criteria overtly predispose the officer to arrest the male:

1. Relative size/apparent strength—a clear signal to arrest the man
2. Risk of future injury—short of clairvoyance, how can an officer accurately predict the future risk of injury?
3. Prior complaints of domestic violence between the parties—does not distinguish between complaints that were based on trivial or non-existent incidents versus complaints that were upheld in a court of law.
4. Relative severity/extent of injury inflicted on each person—statistically, women face a greater risk of injury than men, but the decision to arrest should be based on the facts at hand, not on general statistics (as the example on page 1 of this Special Report reveals).

This Massachusetts case further reveals the problems of relying on gender-biased criteria:

*Intimate partners Monica and Terri got into a fight and the police were summoned. Monica was known by friends to be the true abuser. But Terri was the larger of the two and came across to the officers as more "masculine." So the police arrested her.*¹⁵

[†] Traditionally, self-defense has been defined narrowly by the courts. For example, one landmark ruling held, "[T]he right of self-defense ordinarily cannot be claimed by a person who provokes or initiates an assault unless that person withdraws in good faith from the conflict and announces his intention to retire." (Commonwealth v. Maguire, 375 Mass. 768, 772, 378 N.E.2d 445 (1978))

Questionable Assumptions

Predominant aggressor policies have come under scrutiny for embodying contradictory conceptions, prematurely identifying the “victim,” and being rooted in false assumptions.

Contradictory Conceptions

Troubling are the open contradictions among the policies. In four states—Alaska, Iowa, Nevada, and Rhode Island—the predominant aggressor is defined as the person who strikes the first blow. But the California and Missouri codes take the exact opposite stance, defining the predominant aggressor as the “most significant, *rather than the first*, aggressor” (emphasis added).

Prematurely Identifying the “Victim”

Many discussions on predominant aggressor begin with the assertion that the criminal justice system should not “re-victimize the victim.” In situations where the police officer discovers one person with a bodily injury and the other party admits to inflicting the harm, identification of the “victim” and “perpetrator” is a clear-cut matter.

But few domestic violence investigations are so evident. Most commonly, there are no visible injuries. Less often, both parties may be injured. It may be unknown who struck the first blow. Emotional, financial, or sexual abuse may also be part of the picture.

In such cases, discussions of not “re-victimizing the victim” are based on the questionable assumption that a police officer can make a quasi-judicial decision with limited time and information. This places an unreasonable burden on law enforcement, pre-empts the role of the criminal justice system, and gives rise to troubling civil rights violations.¹⁶

False Assumptions

Predominant aggressor policies rely on two underlying assumptions:

1. In cases of mutual aggression, one of the partners must be the “predominant” aggressor, usually interpreted to mean that person exerts more power and control in the relationship.
2. In almost every case, men exert more power and control in partner relationships.

But research reveals both of these assumptions are erroneous:

1. The need for interpersonal power and control plays, at most, a minor role in domestic violence cases:
 - One large-scale survey found that power and control motivations accounted for only one of 14 different reasons for domestic violence.¹⁷

- Two meta-analyses found no consistent link between traditional gender attitudes and partner assault.^{18,19}
2. When the power and control is a factor, it motivates women’s behavior as much as, or more than, men’s actions:
- One review concluded, “When comparing men’s and women’s use of controlling behaviors, research using non-selected samples has found that there are no differences in their overall use.”²⁰
 - A 32-nation survey documented a link between dominance and physical aggression, but the connection is stronger for female-initiated than male-initiated aggression.²¹

Back-Door Approach to Gender Profiling

Over 250 scholarly studies reveal that men and women are equally likely to initiate severe partner aggression.²² In other words, about 50% of domestic violence perpetrators are female. In contrast, over three-quarters—77%—of domestic violence arrestees are male.²³ The discrepancy between 50% and 77% is suggestive of bias in the enforcement of our nation’s laws.

The two following examples reveal that biased predominant aggressor policies may lie at the root of such bias.

