



**SPECIAL REPORT**

**Predominant Aggressor Policies and the  
Mass Incarceration of Men**

*If most victims of domestic violence are men, why are the great majority of persons arrested for domestic violence offenses male?*

Mass incarceration has become a threat to fundamental notions of fairness and justice in America. Since the early 1980s, the number of incarcerated men has risen dramatically, making the United States the global leader in both the number and percentage of incarcerated individuals.<sup>1</sup> Domestic violence policies have been central to the development of mass incarceration.<sup>2</sup> One of these policies is known as “predominant aggressor.”

According to the U.S. Department of Justice, 77% of domestic violence arrestees are male.<sup>3</sup> But inexplicably, men are more likely than women to be the victims of domestic violence.<sup>4</sup>

- Males: 4.2 million victims
- Females: 3.5 million victims

Despite the greater number of male victims, the criminal system has come to regard men as perpetrators, when in fact they are often victims. Part of the reason for this puzzle is found in the widespread use of “predominant aggressor” policies, as revealed by this case:

*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.<sup>5</sup>*

This Special Report probes the historical evolution, risk assessment tools, and controversies that surround predominant aggressor policies for domestic violence, with a focus on the publications and training materials of the International Association of Chiefs of Police.

### **Origins of Predominant Aggressor**

In about half of cases, intimate partner violence is mutual, meaning both persons are exchanging blows:<sup>6</sup>

- One national study of persons ages 18–28 found that 50% of violent couples were mutually aggressive.<sup>7</sup>
- A survey of American university students found that 70% of partner aggression was reciprocal in nature.<sup>8</sup>

This fact poses a daunting challenge to the police officer who responds to a domestic violence call – should the officer arrest both parties, just one, or neither party?

## COALITION TO END DOMESTIC VIOLENCE

Beginning in the mid-1980s, states began to enact mandatory arrest laws for domestic violence. These policies triggered sharp increases in the number of arrests of both 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%.<sup>9</sup>

Activists began to complain that the law was being enforced too aggressively, claiming that 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.”<sup>10</sup>

This requirement spurred the development of the “predominant aggressor” concept, and many states enacted laws that delineate predominate aggressor criteria – see Appendix. Many of policies are rooted in the dubious Theory of Patriarchal Power and Control, which holds that domestic violence arises from persons’ need for interpersonal power. But research reveals the existence of a broad range of motivations to engage in partner violence.<sup>11,12</sup>

### **International Association of Chiefs of Police**

The International Association of Chiefs of Police is the world’s largest, and perhaps most influential, professional association for police leaders.<sup>13</sup> Thanks to continued support from the DOJ Office on Violence Against Women,<sup>14</sup> the International Association of Chiefs of Police has a long-standing focus on the problem of domestic violence.

A search of the IACP website on the term “violence against women” turns up 27 results, including a leadership institute, first-line supervisor training, a violence against women library, and more. A search of the IACP website using the term “violence against men” yields zero results.

Accordingly, the IACP has become a leading proponent of predominant aggressor policies. The IACP’s views on predominant aggressor are summarized in its document, “Intimate Partner Violence Response: Policy and Training Content Guidelines,” published in 2017.<sup>15</sup>

Four aspects of the document raise concerns:

#### *1. Definition of Domestic Violence*

The IACP defines intimate partner violence broadly:<sup>16</sup>

“a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over or to harm another intimate partner.

Intimate partner violence can include physical, sexual, emotional, economic, or psychological actions or threats of actions that are intended to control and/or harm another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.”

Neither the Violence Against Women Act or any jurisdiction in the United States defines domestic violence in such a broad manner. Vague definitions that encompass “emotional” and “psychological” abuse have been criticized for turning everyday behaviors, such as Honey-Do lists and simple requests to not over-spend the household checking account, into a legal offense.<sup>17</sup>

## *2. Facts About Intimate Partner Violence*

The document includes a section on “Facts About Intimate Partner Violence,” which states:

“Experts estimate that a woman has between a one-in-three and a one-in-four chance of being physically assaulted by a partner or ex-partner during her lifetime. On average, nearly 20 people per minute are physically abused by an intimate partner in the United States. During one year, this equates to more than 10 million women and men.”

