

# Dynamics of Domestic Violence and Interacting with Systems

Milly Gonzales, Associate Director - End Domestic Abuse WI  
Hon. Tania Bonnett, Judge - Adams Co. Circuit Court



# What is End Domestic Abuse Wisconsin?

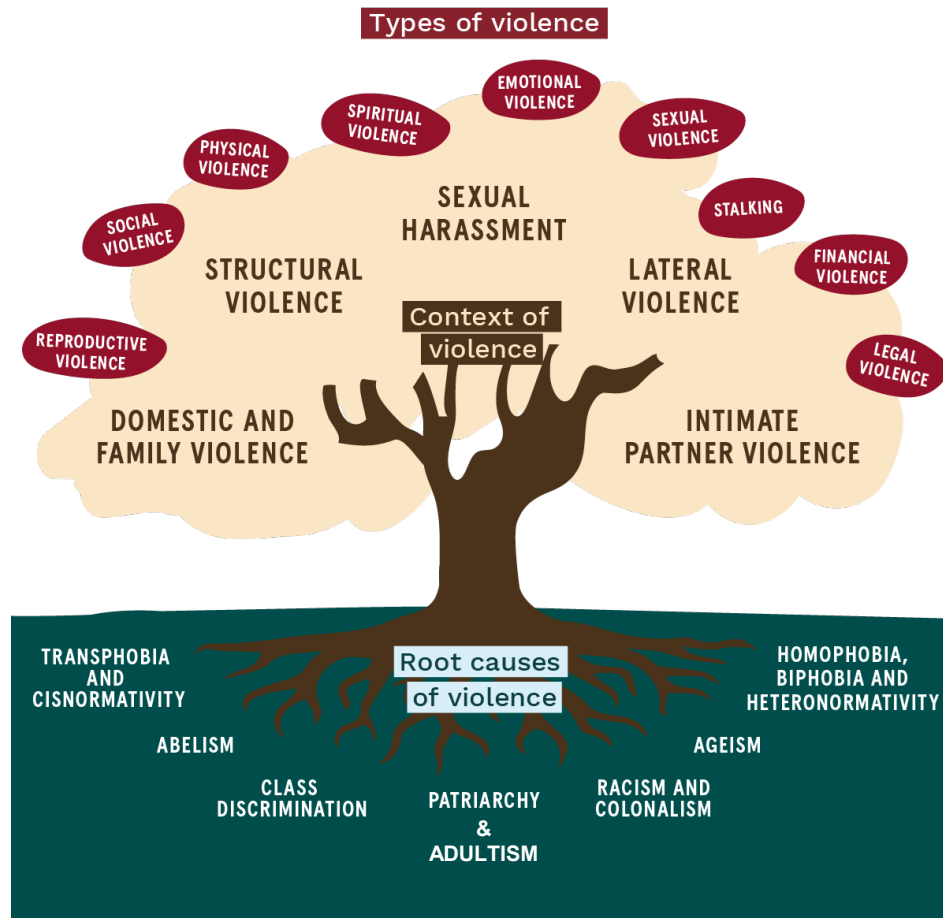
- Wisconsin's Coalition Against Domestic Violence
- Membership-based organization providing services to the state's domestic violence and domestic violence/sexual assault programs
- Provides technical assistance and training, legal technical assistance and training, prevention, outreach, and systems-based advocacy



# What is Domestic Violence?

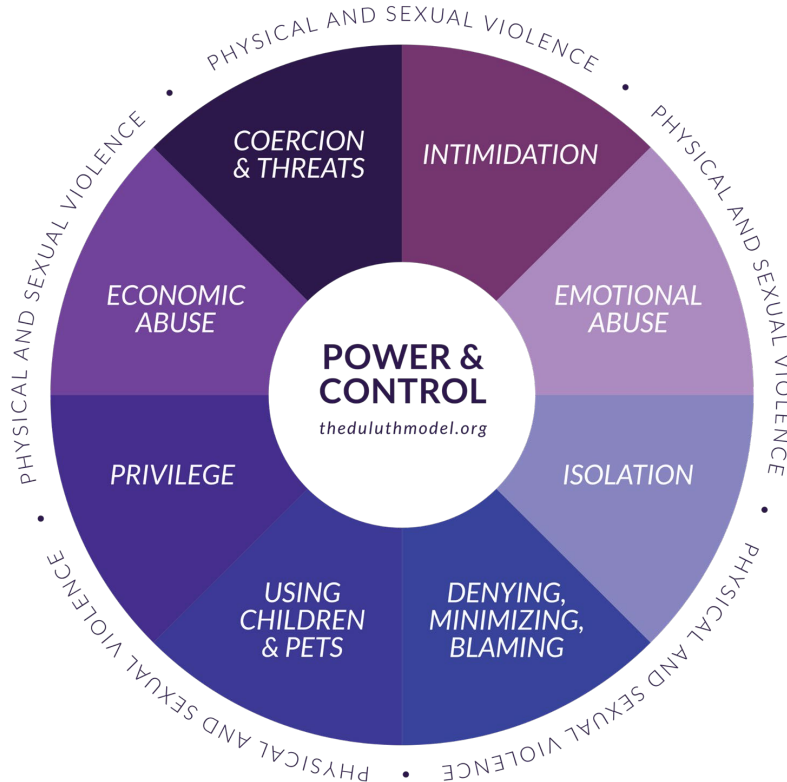
Domestic Violence (DV) is a pattern of **coercive controlling behaviors** that are violent and or abusive used by one person to **maintain power and control over another person** in a domestic setting; such as in marriage or cohabitation.