1. Roanoke, Virginia

The Roanoke (Va.) Police Department has published a list of 13 criteria to identify the predominant aggressor:²⁴

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. History of service calls to the home. 2. History of domestic violence between the parties. 3. Prior assault convictions of either party. 4. Current or previous orders of protection filed against either party. 5. Height/weight of parties. 6. Proportional nature of injuries inflicted on each person. 7. Injuries—offensive and defensive. | <ol style="list-style-type: none"> 8. Evidence that one party acted in self-defense (bites, scratches, use of a defense "weapon"). 9. Presence of fear in one party. 10. Presence of other normal responses to trauma (crying). 11. Presence of controlling behavior in one party. 12. Need for protection. 13. Potential for future injury. |
|--|--|

Some criteria are reasonable, such as “Prior assault convictions of either party.” But indicators such as the existence of bites and scratches are dubious, since any person can

instigate an altercation by biting or scratching the other party.[‡] Two other criteria seemingly require that the police officer possess omniscient powers to predict the future: “Need for protection” and “Potential for future injury.”

“Presence of fear in one party” is slanted because male victims often disguise their fears. And “height/weight of parties” is patently unfair, as this case reveals:

Susan Finkelstein got into an argument with her boyfriend while riding in a car. The argument escalated, so he pulled over to get out. She scratched him and he responded by pushing her. The police spotted the incident and started to arrest the man. When Finkelstein told the officer that she was as much the aggressor, the officer explained that policy required him to arrest the larger of the two parties.²⁵

2. Maine

In 2007 the Maine legislature passed LD 1039, directing the Maine Criminal Justice Academy to develop a predominant aggressor curriculum for law enforcement personnel. The curriculum, “Identifying Predominant Aggressors in Domestic Violence Cases,” was released five months later.²⁶

This training document contains numerous deficiencies:

1. Of the 13 “What is Domestic Violence” statements made in the document, only one was found to be verifiable and true. The remaining 12 are unverifiable, misleading, or even false—see Appendix B.
2. The curriculum arbitrarily classifies face scratches, eye gouges, and arm bites as defensive, when such injuries can be actions taken by the perpetrator.
3. No logical rationale or scientific evidence is provided to support the seven predominant aggressor criteria.
4. The document features 10 vignettes of intimate partner altercations. None of the vignettes depict same-sex aggression or consider the possibility that the identified victim may misrepresent the facts of the case. In not a single case does the curriculum recommend arresting the female.

The curriculum developers anticipated that many officers who take the course would view the information as biased. “Be ready for audience members to protest that predominant aggressor is really just creating or reinforcing a gender bias against men,” the document warns. For which the curriculum provides this pat—and *entirely fallacious*—answer: “Remind them that, by and large, abusers are men and victims are women.”

[‡] In researching this Report, the domestic violence specialist at the Roanoke Police Department was contacted to locate research to support the validity of the Department’s primary aggressor criteria. The representative was unable to provide the requested information. (Telephone conversation with Pamela Gold, January 29, 2010.)

Not surprisingly, the training manual has attracted criticism. One article warned the curriculum would “lead to the arrests of many innocent men.”²⁷ One commentator has derided the Maine approach as a policy that “says, in effect, if a woman punches the living daylights out of her husband, somehow it must be the man’s fault.”²⁸ One law enforcement expert decries the curriculum as a “more a polemic ideological rant than a domestic violence intervention program.”²⁹

Given its numerous misrepresentations of fact and dubious recommendations, the Maine document cannot be viewed as a credible law enforcement resource. Indeed, it is likely to predispose officers to make faulty arrest decisions, as happened in this case:

A woman assaulted her husband with a frying pan, causing a large gash on his head. When the police arrived, the man said that he wanted to file a complaint. The officer replied dismissively, “There’s nothing to press charges on. She’s half your size.”³⁰

Abusers Remaining Unaccountable?

By long-standing legal definition, the aggressor is the person who “begins a quarrel or dispute, either by threatening or striking another.” But the notion of “predominant” aggressor serves to undermine or even negate the fundamental notion of which party initiates the aggression. In this sense, “predominant aggressor” is a legal oxymoron.