All three of these claims are deeply flawed:

1. The first sentence is biased because it neglects to mention domestic violence against men. “During her lifetime” is also problematic because survey respondents tend to forget about incidents that occurred 5, 10, or 15 years ago. Annual incidence numbers are considered to be far more reliable.
2. Domestic violence activists are known to tout shocking statistics that cannot be verified.<sup>18</sup> The “nearly 20 people per minute” claim is a good example of such a “factoid from nowhere.”
3. The “more than 10 million women and men” statistic is wrong because the IACP cites an outdated version of the NISVS. The 2015 NISVS reveals the number of male victims *exceeds* the number of female victims.<sup>19</sup>

In sum, the first three sentences of the IACP “Facts About Intimate Partner Violence” are misleading, unverifiable, outdated, or factually wrong. Unfortunately, these errors, which downplay and even ignore the existence of male victims, serve to bias police determinations of which party is the predominant aggressor, a well-documented problem known as “confirmation bias.”<sup>20</sup>

## *3. ‘Primary’ versus ‘Predominant’ Aggressor*

According to Black’s Legal Dictionary, the definition of the primary “aggressor” is:

## COALITION TO END DOMESTIC VIOLENCE

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.<sup>21</sup>

The IACP defines “predominant aggressor” differently, as the individual who “poses the most serious, ongoing threat, who might not necessarily be the initial aggressor in a specific incident.”<sup>22</sup> Thus, the IACP’s conception of “predominant” aggressor side-steps the question of which party initiated the aggression in the current case.

Furthermore, the IACP definition presumes that culpability should be assigned to only one party, precluding the possibility that both persons may need treatment to overcome their abusive tendencies. This approach can have tragic consequences:

*“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”.*<sup>23</sup>

### 4. Subject Matter Experts

The document’s Acknowledgement states, “Content recommendations were submitted by a multidisciplinary group of subject matter experts including prosecutors, law enforcement, advocates, and national training and technical assistance providers.”<sup>24</sup>

But what about researchers, scientists, and public policy experts? Why weren’t these persons included?

### **Predominant Aggressor Criteria**

#### *Prior Research*

Extensive research has been conducted on domestic violence risk assessment.<sup>25</sup> Two instruments have been developed for use by frontline police officers:

- Brief Spousal Assault Form for the Evaluation of Risk (B-SAFER)<sup>26</sup>
- Ontario Domestic Assault Risk Assessment (ODARA)<sup>27</sup>

The ODARA consists of 13 items that have been validated by police files collected for an average of 51 months after the index assault:

1. Prior domestic assault in police records
2. Prior nondomestic assault in police records
3. Prior sentence for a term of 30 days or more
4. Failure on prior conditional release; bail, parole, probation, no-contact order
5. Threat to harm or kill anyone during index incident

6. Confinement of victim during index incident
7. Victim fears about future assault
8. More than one child altogether
9. Victim has a biological child from a previous partner
10. Violence against any person other than a partner or the children
11. More than one indicator of substance abuse problem
12. Assault on the victim when she was pregnant
13. Victim faces at least one barrier to support: children, no phone, no access to transportation, geographical isolation, alcohol/drug consumption or problem

Each item is scored as “Yes” or “No,” and the number of Yes answers are totaled to calculate the ODARA score. For example, a score of 4 means the person is likely to “commit another assault against their partner (or, in some cases, a future partner) that comes to the attention of the police, within an average of about 5 years.” ODARA has been shown to be valid for use with both male<sup>28</sup> and female<sup>29</sup> offenders.