It may be termed **intimate partner violence** (IPV) when committed by a spouse or partner in an intimate relationship against the other spouse or partner and can take place in heterosexual or same-sex relationships, or between former spouses or partners. Domestic violence can also involve violence against children, parents, or the elderly.



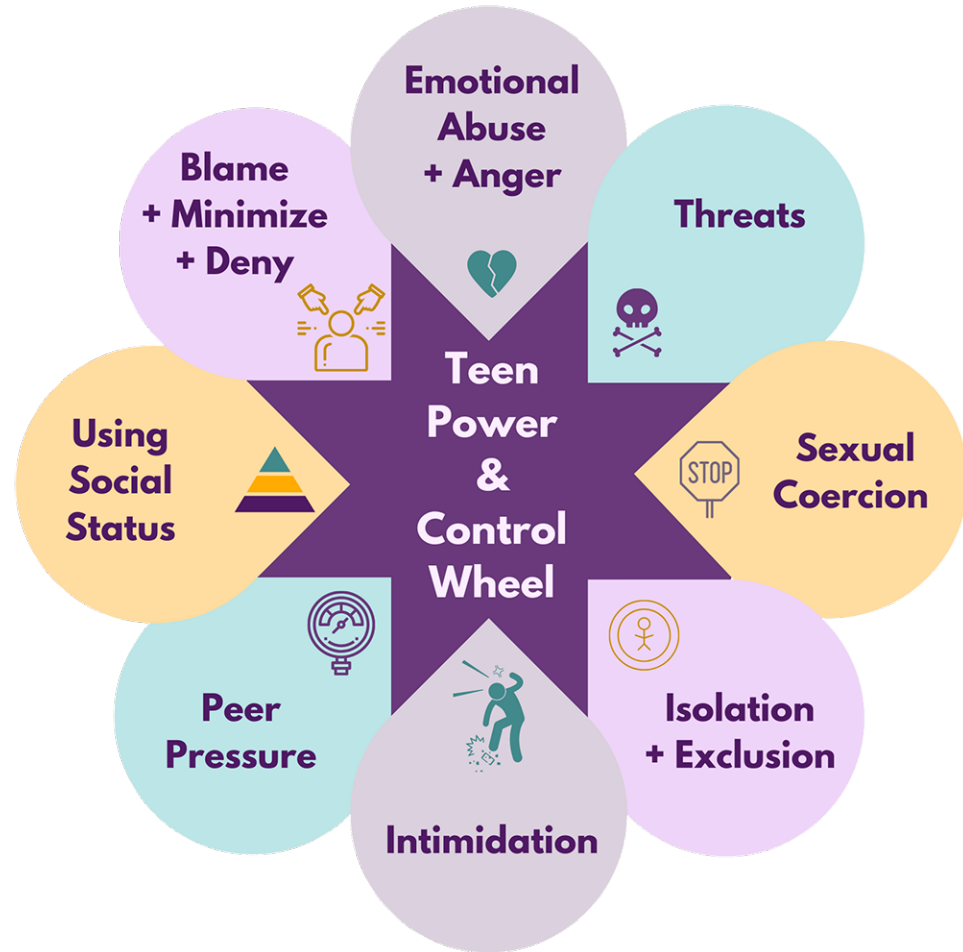
**“What happens in the home is reflected in society what happens in society is reflected in the home”**