The reliance on subjective criteria and the use of indicators that are proxies for male gender point to an unsettling conclusion: *Through use of vague and sex-biased criteria, predominant aggressor laws are designed to maximize the number of male arrests and minimize the number of female arrests.*

This circumvents the Fourteenth Amendment of the U.S. Constitution, which promises, “no state shall ... deny to any person within its jurisdiction the equal protection of the laws.”

Even though a law may not have explicit sex classifications in words, the statute may be applied in such a way as to create unlawful classifications, a practice that the Supreme Court has ruled unconstitutional.³¹

Others have decried the sex-bias of predominant aggressor policies. One observer has noted, “Unless the officer can conduct a thorough psychosocial history on the scene, he/she is likely to make the arrest based on the potential for the man to cause greater harm... Arrests should be based on severity of assaults... without gender bias.”³² Victim advocate Stanley Green has compared the use of surrogate measures in predominant aggressor laws to segregation-era policies designed to disenfranchise Blacks from voting.³³

Slanting the criteria to arrest more men and fewer women has another undesirable consequence: female perpetrators of domestic violence are not held accountable for their actions. In such cases, children may end up paying the price:

Socorro Caro of California had repeatedly attacked her husband. But her husband, a well-known physician, was reluctant to report the incidents because he thought that the authorities wouldn't believe him. One day, Mrs. Caro shot their three sons, ages 11, 8, and 5, with a .38-caliber handgun. She was later convicted of first-degree murder.³⁴

Unfair predominant aggressor policies may increase the risk of retaliatory aggression.³⁵ The conclusion is clear: Law enforcement officers must make *a priori* assumptions of which party is the aggressor, nor can single-perpetrator/single-victim scenarios be presumed.

Until a solid research basis can be established, no state should implement predominant aggressor policies that extend beyond long-held notions of the aggressor who first employs hostile force. And given the potential for wrongful arrests, family dissolution, and subsequent harm to children, existing predominant aggressor policies that are subjective or gender-biased should be repealed.

Criteria to Identify Predominant Aggressor

Alabama: ALA. CODE § 13A-6-134

- Officers shall evaluate claims separately to determine who the **primary aggressor** is. The following shall be used to determine primary aggressor:
 - Prior complaints of DV
 - Relative severity of injury inflicted on each person
 - Likelihood of future injury to each person
 - Whether one of the parties acted in self defense.

Alaska: ALASKA STAT. § 18.65.530

- Part (b) has “**principal physical aggressor**” language:
 - The officer shall evaluate the conduct of each person to determine who the principal physical aggressor is.

California: CAL. PENAL CODE § 836

- The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the **primary aggressor**, an officer shall consider:
 - (A) the intent of the law to protect victims of domestic violence from continuing abuse,
 - (B) the threats creating fear of physical injury,
 - (C) the history of domestic violence between the persons involved, and
 - (D) whether either person involved acted in self-defense.

Colorado: COLO. REV. STAT. ANN. § 18-6-803.6

- In determining if a crime was committed (after both parties claim domestic violence), the following factors come into play:
 - Prior DV complaints
 - Relative severity of injuries of each party
 - Likelihood of future injury to either party
 - Possibility that one person acted in self defense.

Florida: FLA. STAT. ANN. § 741.29(4)

- (b) If a law enforcement officer has probable cause to believe that two or more persons have committed a misdemeanor or felony, or if two or more persons make complaints to the officer, the officer shall try to determine who was the **primary aggressor**.

Georgia: GA. CODE ANN. § 17-4-20.1

- In making the primary physical aggressor determination, the officer shall consider:
 - Prior family violence involving either party;
 - The relative severity of the injuries inflicted on each person;
 - The potential for future injury; and
 - Whether one of the parties acted in self defense.

Iowa: IOWA CODE ANN. § 236.12

- Section 3. "... the peace officer shall arrest the person whom the peace officer believes to be the **primary physical aggressor**."

