Domestic Violence, Sexual Assault and Stalking: An introduction

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Why is it important?

- Domestic violence is now viewed as a criminal justice issue, a public health crisis and a costly drain on American economic productivity.

The What: Behavior Definitions of Domestic Violence

- A pattern of behaviors including a variety of tactics.
  - Some physically injurious and some not,
  - Some criminal and some not.
- Assaultive and coercive behaviors, including physical, sexual, and psychological attacks as well as economic coercion.
Domestic Violence: A Pattern of Behaviors

- Physical Assaults: Physical abuse may include spitting, scratching, biting, grabbing, shaking, shoving, pushing, restraining, throwing, twisting, slapping (with open or closed hand), punching, strangling (choking), burning, and/or use of weapons (e.g. household objects, knives, guns) against the victim.
- Understanding seriousness requires determining context (i.e. “pushing...down a flight of stairs, in front of a car, while pregnant, etc.”)

Psychological Assaults

- Threats of violence and harm
- Attacks against property or pets and other acts of intimidation
- Emotional abuse
- Isolation
- Minimization, denial and blame
- Use of children

Power and Control Wheel
SEXUAL ASSAULT

- 67% of sexual assaults reported by adolescent and college-aged women are date rapes.
- 38% of all date rape victims are young women between the ages of 15 and 24.

Rape and Sexual Assault

- Complicated in dating cases by:
  1. Failure of many victims to realize they have the right to say no to an intimate partner;
  2. The reluctance of many victims to report, let alone describe the assault to police, prosecutor, or judge;
  3. The slow recognition of legal system to understanding “date rape.”

Sexual Abuse Complications

- Sexual activity with someone who is under the influence of drugs or alcohol;
- Higher incidence of STDs;
- Health risks short term and long term.
What is stalking?

Stalking generally refers to harassing or threatening behavior that an individual engages in repeatedly, such as following a person, appearing at a person’s home or place of business, making harassing phone calls, leaving written messages or objects, or vandalizing a person’s property.

These actions may or may not be accompanied by a credible threat of serious harm, and they may or may not be precursors to an assault or murder.

Justice System Response

- 55% of female victims report stalking to police;
- 24% of those were criminally prosecuted (stalking, harassment, menacing or threatening, vandalism, trespassing, breaking and entering, robbery, disorderly conduct, intimidation, and simple and aggravated assault)
- 28% got protection order against stalker;
- Of those, 69% said stalker violated protection order.

Societal Cost

- 30% sought psychological counseling as a result of stalking;
- 26% said stalking caused them to lose time from work;
- 7% said they never returned to work.

Stats from The National Institute of Justice and Center for Disease Control and Prevention
What is Cyberstalking?

- Cyberstalking is the utilization of the Internet, computers or other electronic devices to annoy, threaten, or harass.
- Three main types:
  - Email: unsolicited emails or instant messaging
  - Internet: posting false info
  - Computer: taking control over victim’s computer or using his or her password to get access

Technological Abuse

- Use of high tech spying tools to extend power and control
- Tracking calls made and websites visited
- Installation of Spyware on computers
  - Difficult to spot on computer
- GPS
  - Cell phone
  - Vehicle
- Now available easily and inexpensively

What are some remedies?

- Criminal Prosecution
- Civil Liability
- Domestic Violence Protection Order
- Stalking Protection Orders
- Both Civil and Criminal Case
Criminal Law

- Wyoming has several crimes that can be categorized as domestic violence crimes;
- No one specific crime “domestic violence”;
- Not limited to battery and stalking;
- Involves family or other “household members” so somewhat unique;

Federal Domestic Violence
Firearms Prohibitions Possession

- 18 USC §922(g)(8) – prohibits possession of a firearm while subject to a protection order
- 18 USC §922(g)(9) (a.k.a. the “Lautenberg Amendment”) – prohibits possession of a firearm by anyone ever convicted of a misdemeanor crime of domestic violence (MCDV)

Duties of law enforcement:

- At the time of arrest or as soon thereafter as is practicable, Wyoming law provides that the law enforcement officer advise the victim of the availability of a program that provides services to victims of battering in the community and give the victim notice of the legal rights and remedies available.
- Research suggests that perpetrators are best deterred by swift and certain sanctions and that victims may refrain from seeking justice system intervention if perpetrators violate orders with impunity.
Goals of Prosecution

- To protect the victim from additional acts of violence committed by the perpetrator;
- To reduce the exposure and/or possible injury to children or other family members from domestic violence;
- To deter the perpetrator from committing continued acts of violence in the community and hold him accountable for his actions;
- To create a general deterrence to domestic violence in the community; and
- To serve justice.

Increased Risk:

- While the relative danger posed by each individual defendant will vary, studies have shown a statistically increased risk for re-offense or obstruction of justice by domestic violence offenders during the period between arrest and trial.