# POWER & CONTROL VS. EQUALITY WHEEL



# Teen Dating Power & Control Wheel

1. Digital Abuse
2. Looking for independence at home
3. Instances in driving

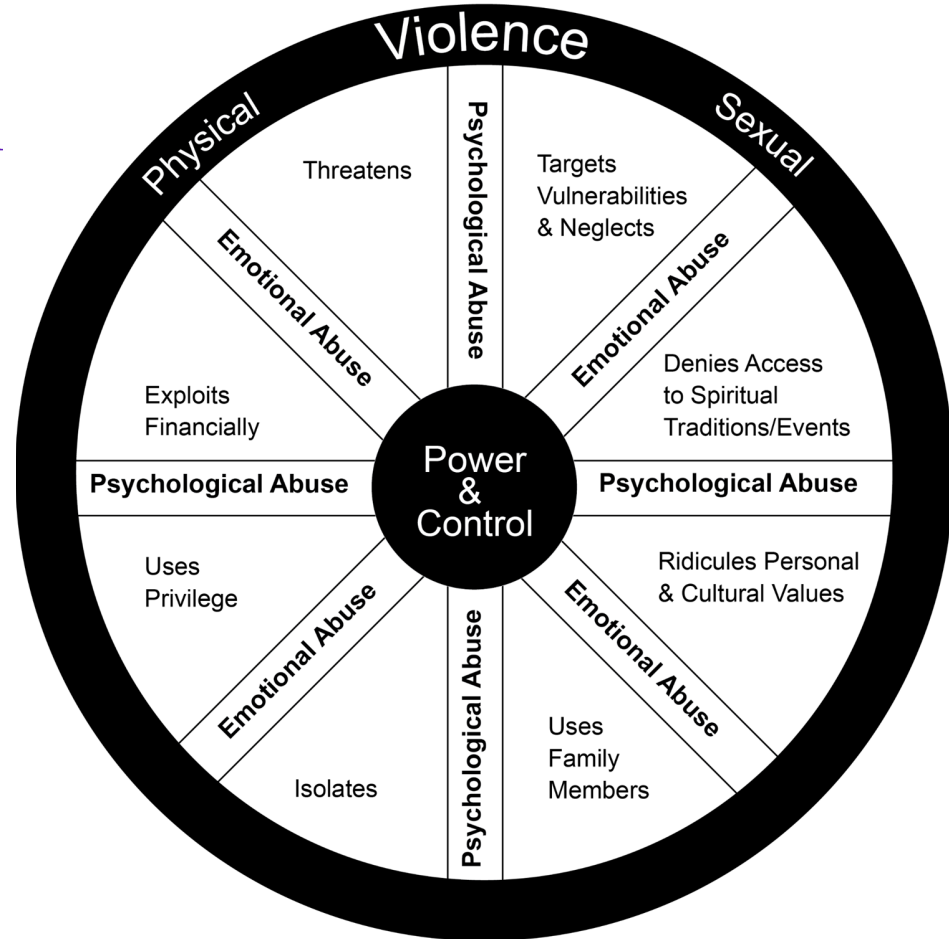


1 in 4 Teens experience dating violence in the state of Wisconsin

# Abuse in Later Life

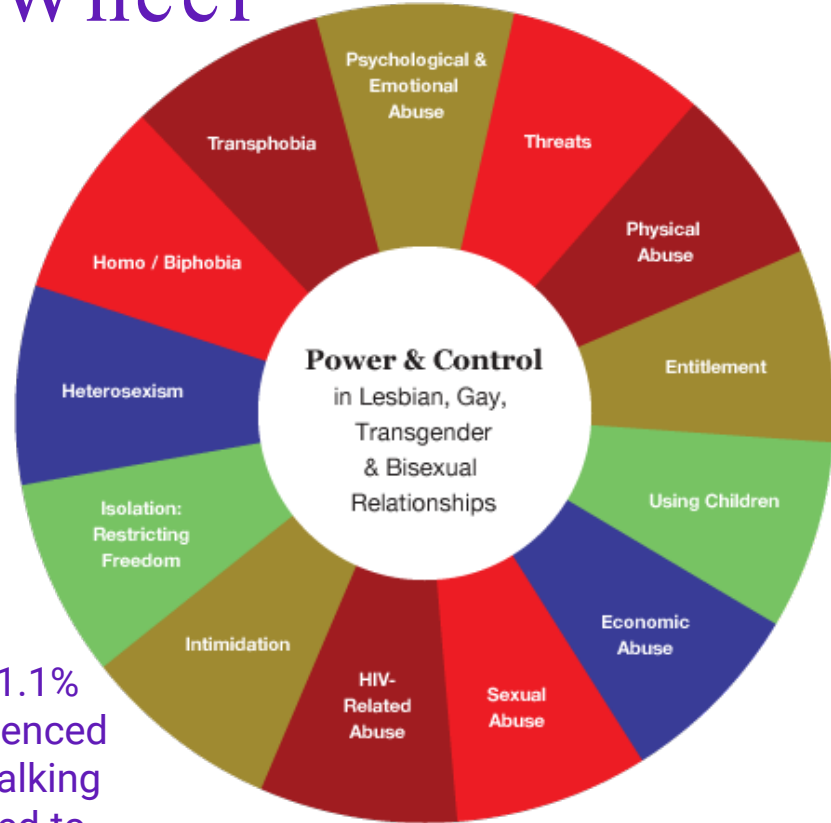
## Power & Control Wheel

1. Treating Elder as a child or servant
2. Refuses transportation, medication & care
3. Misleads regarding condition of Elder
4. Threats to institutionalize
5. Isolation



# LGBTQ+ Power & Control Wheel

1. Threatening to “out” victim
2. Heterosexism bias in Society
3. “Abuse can only in hetero context”
4. Using fear and hatred of anyone who challenges traditional gender expression
5. Pressure to hide to prevent tarnishing the image of the LGBTQ+ community
6. Threats to have children removed
7. Isolation from community