Maine: MAINE CODE. SEC. 1.25 MRSA § 2803-B, sub § 1

- Domestic violence law enforcement efforts include a process to evaluate and determine who is the **predominant physical aggressor** in a domestic violence situation.
- The law mandates that the Maine Criminal Justice Academy develop a training program for law enforcement personnel which outlines the following criteria:
 - Who in the relationship is the overall aggressor in terms of power and control dynamics?
 - Who is at most risk of future harm?
 - Was the amount of force used appropriate and reasonable?
 - What is the relative severity of the injuries inflicted on each person?
 - What is the likelihood of future harm?
 - Did one person act in self-defense?
 - Have there been prior complaints of domestic violence with the involved parties?

Maryland: MD. CODE. ANN. FAM. LAW § 4-509

- 2-402(b) If the police officer has probable cause to believe that mutual battery occurred and arrest is necessary under subsection (a) of this section, the police officer shall consider whether one of the persons acted in self-defense when determining whether to arrest the person whom the police officer believes to be the **primary aggressor**.

Missouri: MO. ANN. STAT. § 455.085

- The term "primary physical aggressor" is defined as the most significant, rather than the first, aggressor. The law enforcement officer shall consider any or all of the following in determining the primary physical aggressor:
 - (1) The intent of the law to protect victims of domestic violence from continuing abuse;
 - (2) The comparative extent of injuries inflicted or serious threats creating fear of physical injury;
 - (3) The history of domestic violence between the persons involved.

Montana: MONT. CODE ANN. § 455.085

- A determination of who the **predominant aggressor** is must be based on but is not limited to the following considerations, regardless of who was the first aggressor:
 - (i) the prior history of violence between the partners or family members, if information about the prior history is available to the officer;
 - (ii) the relative severity of injuries received by each person;
 - (iii) whether an act of or threat of violence was taken in self-defense;
 - (iv) the relative sizes and apparent strength of each person;
 - (v) the apparent fear or lack of fear between the partners or family members; and
 - (vi) statements made by witnesses.

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Nevada: NEV. REV. STAT. ANN. § 171.137

- “In instances of dual arrest, the officer: shall attempt to determine which person was the **primary physical aggressor.**”

New Hampshire: N.H. REV. STAT. ANN. § 173-B:10

- When the peace officer has **probable cause** to believe that the persons are committing or have committed abuse against each other, the officer need not arrest both persons, but should arrest the person the officer believes to be the **primary physical aggressor.**
- The New Hampshire Law Enforcement Protocol states: When the officer has probable cause to believe that the persons are committing or have committed abuse against each other, the officer need not arrest both persons, but should arrest the person whom the officer believes to be the **primary physical aggressor.** In determining who is the primary physical aggressor, an officer shall consider:
 - the intent of the statute to protect victims of domestic violence,
 - the relative degree of injury or
 - fear inflicted on the persons involved, and
 - any history of domestic abuse between these persons, if that history can reasonably be ascertained by the officer.

New Jersey: N.J. STAT. ANN. § 2C:25-21

- c.(2) In determining which party in a domestic violence incident is the victim where both parties exhibit signs of injury, the officer should consider:
 - the comparative extent of the injuries,
 - the historic domestic violence between the parties, if any, and
 - any other relevant factors.

New York: N.Y. CRIM. PROC. § 140.10

- When an officer has reasonable cause to believe that more than one family or household member has committed such a misdemeanor, the officer is not required to arrest each such person. In such circumstances, the officer shall attempt to identify and arrest the **primary physical aggressor** after considering:
 - (i) the comparative extent of any injuries inflicted by and between the parties;
 - (ii) whether any such person is threatening or has threatened future harm against another party or another family or household member;
 - (iii) whether any such person has a prior history of domestic violence that the officer can reasonably ascertain; and
 - (iv) whether any such person acted defensively to protect himself or herself from injury.