### *IACP Criteria*

The IACP identifies the following 22 criteria to identify which person is the predominant aggressor:<sup>30</sup>

1. Who uses threats and intimidation in the relationship?
2. Does either individual in the relationship isolate their partner?
3. Who is emotionally abusive (uses degrading names, humiliating comments, etc.)?
4. How are minimization, blame, and denial being used by the victim and/or the suspect?
5. Who utilizes the children to get their way in the relationship?
6. Who has forced sexual contact or used sexual acts as a way to control the other?
7. Who has control of money and finances or uses them as a way to control the other?
8. Who utilizes coercion and threats?
9. Have any threats been carried out or steps taken to carry them out?
10. Does either party have a history of committing violent crimes?
11. What does the premise history tell you about calls for service to the residence?
12. Is there a history of intimate partner violence between the parties?
13. Is there a physical size difference between the parties?
14. Does either party have a protection order against them or a history of protection orders against them?
15. Who appears to be more capable of assaulting the other?
16. What is the severity of the injuries to the parties?
17. Did either party utilize self-defense?
18. Is there potential for violence in the future? If so, by whom?
19. Which party has access to firearms or other weapons?

## COALITION TO END DOMESTIC VIOLENCE

20. What types of injuries do the parties have? Are they offensive or defensive in nature?
21. Does either party express fear of the other?
22. Is there evidence from witnesses?

Particularly worrisome is the fact that the IACP does not cite any scientific research in support of its criteria.

### *Critique of IACP Criteria*

Five of the IACP criteria are vague and/or subjective:

1. How are minimization, blame, and denial being used?
2. Who utilizes the children to get their way in the relationship?
3. Who appears to be more capable of assaulting the other?
4. Did either party utilize self-defense?
5. Is there potential for violence in the future? If so, by whom?

Other IACP criteria are openly biased against the male party:

1. Does either party express fear of the other? -- It's no secret that men are taught to not express fear.
2. Is there a physical size difference between the parties? – But most domestic violence incidents are not dependent on physical strength or size, as revealed by 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."*<sup>31</sup>

Even clear-cut criteria such as, What is the severity of the injuries to the parties? lack reliability, as seen in this case:

*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.*<sup>32</sup>

In contrast to ODARA, the IACP document does not explain how to score the responses, raising concerns about the practical value of the tool. In addition, few police officers have the time to pose all the 22 questions to both parties, or possess the expertise to evaluate their answers.

## IACP Training Program

Two years after publication of its “Intimate Partner Violence Response: Policy and Training Content Guidelines,” the IACP published a training program on Predominant Aggressor Determination.<sup>33</sup> Without explanation, the new program abandoned the listing of 22 criteria, and instead boiled down the risk assessment process to five poorly explained factors (Slide 5):

1. Self-defense determination
2. Analysis of injuries
3. Course of conduct
4. Thorough investigation that puts everything into context
5. Investigate for Power and Control

The program features a Case Study with graphic photographs, which again reinforces the male-as-perpetrator, female-as-victim narrative (Slides 13-24). The example is implausible because it claims that the woman was arrested, despite the fact that her unidentified partner dragged her across the floor, kicked her, hit her, and attempted to strangle her.

Even more troubling is the training program’s attempt to “invent” new crimes. Slide 9, titled “Power and Control = Criminal Behavior,” states:

- Emotional Abuse.....Simple Assault
- Economic Abuse.....Theft, Fraud, Forgery
- Using Children.....Kidnapping, Neglect, Abuse
- Using Male Privilege...Sexual Assault

Other major flaws with the program include:

1. Generally relies on the discredited “power and control” paradigm
2. Refers to “using male privilege” as an indication of criminal behavior (Slide 9)
3. Inexplicably describes “Presence of calm” as an indication of “power and control” (Slide 10)
4. Provides an explanation for use of physical force that appears to justify female aggression: “Domestic violence victims who use force may also do so for a purpose, but that purpose is not related to obtaining and maintaining power and control.” (Slide 26)
5. Claims that mutual abuse happens only when it is a “fair fight,” suggesting that mutual aggression cannot happen when the persons are a different size. (Slide 28)
6. Engages in sex profiling that disadvantages men, e.g., “Comparative height and weight” of the parties (Slide 38).

Another problem with the offender-is-male paradigm becomes apparent when an officer confronts domestic violence in a lesbian couple, as revealed by this case:



## COALITION TO END DOMESTIC VIOLENCE

*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.<sup>34</sup>*

Researcher John Hamel 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.”<sup>35</sup>

Given these extensive flaws, the IACP Predominant Aggressor Determination program cannot be viewed as “educational” in the traditional sense of the word. “Indoctrination” seems to be a more accurate term.