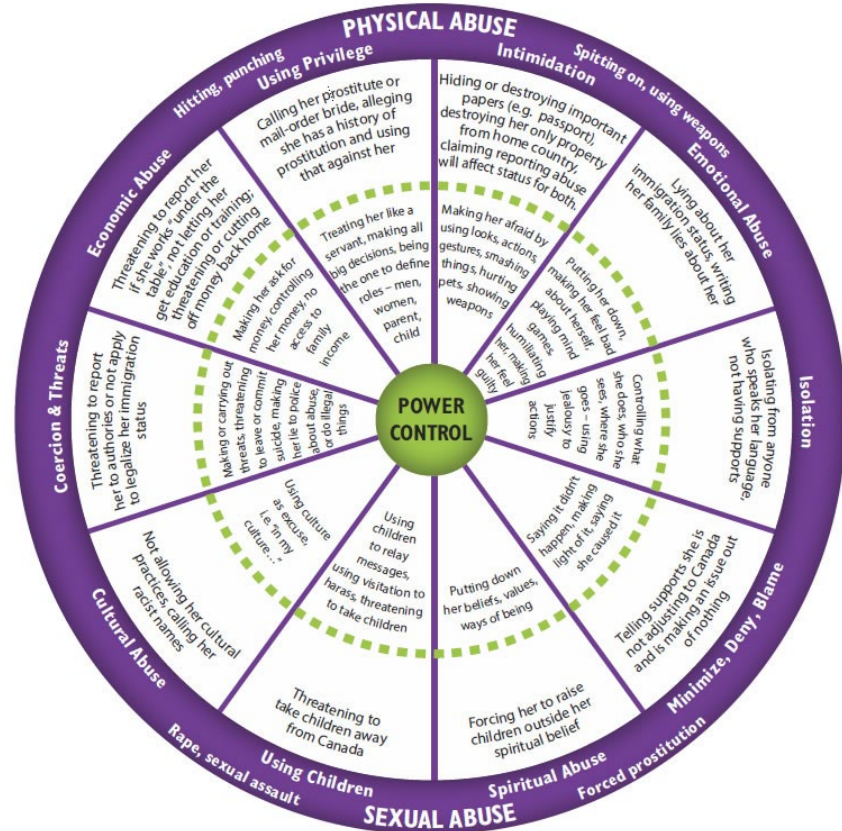
43.8% of lesbian women and 61.1% of bisexual women have experienced rape, physical abuse, and/or stalking by an intimate partner, compared to 35% of heterosexual women.





# Immigrant Power & Control Wheel

1. Threatening deportation
2. Threatening to take custody away from parent due to immigration status
3. Not allowing their cultural practices
4. Calling partner racist names
5. Hiding or destroying important papers
6. Isolating from anyone who speaks their language
7. Calling/treating them like property “mail-order bride”, “paid prostitute”



# Considering barriers for immigrant litigants

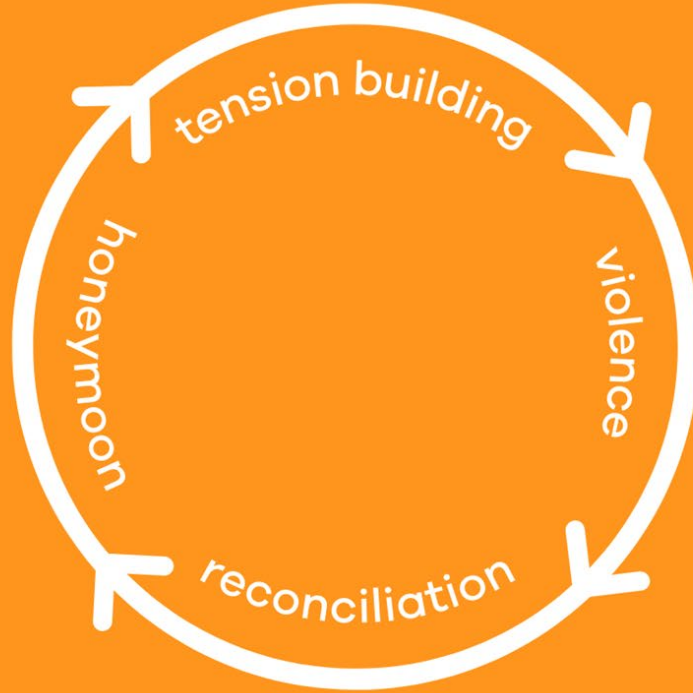
- 94% of GALs surveyed for the La Follette GAL report do not practice in languages other than English
- Cultural context can influence how a survivor navigates an abusive relationship - survivors are experts of their own circumstances
- Abusive parties may leverage an undocumented parent's immigration status against them, arguing it makes them a less stable parent

