

NOTE

“I Just Didn’t Want It to Be Me”: The Social Entrapment Framework in Self-Defense Claims of Criminalized Survivors

*Kelly Hennessy**

ABSTRACT

Intimate partner violence affects over ten million people across the United States each year. The primary societal response to this violence has been the criminal legal system, which has had the unintended consequence of creating a subset of accused persons, referred to in this Note as criminalized survivors, who are incarcerated for crimes committed against their abusive partners in response to their abuse. The criminal legal system’s conception intimate partner violence, consisting of discrete violent incidents, creates issues for criminalized survivors trying to explain the reasonableness of their responsive force when claiming self-defense. “Battered woman syndrome” and its progeny, “battering-and-its-effects” evidence, which purportedly describe psychological and behavioral symptoms of someone who has suffered persistent intimate partner violence, are the chief adaptations to address these challenges. But they have numerous limitations that make them ill-suited to assessing criminalized survivors’ self-defense claims.

This Note argues that practitioners defending criminalized survivors charged with murder should adopt an expansive “social entrapment” framework, which considers the coercive control exercised by the abusive partner and

* J.D. 2025, The George Washington University Law School; B.A. 2016, Middlebury College. Thank you to Jackie Hennessy and Darrel Harris for lending the expertise you’ve developed over years advocating for domestic violence survivors to this Note and to Erin Hennessy and the rest of the Advocates for fighting for survivors every day. Thank you to Rachel Lynch for being my perpetual sounding board and gut check and to the rest of my friends and family for listening to me wax on about the criminal legal system and its many injustices daily. Here’s to the fights worth having and the people you fight alongside.

the ways in which institutional indifference and structural inequalities support that control when arguing criminalized survivor’s self-defense claims. Such a framework will enable factfinders to better assess the circumstances as the criminalized survivor believed them to be when they engaged in defensive force, allowing factfinders to more accurately assess the reasonableness of the criminalized survivor’s actions.

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INTRODUCTION

Around midnight on December 12, 2017, Deven Grey was “slapped awake” by her boyfriend, John Vance.¹ He was mad because

¹ Blind Plea, *Someone Is Lying*, LEMONADA MEDIA, at 18:36 (May 17, 2023), <https://lemonadamedia.com/podcast/someone-is-lying/> [<https://perma.cc/9755-3SJY>] [hereinafter *Someone Is Lying*]. Deven recounted the story detailed above throughout *Blind Plea: Someone is Lying*. See *id.* The eleven-episode podcast provides an in-depth look at Deven and John’s relationship and

he could not find his phone, because he thought Deven was too flirty with his friend who was over earlier that day, or perhaps because of nothing at all.² According to Deven, things always seemed to spiral like this when John was upset, and he could be set off by “anything at any time.”³ For hours, John hit Deven, punching her to reawaken her when she lost consciousness.⁴ He grabbed his gun, firing shots indiscriminately around the trailer with their daughter sleeping nearby and pistol whipping Deven with the barrel.⁵ He choked Deven both with his hands and with a hose from outside.⁶ This type of abuse was not new to Deven—much of her six-year relationship with John was punctuated with physical, psychological, and emotional abuse—but Deven says this night was different.⁷ That night, she was sure he was going to kill her—that either he or she would die that night—and, she said, “I just didn’t want it to be me.”⁸

And so, a few minutes after John laid down on their pullout couch with his gun beside him, Deven picked it up and shot him in the back of the head.⁹ Deven immediately called 911 to tell them she had gotten into an argument with her boyfriend and that she shot him and thought he was dead.¹⁰ When police arrived, Deven was bleeding from her ear from a “busted . . . eardrum,” covered in cuts and bruises, and suffering from facial fractures.¹¹ But police quickly decided Deven killed John “in cold blood,” and she was charged with murder.¹² One year later, a judge denied Deven’s self-defense immunity claim in a Stand Your Ground hearing.¹³ Feeling she had no good options left, Deven agreed

Deven’s interaction with the criminal legal system after she kills him. *See generally* Blind Plea, *All Episodes*, LEMONADA MEDIA (2023), https://lemonadamedia.com/podcast/?_episode_cat=blind-plea [<https://perma.cc/87VR-58VZ>]. This Note discusses Deven’s story as she tells it and treats her recounting as true. For more information about the State’s case against Deven and Deven and John’s relationship, see generally *id.* This Note uses first names when referencing the people involved in these events as that is how the *Blind Plea* podcast refers to them.

² See *Someone Is Lying*, *supra* note 1, at 19:24.

³ *Id.* at 20:22.

⁴ See *id.* at 36:10.

⁵ See *id.* at 32:46.