Ohio: OHIO REV. CODE. ANN. § 2935.032

- 2935.03(B)(3)(d) In determining for purposes of division (B)(3)(b) of this section which family or household member is the **primary physical aggressor** in a situation in which family or household members have committed the offense of domestic violence or the offense of violating a protection order against each other, a peace officer described in division (A) of this section, in addition to any other relevant circumstances, should consider all of the following:

- (i) Any history of domestic violence or of any other violent acts by either person involved in the alleged offense that the officer reasonably can ascertain;
- (ii) If violence is alleged, whether the alleged violence was caused by a person acting in self-defense;
- (iii) Each person's fear of physical harm, if any, resulting from the other person's threatened use of force against any person or resulting from the other person's use or history of the use of force against any person, and the reasonableness of that fear;
- (iv) The comparative severity of any injuries suffered by the persons involved in the alleged offense.

Rhode Island: R.I. GEN. LAWS § 12-29-3

- (c)(2) “When the officer has probable cause to believe that family or household members 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.**”

South Carolina: S.C. CODE ANN. § 16-25-70

- (D) “If a law enforcement officer receives conflicting complaints of domestic or family violence from two or more household members involving an incident of domestic or family violence, the officer must evaluate each complaint separately to determine who was the **primary aggressor.**”

South Dakota: S.D. CODIFIED LAWS § 25-10-35

- The officer shall arrest the person whom the officer believes to be the **predominant physical aggressor.** In making this determination, the officer shall make every reasonable effort to consider:
 - (1) The intent to protect victims of domestic abuse under this chapter;
 - (2) The comparative extent of injuries inflicted or serious threats creating fear of physical injury; and
 - (3) The history of domestic abuse between the persons involved.

Utah: Utah Code Ann. § 77-36-2.2

- (3) If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who the **predominant aggressor** was.

Virginia: VA. CODE ANN. § 19.2-81.3

- B. The standards for determining who is the **predominant physical aggressor** shall be based on the following considerations:
 - (i) who was the first aggressor,
 - (ii) the protection of the health and safety of family and household members,
 - (iii) prior complaints of family abuse by the allegedly abusing person involving the family or household members,
 - (iv) the relative severity of the injuries inflicted on persons involved in the incident,
 - (v) whether any injuries were inflicted in self-defense,
 - (vi) witness statements, and

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(vii) other observations.

Washington: WASH. REV. CODE ANN. § 10.31.100(c)

- 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:
 - (i) The intent to protect victims of domestic violence under RCW 10.99.010;
 - (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and
 - (iii) the history of domestic violence between the persons involved.

Wisconsin: WIS. STAT. ANN. § 968.075

- “a law enforcement officer shall arrest and take a person into custody if:
 1. The officer has reasonable grounds to believe that the person is committing or has committed domestic abuse and that the person's actions constitute the commission of a crime; and
 2. Any of the following apply:
 - a. The officer has a reasonable basis for believing that continued domestic abuse against the alleged victim is likely.
 - b. There is evidence of physical injury to the alleged victim.
 - c. The person is the **predominant aggressor**.”
 - History of domestic abuse between the parties
 - Statements made by witnesses
 - Relative degree of injury inflicted on the parties
 - Extent to which each person appears to fear any party
 - Whether any party is threatening or has threatened future harm
 - Whether either party acted in self-defense

**Analysis of “What is Domestic Violence?” Statements in the
Maine Predominant Aggressor Curriculum**

No.	Statement	Assessment
1	Domestic violence is a “pattern of behavior by one person whose goal is to gain and maintain control over a partner or family member.”	<i>False:</i> The 2003 federal Family Violence Prevention and Services Act defines domestic violence as: “any act or threatened act of violence, including any forceful detention of an individual” committed by an intimate partner. A need for control is an <i>uncommon</i> cause of domestic violence, and when it is, women are as likely as men to be controlling. ^{36,37}
2	“Domestic abuse homicides continue to account for approximately 50% of all homicides in Maine over time—9 of 23 homicides.”	<i>Incorrect:</i> The arithmetic is wrong. Nine divided by 23 equals 39%, not 50%.
3	“31% of American women report being physically or sexually abused by an intimate partner during their lifetime.”	<i>Inaccurate and misleading:</i> The 31% figure comes from a non-representative Louis Harris poll. ³⁸ Even though the poll surveyed men, their results were not published in the report.
4	“In 2000, 5,554 domestic assaults were reported to LE Agencies.”	<i>Incorrect:</i> According to <i>Crime in Maine 2000</i> : “During 2000 police reported 4,486 offenses.” ³⁹ The document overstates the actual number by nearly one-quarter.
5	“In 2006, over 13,000 people received services from the domestic abuse projects in Maine; 96% were women and children.”	<i>Unverifiable:</i> A search of the website of the Maine Coalition to End Domestic Violence did not identify any reports or statistics to support this claim. ⁴⁰
6	“A domestic assault occurs every hour and a half in Maine.” (Department of Public Safety, 2006)	<i>Correct:</i> According to the Maine Department of Public Safety, a domestic assault occurred every hour and 34 minutes in 2006, of which 74% involved intimate partners.
7	“In Maine, the majority (over 75%) of domestic violence victims who are killed, are killed during or after they have left the abuser.”	<i>Unverifiable:</i> This claim does not provide a supporting reference. An Internet search did not succeed in identifying the source of this claim.