# Post Separation Abuse Wheel

1. Misuse of court proceedings to control, harass, intimidate and harm financially
2. Terrorizes and intimidates safe parent without rising to level of involving LE
3. Paints false narrative, projecting their own issues to discredit safe parent
4. Child favors safe parent and rejects the abusive parent leading to false allegations of alienation



# Cycle of Violence



# Trauma



# What is trauma?

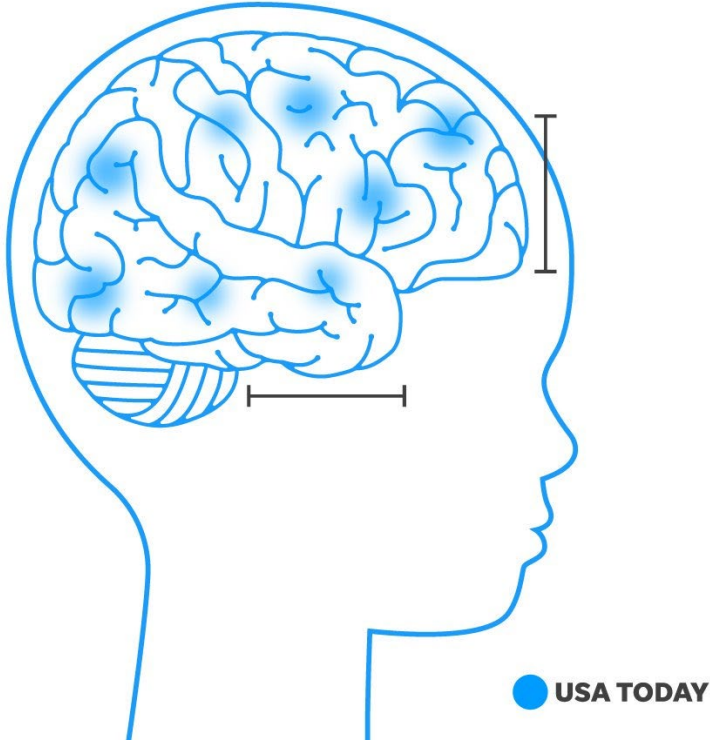
1. A deeply distressing or disturbing experience.
2. Emotional shock following a stressful event or a physical injury, which may be associated with physical shock and sometimes leads to long-term neurosis

# Types of Trauma

1. **Acute trauma** results from a single incident.
2. **Chronic trauma** is repeated and prolonged such as domestic violence or abuse.
3. **Complex trauma** is exposure to varied and multiple traumatic events, often of an invasive, interpersonal nature.

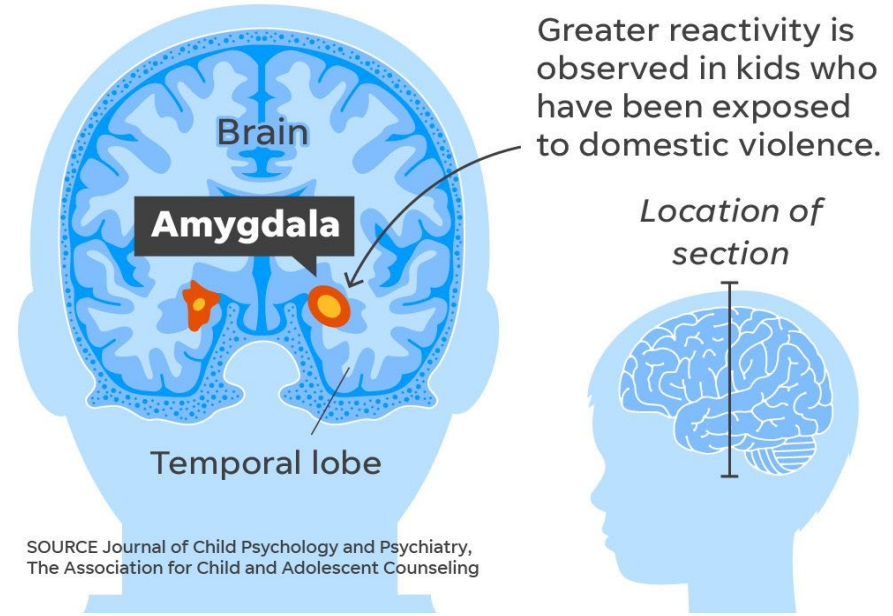


**Exposure to violence can change the size of parts of the brain, its overall structure and the way its circuits work together.**



## **Exposure to domestic abuse has long-term consequences for brain**

In children exposed to trauma including domestic violence, the amygdala — the part of the brain that processes emotions, memory and fear reacts more strongly to threats than in children who haven't.



How domestic violence affects the brain



# Vicarious trauma affects us

- Emotional: Feeling numb or detached; feeling overwhelmed or hopeless
- Physical: Having low energy or feeling fatigued
- Behavioral: Engaging in self-destructive coping mechanisms
- Professional: Experiencing low job morale & Performance
- Cognitive: Experiencing confusion, low concentration & difficulty decision making
- Spiritual: Questioning the meaning of life or feeling disconnection
- Interpersonal: Physically withdrawing or becoming emotionally unavailable to your family, friends, and co-workers

Effects of trauma can disrupt our services

Self-Care is a  
priority and necessity  
- not a luxury -  
in the work that we do.