### **Intellectual and Constitutional Travesty**

The Fourteenth Amendment of the U.S. Constitution states, “no state shall ... deny to any person within its jurisdiction the equal protection of the laws.” Ignoring this fundamental legal principle, the IACP seeks to bias the predominant aggressor determination in four ways:

1. Presenting the topic within the context of “Violence Against Women”<sup>36</sup>
2. Biased and unverifiable statistics
3. Criteria that are overtly biased against men
4. One-sided training example

The beginning of this report highlights the discrepancy between domestic violence incidence numbers versus arrest statistics. While a strong majority of domestic violence victims are male, 77% of domestic violence arrestees are male. This contradiction reveals a troubling law enforcement bias that gives rise to profound civil rights violations<sup>37</sup> and contributes to the problem of mass incarceration of men, especially Black men.<sup>38,39</sup> One group has concluded,

“Particularly within the historical context of wildly exaggerated, widely distributed claims about domestic violence against women, scarcely any publicly expressed concern for domestic violence against men, and widespread gender stereotyping of domestic violence, gender-profiling men for arrest for domestic violence is likely to have real, invidious effects.”<sup>40</sup>

Lawmakers and law enforcement agencies must reject the flawed IACP predominant aggressor approach, and instead rely on scientifically validated tools such as the Ontario Domestic Assault Risk Assessment.

In the mean time we need to ask, how did the IACP allow this intellectual and constitutional travesty to occur?

**ACKNOWLEDGEMENT**

John Hamel, PhD, assisted in the identification of pertinent research studies.

### State-Level Criteria for Predominant or Primary Aggressor

Twenty-three states have enacted 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.

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.

In the remaining 15 states, policies enumerate specific criteria to assist law enforcement personnel in identifying the predominant aggressor. In Maine<sup>41</sup> and New Hampshire<sup>42</sup>, the predominant aggressor criteria are defined by policy documents, not statutory language.

The 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
----	----------------------	----

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 which party is the predominant aggressor.

The statutory provisions are cited below:

**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;

## COALITION TO END DOMESTIC VIOLENCE

- 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;

## PREDOMINANT AGGRESSOR POLICIES

- (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.

### **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

## COALITION TO END DOMESTIC VIOLENCE

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,

## PREDOMINANT AGGRESSOR POLICIES

- (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
- (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