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8	“DV is the leading cause of injuries to women between the ages of 15–44 in the U.S.”	<i>False:</i> This claim has been repeatedly debunked. According to the US Department of Health and Human Services, the leading causes of injury to women are unintentional falls, motor vehicle accidents, and overexertion. ⁴¹ Domestic violence doesn’t appear on the list of leading causes of injury.
9	“Women are the targets of abuse in 85% of all intimate partner violence.”	<i>False:</i> This statistic from the National Crime Victimization Survey understates and distorts the true incidence of domestic violence, since victimized men are less likely to view partner aggression as a crime. ⁴²
10	“33% of men counseled for battering are well-rested professional men.”	<i>Misleading and unverifiable:</i> Domestic violence cuts across both sexes and all economic classes. And what does it matter whether an abuser is well-rested or not?
11	“Nationally 50% of homeless women and children are on the streets because of violence in the home.”	<i>False:</i> Leading family violence researcher Richard Gelles notes of this claim, “An interesting factoid stated by Senator Biden, but one without any actual published scientific research to support it.” ⁴³
12	“Nationally the annual medical cost to DV is \$4–8 billion.”	<i>Half-truth:</i> According to the Centers for Disease Control, the annual cost for female victims of domestic violence is about \$5.8 billion. ⁴⁴ The cost for male victims is unknown.
13	“Nationally the annual cost to businesses in lost wages, S/L [sick leave], and absenteeism is \$100 billion.”	<i>Unverifiable, Probably False:</i> This claim has been attributed to <i>Domestic Violence for Health Care Providers</i> , published by the Colorado Coalition Against Domestic Violence in 1991. However, this publication is no longer listed on the Coalition’s website, and the \$100 billion figure does not appear on the Coalition’s Domestic Violence Facts and Statistics webpage. ⁴⁵