# Domestic violence survivors may react by:

1. Repeating patterns of past unhealthy and abusive relationships
2. Trying to connect and interact with negative connections, and or lash out
3. Keeping help at a distance, or shut down
4. Losing trust in judicial and law enforcement systems
5. Seeing themselves as worthy of abuse or as the “problem”
6. In the courtroom survivors may react by:
  - a. Avoiding eye contact
  - b. Dressing in a disheveled manner
  - c. Erratic testimony

# Support Survivors

Let's be mindful of that trauma  
can and not add to it

1. Understand that your definition of safety is not theirs and they are the experts of their own experiences
2. Explain your intent, and purpose and what to expect
3. Respect and validate their experiences
4. Pay close attention to the WHY rather than the WHAT  
(look through a trauma lens)

**“While trauma informed care is important, social justice informed care is even more important. One cannot fully practice trauma informed care without understanding the trauma of social injustice.”**

- Angela Marino LCSW

# Support Survivors

Working with culturally specific  
clients & multiple intersections

1. Understand Collective, Generational & Historical Trauma
2. Avoid making assumptions and be prepared to challenge your own beliefs
3. Educate yourself about intersectionality and biases

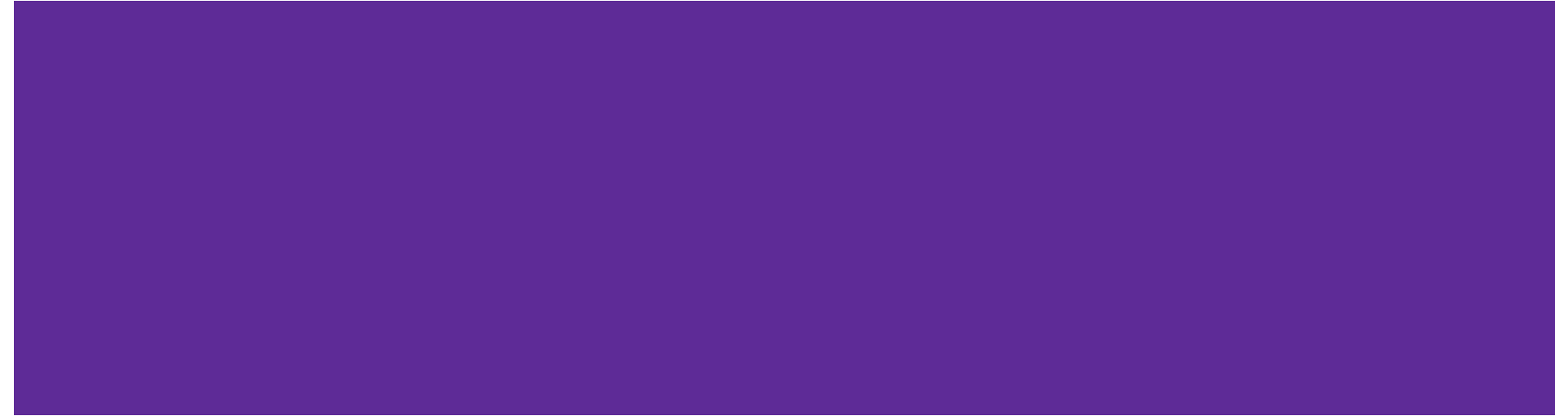
# Beliefs to Avoid

Let's do some self-reflection

1. If it really is that bad they would leave and not have connection with their abuser
2. What we do or give should be enough
3. Having a safe space should change behavior
4. Survivors and their children shouldn't have divided loyalties
5. A good person wouldn't allow D.V. to happen

\*Remember trauma affects how people are able to absorb or fully understand info.

# **Domestic Violence and Trauma in the Courtroom**



# Where might domestic violence dynamics appear in the courtroom?

In any type of case! But commonly in...

- Restraining orders
- Family law
- Criminal law



# Domestic Abuse TRO/Injunctions [Wis. Stat. 813.12](#)

## Two requirements:

1. Qualifying relationship; and
2. Abusive Conduct

## Qualifying Relationship [Wis. Stat. 813.12\(1\)](#)

- An adult against an adult **family** or adult **household** member

**Family member** = spouse, parent, child or person related by blood or adoption

**Household member:** person currently/formerly residing in a place of abode with another person

## Qualifying Relationship [Wis. Stat. 813.12\(1\)](#)

- Adult caregiver against an adult in their care
- Adult against adult former spouse
- Adult against adult with child in common
- **Adult against adult in present or past dating relationship**

## Qualifying relationship [Wis. Stat. 813.12\(1\)](#)

- **Dating relationship** = A romantic or intimate social relationship
  - Does not include a “casual relationship” or an “ordinary fraternization” between 2 individuals in a business or social context
  - Court shall determine if a dating relationship existed by considering...
    - length of the relationship,
    - type of the relationship, and
    - frequency of the interaction

# Qualifying Relationships for Mandatory Arrest: 968.075(1)

- An adult against a current or former spouse
- An adult against a person with whom they reside or previously resided (this can be non-intimate partner roommates)
- An adult with a child in common

**Note:** Unlike 813.12, this definition does not include abuse between individuals who are only related as dating partners. Wis. Stat. 973.055 domestic surcharge (which creates the basis for DV Repeater) mirrors the mandatory arrest statute and also does not include dating partners.