---

## References

- <sup>1</sup> Wikipedia contributors (June 7, 2021). *Comparison of United States incarceration rate with other countries*. Wikipedia. [https://en.wikipedia.org/wiki/Comparison\\_of\\_United\\_States\\_incarceration\\_rate\\_with\\_other\\_countries](https://en.wikipedia.org/wiki/Comparison_of_United_States_incarceration_rate_with_other_countries)
- <sup>2</sup> Acrosswalls (November 23, 2014). *Domestic Violence Policies Central to Mass Incarceration..* <https://www.acrosswalls.org/domestic-violence-policies-mass-incarceration/>
- <sup>3</sup> Matthew R. Durose (2005). *Family Violence Statistics Including Statistics on Strangers and Acquaintances*. Ojp.Usdoj.Gov. <http://www.ojp.usdoj.gov/bjs/pub/pdf/fvs.pdf>
- <sup>4</sup> National Intimate Partner and Sexual Violence Survey (2018). *2015 Data Brief – Updated Release*, Atlanta, Georgia. Tables 9 and 11. <https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf>
- <sup>5</sup> Young C. (February, 1998). *Domestic violations*. Reason Online.
- <sup>6</sup> Jennifer Langhinrichsen-Rohling, et al (2012). *Rates of bi-directional versus unidirectional intimate partner violence across samples, sexual orientations, and race/ethnicities: A comprehensive review*. *Partner Abuse*, 3(2), 199–230, <https://doi.org/10.1891/1946-6560.3.2.199>
- <sup>7</sup> Daniel J. Whitaker, et al (May, 2007). *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, pp. 941–947. <http://www.ajph.org/cgi/content/abstract/97/5/941>
- <sup>8</sup> Murray A. Straus (2008). *Dominance and symmetry in partner violence by male and female university students in 32 nations*. *Children and Youth Services Review*, Vol. 30, pp. 252–275.
- <sup>9</sup> William Wells & William DeLeon-Granados (2002). *Analysis of unexamined issues in the intimate partner homicide decline: Race, quality of victim services, offender accountability, and system accountability. Final report*. NCJ Document No. 196666. <http://www.ncjrs.org/pdffiles1/nij/grants/196666.pdf>
- <sup>10</sup> U.S. Department of Justice, Office of Violence Against Women (2001). *Grants to encourage arrest policies and enforcement of protection orders program: Fiscal application and program guidelines*. <http://www.usdoj.gov/ovw/grants/arrest/arrest01.pdf>
- <sup>11</sup> Murray A. Straus (2008). *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.
- <sup>12</sup> Graham-Kevan N (2007). *Power and control in relationship aggression*. In Hamel J and Nicholls TL (eds.): *Family Interventions in Domestic Violence*. New York: Springer Publishing Co.
- <sup>13</sup> International Association of Chiefs of Police. *About IACP*. <https://www.theiacp.org/about-iacp>
- <sup>14</sup> Grant No (2016). TA-AX-K055.
- <sup>15</sup> International Association of Chiefs of Police (2017). *Intimate Partner Response: Policy and Training Content Guidelines*. Page 6. <https://www.theiacp.org/sites/default/files/all/i-j/IACPIntimatePartnerViolenceResponsePolicyandTrainingGuidelines2017.pdf>
- <sup>16</sup> Page 1 *Intimate Partner Response*.
- <sup>17</sup> James Baresel (April 15, 2021). *With Loose Definitions, Everything’s a Crime*. Intellectual Conservative. <https://www.intellectualconservative.com/articles/with-loose-definitions-everything-s-a-crime>
- <sup>18</sup> Coalition to End Domestic Violence (2021). *Thirty Years of Domestic Violence Half-Truths, Misrepresentations, and Lies*. <http://endtodv.org/wp-content/uploads/2021/09/Thirty-Years-of-DV-Half-Truths-Falsehoods-and-Lies.pdf>