References

- ¹ Straus MA. *Behind Closed Doors: Violence in the American Family*, Anchor Books, 1980, pp. 36–37.
- ² Whitaker DJ et al. Differences in frequency of violence and reported injury between relationships with reciprocal and nonreciprocal intimate partner violence. *American Journal of Public Health*, Vol. 97, No. 5, May 2007, pp. 941–947. <http://www.ajph.org/cgi/content/abstract/97/5/941>
- ³ Straus MA. Dominance and symmetry in partner violence by male and female university students in 32 nations. *Children and Youth Services Review*, Vol. 30, 2008, pp. 252–275.
- ⁴ Follingstad D, Wright S, Lloyd S, and Sebastian J. Sex differences in motivations and effects in dating relationships. *Family Relations*, Vol. 40, 1991, pp. 51–57.
- ⁵ Carrado M, George MJ, Loxam E, et al. Aggression in British heterosexual relationships: A descriptive analysis. *Aggressive Behavior*, Vol. 22, pp. 401–415.
- ⁶ Black HC. *Black's Law Dictionary*. St. Paul: West Publishing Co., 1983.
- ⁷ Strack GB. “She hit me, too.” Identifying the primary aggressor: A prosecutor’s perspective. Undated. http://www.peaceathomeshelter.org/DV/readings/aggressor/She_hit_me.pdf
- ⁸ Personal communication, Claudia Cornell, PhD. February 21, 2010.
- ⁹ Wells W, DeLeon-Granados W. Analysis of unexamined issues in the intimate partner homicide decline: Race, quality of victim services, offender accountability, and system accountability. Final report. Document No. 196666, 2000. <http://www.ncjrs.org/pdffiles1/nij/grants/196666.pdf>
- ¹⁰ U.S. Department of Justice, Office of Violence Against Women. Grants to encourage arrest policies and enforcement of protection orders program: Fiscal year 2001 application and program guidelines. <http://www.usdoj.gov/ovw/grants/arrest/arrest01.pdf>
- ¹¹ Rogers JB, Faragher-Houghton K. Identifying predominant aggressors in domestic violence cases (train-the-trainer). Vassalboro, ME: Maine Criminal Justice Academy, 2008. <http://www.maine.gov/dps/mcja/docs/Mandatory-Law/Predominant%20Aggressor.doc>
- ¹² Governor’s Commission on Domestic Violence. Law enforcement: A model for police response to domestic violence cases. Undated. <http://doj.nh.gov/victim/pdf/dvlaw.pdf>
- ¹³ Hirschel D, Buzawa E, Pattavina A, Faggiani D, Reuland M. “Explaining the Prevalence, Context, and Consequences of Dual Arrest in Intimate Partner Cases.” Final report for National Institute of Justice, Grant Number 2001-WT-BX-0501. Washington, DC: U.S. Department of Justice, National Institute of Justice, April 2007, NCJ 218355. <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=240055>
- ¹⁴ Toon R, Hart B. Layers of meaning: Domestic violence and law enforcement attitudes in Arizona. Arizona State University, 2005, p. 34. http://morrisoninstitute.asu.edu/publications-reports/CJI4Az_LayersOfMeaning-DVandLawEnfAttitudes/at_download/file
- ¹⁵ National Coalition of Anti-Violence Programs. Lesbian, Gay, Bisexual, Transgender, and Queer Domestic Violence in the United States in 2008. New York, 2009, p. 13. <http://www.avp.org/documents/2008NCAVPLGBTQDVRReportFINAL.pdf>
- ¹⁶ Stop Abusive and Violent Environments. Are domestic violence policies respecting our fundamental freedoms? Rockville, MD. 2010. <http://www.saveservices.org/downloads/SAVE-Assault-Civil-Rights>
- ¹⁷ Straus MA. Dominance and symmetry in partner violence by male and female university students in 32 nations. *Children and Youth Services Review*, Vol. 30, 2008, pp. 252–275.
- ¹⁸ Sugarman DB, Frankel SL. Patriarchal ideology and wife-assault: A meta-analytic review. *Journal of Family Violence*, Vol. 17, 1996, pp. 13–40.
- ¹⁹ Felson RB, Outlaw MC. The control motive and marital behavior. *Violence and Victims*, Vol. 22, No. 4, 2007, pp. 387–407.