# Abusive Conduct

- Intentional infliction of physical pain, injury or illness
- Intentional impairment of physical condition
- 1st, 2nd, or 3rd degree sexual assault, per 940.225
- Intentional damage to property of victim, per 943.01
- Stalking, per 940.32
- Threat to engage in any of the above conduct

# Domestic abuse for Mandatory Arrest means:

1. Intentional infliction of physical pain, physical injury or illness
2. Intentional impairment of physical condition
3. 1st, 2nd, 3rd degree sexual assault
4. A **physical act** that may cause the other person reasonably to fear imminent engagement in any of the above

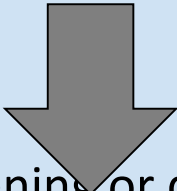
Note: Does not include property damage unless it also meets #2 or #4.

# What is “impairment of physical condition?”

Not defined in statute.

Using Webster’s definitions:

- “Impairment” = weakening or damaging of a faculty or function
- “Faculty” = a mental or physical power
- “Function” = the proper work or operation of a part of the body



The weakening or damaging of the proper operation of a physical power of a person.



# What is “impairment of physical condition?”

## **State v. Arriaga (not published and not legally binding precedent)**

- Victim seeing "white dots" after being struck in the head and redness on neck caused by her scarf being pulled were both impairment of her physical condition (note: punching itself did not qualify because she testified it did not cause her pain)

Anecdotal examples of facts that met the definition in WI circuit courts:

- Putting legs over a person preventing their movement/escape
- Withholding a person's cell phone
- Blocking a doorway with their body preventing a person from walking away
- Parking a car in front of a person's driveway, blocking them from leaving
- Locking a person out of their home
- Hiding a person's medication

**Note: A theme of False Imprisonment, which is not listed in 813.12 or 968.075**

# Harassment Petitions in domestic situations

- Sometimes conduct rooted in domestic abuse does not meet the conduct requirements for a domestic abuse TRO/injunction (i.e. emotional, financial and other forms of abuse)
- Verbal abuse that is not threatening is relegated to harassment

# Conversion from DV to Harassment

**813.12(5g)** If the parties enter into a stipulation to convert a petition under this section to a petition for a temporary restraining order or injunction under s. 813.125, the court may not approve that stipulation unless all of the following occur:

(a) Either or both parties submit an **oral request** on the record for the conversion **explaining why** the conversion of the petition is requested.

(b) The **court addresses the petitioner personally** and **determines** that the petitioner entered into the stipulation **voluntarily** and with an **understanding of the differences** between the harassment and domestic abuse injunction orders.

**Practice point:** Have a *meaningful* exchange with the petitioner. Inviting free narrative will give a more accurate impression of the voluntary nature of the stipulation.

# Extension of Injunctions

Switzer v. Switzer, 2006 WI App 10

- When original injunction granted for less than four years
- If petitioner “states by letter or other writing” that an extension is necessary to protect them
- Court shall extend the injunction
- Up to remainder of four years from date first granted (thus, not more than 4-year term)
- Can be granted after the initial time period has expired
- Notice to respondent is not required prior to granting

# Extension of Injunctions - Legislative Intent

The plain language of the statute expresses the **legislature's intent to cloak victims of domestic abuse with substantial protection by creating “procedural mechanisms ... to alleviate the inherent problem of preventing further abuse....”** *Switzer* citing *Schramek v. Bohren*, 145 Wis.2d 695, 711, 429 N.W.2d 501 (Ct.App.1988).

This statutory scheme **affords victims flexibility** by tailoring the initial injunction **to fit their own unique circumstances at the time**; the degree of risk he or she perceives at the initial injunction hearing may not warrant a four-year injunction. On the other hand, **should those circumstances change** such that longer protection is required, **victims may, by simply requesting in a letter or other writing, obtain an injunction for up to the duration they were initially entitled to receive.**

*Switzer v. Switzer*, 2006 WI App 10, ¶ 15, 289 Wis. 2d 83, 92–93, 709 N.W.2d 871, 876

# Extension of Injunctions

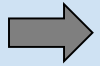
What about extending based upon risk of SA/homicide?