- <sup>19</sup> CDC (2015). *National Intimate Partner and Violence Survey*. Tables 9 and 11. <https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf>
- <sup>20</sup> Wayne Wallace (2015). *The Effect of Confirmation Bias on Criminal Investigative Decision Making*. Walden University ScholarWorks. <https://scholarworks.waldenu.edu/cgi/viewcontent.cgi?article=1406&context=dissertations>
- <sup>21</sup> Henry Campbell Black (1983). *Black's Law Dictionary*. St. Paul: West Publishing Co.
- <sup>22</sup> International Association of Chiefs of Police (2017). *Intimate Partner Response: Policy and Training Content Guidelines* Page 6. <https://www.theiacp.org/sites/default/files/all/i-j/IACPIntimatePartnerViolenceResponsePolicyandTrainingGuidelines2017.pdf>
- <sup>23</sup> S. Decker (April 6, 2002). *Mom sentenced for slaying sons*. DailyNews.com. <http://www.fact.on.ca/news/news0204/dn020406.htm>
- <sup>24</sup> *Policy and Training Content Guidelines*, Page 29.
- <sup>25</sup> Tonia Nicholls, et al (2007). *Violence Risk Assessments with Perpetrators of Intimate Partner Abuse*. In John Hamel and Tonia Nicholls, eds. *Family Interventions in Domestic Violence*. New York: Springer Publishing Co.
- <sup>26</sup> P. Randall Kropp, Stephen D. Hart (2004). *The Development of the Brief Spousal Assault Form for the Evaluation of Risk (B-SAFER): A Tool for Criminal Justice Professionals*. Family Violence Initiative [https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/rr05\\_fv1-rr05\\_vf1/rr05\\_fv1.pdf](https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/rr05_fv1-rr05_vf1/rr05_fv1.pdf)
- <sup>27</sup> Mental Health Centre (2005). *Ontario Domestic Assault Risk Assessment*. <https://grcounseling.com/wp-content/uploads/2016/08/domestic-violence-risk-assessment.pdf>
- <sup>28</sup> Laurie M. Graham et al (2019). *The validity and reliability of available intimate partner homicide and reassault risk assessment tools: A systematic review*. *Trauma, Violence, & Abuse*, 22, pp. 18-40 <https://doi.org/10.1177/1524838018821952>
- <sup>29</sup> N. Zoe Hilton, et al (2014). *Preliminary validation of the ODARA for female intimate partner violence offenders*. *Partner Abuse*, 5, 189–203. <https://doi.org/10.1891/1946-6560.5.2.189>
- <sup>30</sup> International Association of Chiefs of Police (2017). *Intimate Partner Violence Response: Policy and Training Content Guidelines* Page 23. <https://www.theiacp.org/sites/default/files/all/i-j/IACPIntimatePartnerViolenceResponsePolicyandTrainingGuidelines2017.pdf>
- <sup>31</sup> Phillip W. Cook (1997). *Abused Men: The Hidden Side of Domestic Violence*. Westport, CT: Praeger Publishers, p. 79.
- <sup>32</sup> Claudia Cornell, PhD (February 21, 2010). *Personal communication*.
- <sup>33</sup> International Association of Chiefs of Police (March 24, 2020). *Predominant Aggressor Determination*. <https://www.rit.edu/fa/compliance/sites/rit.edu/fa.compliance/files/PredominantAggressorPresentation.PDF>
- <sup>34</sup> National Coalition of Anti-Violence Programs (New York, 2009). *Lesbian, Gay, Bisexual, Transgender, and Queer Domestic Violence in the United States in 2008*. p. 13. <http://www.avp.org/documents/2008NCAVPLGBTQDVRReportFINAL.pdf>
- <sup>35</sup> Michael McCormick & Glenn Sacks (August 5, 2007). *Maine's adoption of primary aggressor doctrine in DV arrests will ensnare innocent men*. Lewiston Sun Journal.
- <sup>36</sup> International Association of Chief of Police *National Law Enforcement Leadership Initiative On Violence Against Women: Predominant Aggressor Determination*. [https://learn.theiacp.org/products/national-law-enforcement-leadership-initiative-on-violence-against-women-predominant-aggressor-determination#tab-product\\_tab\\_overview](https://learn.theiacp.org/products/national-law-enforcement-leadership-initiative-on-violence-against-women-predominant-aggressor-determination#tab-product_tab_overview)
- <sup>37</sup> Coalition to End Domestic Violence (2021). *An Assault Upon Our Civil Rights*. <http://endtodv.org/wp-content/uploads/2021/04/Assault-Civil-Rights.pdf>
- <sup>38</sup> Donna Coker & Ahjane Macquoid, (2021). *Why Opposing Hyper-Incarceration Should Be Central to the Work of the Anti-Domestic Violence Movement*. *Miami Race & Soc. Just. L. Rev.* Page 585. <https://repository.law.miami.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1061&context=umrsjlr>

<sup>39</sup> Across Walls. *Domestic Violence Policies Central to Mass Incarceration*.

<https://www.acrosswalls.org/domestic-violence-policies-mass-incarceration/>

<sup>40</sup> Across Walls. *Gender-Profiling Men for Arrest for Domestic Violence*.

<https://www.acrosswalls.org/gender-profiling-men-arrests-domestic-violence/>

<sup>41</sup> John B. Rogers & Kate Faragher-Houghton (2008). *Identifying predominant aggressors in domestic violence cases (train-the-trainer)* Vassalboro, ME: Maine Criminal Justice Academy,

<http://www.maine.gov/dps/mcja/docs/Mandatory-Law/Predominant%20Aggressor.doc>

<sup>42</sup> Governor's Commission on Domestic Violence *Law enforcement: A model for police response to domestic violence cases*. <http://doj.nh.gov/victim/pdf/dvlaw.pdf>