-
- ²⁰ Graham-Kevan N. Power and control in relationship aggression. In Hamel J and Nicholls TL (eds.): *Family Interventions in Domestic Violence*. New York: Springer Publishing Co., 2007.
- ²¹ Straus MA. Dominance and symmetry in partner violence by male and female university students in 32 nations. *Children and Youth Services Review*, Vol. 30, 2008, pp. 252–275.
- ²² Fiebert MS. References examining assaults by women on their spouses or male partners: An annotated bibliography. Long Beach, CA: Department of Psychology, California State University, 2009. <http://www.csulb.edu/~mfiebert/assault.htm>
- ²³ Durose MR et al. Family Violence Statistics. Washington, DC: Department of Justice. NCJ 207846, 2005. <http://www.ojp.usdoj.gov/bjs/pub/pdf/fvs.pdf>
- ²⁴ Roanoke Police Department. Primary aggressor as defined in Virginia. <http://www.roanokeva.gov/85256A8D0062AF37/vwContentByKey/N254VM2V730SALYEN> Accessed January 26, 2010.
- ²⁵ Young C. Domestic violations. *Reason Online*, February 1998. <http://reason.com/9802/fe.young.shtml>
- ²⁶ Rogers JB, Faragher-Houghton K. Identifying Predominant Aggressors in Domestic Violence Cases. Vassalboro, ME: Maine Criminal Justice Academy, 2008. <http://www.maine.gov/dps/mcja/docs/Mandatory-Law/Predominant%20Aggressor.doc>
- ²⁷ McCormick M, Sacks G. Maine’s adoption of primary aggressor doctrine in DV arrests will ensnare innocent men. *Lewiston Sun Journal*, August 5, 2007.
- ²⁸ Roberts C. In Maine, it doesn’t pay to be a man. *Renew America*, February 1, 2010. <http://www.renewamerica.com/columns/roberts/100201>
- ²⁹ Davis R. Beyond absurd: Analyzing the IPADV training guide. PoliceOne.com. April 7, 2010. <http://www.policeone.com/legal/articles/2034772-Beyond-absurd-Analyzing-the-IPADV-training-guide/>
- ³⁰ Cook P. *Abused Men: The Hidden Side of Domestic Violence*. Westport, CT: Praeger Publishers, 1997, p. 79.
- ³¹ *Yick Wo v. Hopkins*, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220 (1886).
- ³² McCormick M, Sacks G. Maine’s adoption of primary aggressor doctrine in DV arrests will ensnare innocent men. *Lewiston Sun Journal*, August 5, 2007.
- ³³ Green S. Testimony to California Senate Judiciary Committee. April 2003.
- ³⁴ Decker S. Mom sentenced for slaying sons. *DailyNews.com*, April 6, 2002. <http://www.fact.on.ca/news/news0204/dn020406.htm>
- ³⁵ Stop Abusive and Violent Environments. Arrest Policies for Domestic Violence. Rockville, MD. 2010. <http://www.saveservices.org/downloads/Justice-Denied-DV-Arrest-Policies>
- ³⁶ Straus MA. Dominance and symmetry in partner violence by male and female university students in 32 nations. *Children and Youth Services Review*, Vol. 30, 2008, pp. 252–275.
- ³⁷ Graham-Kevan N. Power and control in relationship aggression. In Hamel J and Nicholls TL (eds.): *Family Interventions in Domestic Violence*. New York: Springer Publishing Co., 2007.
- ³⁸ Collins KS, Schoen C, Joseph S et al. Health Concerns across a Woman’s Lifespan. New York City: Commonwealth Fund, 1999. http://www.google.com/url?q=http://www.commonwealthfund.org/usr_doc/Healthconcerns_surveyreport.pdf&ei=uTZnS92XGYzT8QbRxuySAw&sa=X&oi=nshc&resnum=1&ct=result&cd=1&ved=0CAsQzGQoAA&usq=AFQjCNH59agxU2fjzCOILNWn0AB8ATeVgg
- ³⁹ Maine Department of Public Safety. Crime in Maine 2000, p. 2. http://www.maine.gov/dps/cim/crime_in_maine/2000contents.htm
- ⁴⁰ <http://www.mcedv.org/> Accessed February 1, 2010.
- ⁴¹ Department of Health and Human Services. Leading causes of injury among women aged 18 and older, by age, 2006. <http://mchb.hrsa.gov/whusa08/hstat/hi/pages/226i.html>

⁴² Straus MA. The controversy over domestic violence by women: A methodological, theoretical, and sociology of science analysis. In Arriaga XB and Oskamp S (eds.): *Violence in Intimate Relationships*. Sage Publishers, 1999. <http://pubpages.unh.edu/~mas2/CTS21.pdf>

⁴³ Gelles RJ. Domestic violence factoids. Minnesota Center against Violence and Abuse, 1995. <http://www.mincava.umn.edu/documents/factoid/factoid.html>

⁴⁴ National Center for Injury Prevention and Control. Costs of Intimate Partner Violence Against Women in the United States, Atlanta: Centers for Disease Control and Prevention, 2003.

⁴⁵ <http://www.ccadv.org/facts.htm> Accessed February 1, 2010.