813.12(4)(c)2. states: “When an injunction expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect him or her. This extension shall remain in effect until 4 years after the date the court first entered the injunction, **except as provided in par. (d).**”

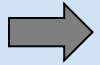
813.12(4)(d)1. states: “A judge or circuit court commissioner may, upon issuing an injunction **or granting an extension of an injunction issued under this subsection**, order that the injunction is in effect for not more than 10 years, if the court finds, **by a preponderance of the evidence *stated on the record***, that any of the following is true  
...”

## Extension of Injunctions based upon Risk of SA/homicide

- Was factual basis stated on original record?
- Was finding made on original record?



If so, may be permissible to grant the extension without notice.



If not, petitioner should be directed to file a new petition.

# “Renewal” of Injunctions

Issue preclusion did not apply in a domestic abuse case where a petitioner received an injunction, vacated it, and applied for a new injunction based on the same facts. The court ruled that the first petition demonstrated both the respondent’s intent to cause harm **and the petitioner’s perception of the threat of harm**. The new petition “certainly did not wipe out the historical facts that underlay her [first] petition.”

Wittig v. Hoffart, 2005 WI App 198.

Issue preclusion requires that estoppel be fundamentally fair.



# Motions to Dismiss Petitions or Injunctions Issued

- Motion to dismiss could be due to intimidation, but it could also be an act of safety
- Reluctance could be based on misinformation about hearing requirements
- Consider conducting a hearing in post-judgment situations

# Domestic violence and restraining orders

## Behaviors

1. Petitioner goes back to abuser
2. Petitioner in a domestic abuse restraining order case has a long history of filing TROs and then not showing for the hearing
3. Respondent in harassment restraining order case shows that Petitioner replied to text messages
4. Petitioner and respondent also have a family law case

## DV Context

1. Takes average of 7 attempts to leave
2. TROs show a pattern of abusive behavior; failure to attend hearings shows fear of retaliation
3. Petitioner may reply to to avoid Respondent escalating behavior
4. When a survivor leaves can be the most dangerous part of a relationship, making an RO critical

## **Sometimes, the wrong person is identified**

Why would a survivor appear to be the “predominant aggressor”?

- As part of the abusive scheme, the abuser is often able to remain calm and collected when interacting with the courts and law enforcement. While, the survivor may be displaying a trauma response which may appear aggressive or agitated.

## DV custody presumption      Wis. Stat. 767.41(2)(d)

*“If the court finds by a preponderance of the evidence that a party has engaged in a pattern or serious incident of interspousal battery... or domestic abuse... there is a rebuttable presumption that it is detrimental to the child and contrary to the best interest of the child to award joint or sole legal custody to that party.”*

*Note: Uses 813.12 definition of abuse, so it includes threats.*

- *What types of evidence can meet the burden?*
- *What about when there are no police reports, convictions, or restraining orders?*

## DV custody presumption      Wis. Stat. 767.41(2)(d)

The presumption under this subdivision may be rebutted only by a preponderance of evidence of all of the following:

- a. The party who committed the battery or abuse has successfully completed treatment for batterers provided through a certified treatment program or by a certified treatment provider and is not abusing alcohol or any other drug.
- b. It is in the best interest of the child for the party who committed the battery or abuse to be awarded joint or sole legal custody based on a consideration of the factors under sub. (5) (am).

# DV custody presumption *in practice*

## End Domestic Abuse Wisconsin 2018 findings

- Study of 361 divorces (2010-2015) in which there were criminal convictions (2008-2015) for domestic abuse felonies or misdemeanor battery by one party against the other
- Only 8% (29 cases) had a domestic abuse finding in the divorce
- Over 80% of cases resulted in stipulated agreements
- 50% of cases resulted in joint legal custody
  - When the abusive parent was not in prison, joint custody increased to 62% of cases

# Example:

- Abuser / One that harms ordered to do Batterer's Program/Domestic Violence Intervention Program.
- They attend program and get certificate to present to the court. Even though abuser did not actually engage with the program.
- Violence escalates

## Custody and placement without the DV presumption

Sometimes, even though there is abuse, there isn't a preponderance of evidence to apply the mandatory presumption of sole legal custody to the survivor-parent under Wis. Stat.

767.41(2)(d)

- Still, the patterns of abusive or controlling behavior may be relevant under the custody / physical placement factors
- A survivor could still be ordered sole legal custody and/or primary physical placement



# DV and custody and placement factors

Wis. Stat. 767.41(5)(am)

## How would these factors be influenced by domestic violence?

- Wishes of the child as communicated by the child, GAL, or other professional
- Cooperation and communication between parties; whether a party unreasonably refuses to cooperate or communicate with the other
- Whether each party can support the other party's relationship with the child; whether one party is likely to unreasonably interfere with the child's continuing relationship with the other party
- Interaction and interrelationship of the child with the parents and amount of time spent with the child in the past
- The child's adjustment to the home, school, religion, and community
- Whether there is evidence of interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am).

# Other considerations

- Remote appearances
- Advocate / service representative presence at hearings
  - Wis. Stat. 895.45

# QUESTIONS?

THANK YOU!