Two reasons for this increased risk are:

1. The alleged perpetrator of a domestic violence crime generally has greater access to the victim than does the alleged perpetrator of stranger violence. Domestic violence perpetrators are likely to live with their victims, or to have regular contact with them for purposes such as child visitation.
2. Domestic violence is usually motivated by the abuser's desire to control the victim. Accordingly, such abusers may resort to violence to regain the control that is lost when their behavior leads to criminal charges.
Best Practices

- **Early and Consistent Contact with Victims**
  - Early, consistent contact with victims and immediate referral to appropriate support services is critical to preserving a case.
  - The prosecutor's office should utilize available resources to create a dialogue with the victim to address their joint or individual concerns.

Information important for filing charges

- Initially, the prosecutor should review all the facts of the case in light of the following:
  - Existence and seriousness of the injuries and/or threats;
  - Use of a weapon (including furniture or other household objects);
  - Any history of violence by either party;
  - Vulnerability of the victim;
  - Presence and proximity of children at the location of the violence;
  - Careful determination of the identity of the dominant aggressor, if any;
  - Potential lethality in the context of the relationship as a whole.

Common factors judges consider when determining conditions of release from custody of a domestic violence defendant include:

- History of domestic violence as documented by police reports, and/or convictions
- Whether the frequency and/or severity of violence appears to be escalating
- Threats of retaliation by the defendant, either directly towards the victim or indirectly towards the children
- Use or threatened use of a weapon
Defendant's prior criminal history
Danger posed to public, including threats to victim's family or co-workers
Defendant's alleged use or possession of alcohol or a controlled substance
Defendant's access to the victim
Defendant's mental and physical health
Defendant's threats of suicide

Communication from Prosecutors and Judges to Defendants
- Emphasize that the criminal proceeding is between the defendant and the state, not the defendant and the alleged victim.
- Emphasize to the defendant that the state, not the victim, has control over the prosecution of the case. Should the defendant be inclined to attempt to influence the victim to withdraw the prosecution, this explanation may discourage such efforts.

Victim’s Goals
- Should the victim’s goals matter to the prosecution?
- What are some reasons victims may be reluctant to testify?
- Hard no-drop vs. Hard drop policies
- Considerations for “soft no-drop” policies
DVPO: Who is Protected? Definition of "household member"

- Persons married to each other;
- Persons living with each other as if married;
- Persons formerly married to each other;
- Persons formerly living with each other as if married;
- Parents and their adult children;
- Other adults sharing common living quarters;
- Persons who are the parents of a child but who are not living with each other; and
- Persons in, or formerly in, "dating relationships."

Protection Order Relief

- Order no contact
- Temporary Custody of Children/Visitation with Respondent
- Refrain respondent from transferring, concealing, encumbering or otherwise disposing of petitioner's property or joint property
  - Order does not affect title to property;
  - Petitioner is likewise restrained.
- Retrieval of personal property
  - Supervised by law enforcement
  - Personal clothing and effects
  - Prearranged so both parties are present.

Stalking Protection Orders

- **Available Relief.** Court can order the respondent to refrain from any further acts of stalking involving the victim or any other person included in the order.
- **Stay Away Provisions.** As a part of any stalking order of protection, the court may direct that the respondent stay away from the home, school, business or place of employment of the victim or any other locations the court may describe in the order.
Stalking Protection Order
Remedies (Cont.)

- **No Contact Clause.** The court may direct that the respondent refrain from contacting, intimidating, threatening or otherwise interfering with the victim of the alleged offense and any other persons, including but not limited to members of the family or household of the victim, as the court may describe in the order.

- **Notices to respondent.** The order shall contain a notice that willful violation of any provision of the order constitutes a crime and can result in immediate arrest and may in some cases subject the perpetrator to enhanced penalties for felony stalking.

WHY DOESN’T SHE JUST LEAVE?

- Question erroneously implies that leaving the batterer necessarily increases the woman's safety.
- Puts emphasis on what she didn’t do, rather that all that she has done.
- Why not ask “Why does he abuse his family/intimate partner/child?”

Separation Abuse

- Women are more likely to be murdered when attempting to report abuse or to leave an abusive relationship.
- The risk of homicide is highest in the first two months of separation.
- The most dangerous time may be between cohabitation and divorce;
Separation Abuse

- Battered women report being assaulted as much as 14X more often after separation than during cohabitation;
- Nearly 75% of reported assaults take place after the separation of the parents. (US Dept. of Justice);
- 73% of battered women seeking emergency medical services sustained injuries after leaving the batterer.

Ending violence and harassment

- Domestic violence doesn’t get better without intervention; in fact, it usually gets much worse.
- Stalking is scary, obsessive behavior that often ends with tragic consequences;
- Sexual assault is a very painful experience for victims—many of whom never fully recover and are often revictimized throughout the system.