⁶ See *id.* at 36:35.

⁷ See Blind Plea, *Haunted Land*, LEMONADA MEDIA (May 17, 2023), <https://lemonadamedia.com/podcast/haunted-land/> [<https://perma.cc/6G3R-TNCV>]; *Someone Is Lying*, *supra* note 1, at 43:19.

⁸ Blind Plea, *Deven’s Defense*, LEMONADA MEDIA, at 36:56 (June 14, 2023), <https://lemonadamedia.com/podcast/devens-defense/> [<https://perma.cc/QC83-PEE7>]; see also *Someone Is Lying*, *supra* note 1, at 44:04.

⁹ See *Someone Is Lying*, *supra* note 1, at 42:55.

¹⁰ See *id.* at 00:35.

¹¹ *Id.* at 34:03.

¹² *Id.* at 06:45.

¹³ See Blind Plea, *supra* note 8, at 39:35.

to a “blind plea” in which she pled guilty to manslaughter with no agreement on sentencing.¹⁴ In 2020, she was sentenced to fifteen years.¹⁵

Much of Deven’s story is not unusual. Roughly one quarter of women have been a victim of severe physical violence at the hands of an intimate partner,¹⁶ and nearly one half, approximately fifty-nine million women, report experiencing some type of intimate partner violence (“IPV”) in their lives.¹⁷ Domestic violence composes twenty-one percent of all violent crime, with IPV composing fifteen percent.¹⁸ Women in the United States are “more likely to be attacked, injured, raped, or killed by a current or former male partner than by all other types of assailants combined.”¹⁹

¹⁴ See Blind Plea, *The Blind Plea*, LEMONADA Media, at 28:49 (June 21, 2023), <https://lemonadamedia.com/podcast/the-blind-plea/> [<https://perma.cc/LR9Q-GXXH>].

¹⁵ *Id.* at 45:02. Deven’s release date was moved up to April 2024 because of good behavior. See Blind Plea, *The Parole Hearing*, LEMONADA MEDIA, at 13:45 (June 28, 2023), <https://lemonadamedia.com/podcast/the-parole-hearing/> [<https://perma.cc/3THG-GRFJ>]. She was ultimately released from prison on May 23, 2023. Blind Plea, *Life on the Outside*, LEMONADA MEDIA, at 1:45 (July 19, 2023), <https://lemonadamedia.com/podcast/life-on-the-outside/> [<https://perma.cc/QH2J-26JA>].

¹⁶ MICHELE C. BLACK, KATHLEEN C. BASILE, MATTHEW J. BREIDING, SHARON G. SMITH, MIKEL L. WALTERS, MELISSA T. MERRICK, JIERU CHEN & MARK R. STEVENS, CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 44 (2011). The survey considers being “hit with a fist or something hard, beaten, slammed against something” as examples of severe violence. *Id.* at 2.

¹⁷ RUTH W. LEEMIS, NORAH FRIAR, SRIJANA KHATIWADA, MAY S. CHEN, MARCIE-JO KRESNOW, SHARON G. SMITH, SHARON CASLIN & KATHLEEN C. BASILE, CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2016/2017 REPORT ON INTIMATE PARTNER VIOLENCE 4 (2022). This report considers “sexual violence, physical violence, and/or stalking” victimization by an intimate partner. *Id.*

¹⁸ JENNIFER L. TRUMAN & RACHEL E. MORGAN, U.S. DEP’T OF JUST., SPECIAL REPORT: NONFATAL DOMESTIC VIOLENCE, 2003–2012, at 1, 3 (2014). Domestic violence is defined as victimizations committed by intimate partners, immediate family members, or other relatives. See *id.* at 14. Intimate partner violence is defined as victimizations committed by current or former spouses, boyfriends, or girlfriends, though there is variance in how state law defines “intimate partners.” See *id.*; Avanti Adhia, Jaron Goddard, Mary A. Kernic, Mary D. Fan, Monica S. Vavilala & Frederick P. Rivara, *Variation in State Laws on Access to Civil Protection Orders for Adolescents Experiencing Intimate Partner Violence*, 66 J. ADOLESCENT HEALTH 610, 613 (2020). Although IPV can impact people of all genders, the vast majority—eighty-two percent—is committed against female victims. TRUMAN & MORGAN, *supra*, at 6.

IPV also exists in relationships of all orientations, and LGBTQ+ persons experience intimate partner and gender-based violence at high rates. See Sarah M. Peitzmeier, Mannat Malik, Shanna K. Kattari, Elliot Marrow, Rob Stephenson, Madina Agénor & Sari L. Reisner, *Intimate Partner Violence in Transgender Populations: Systematic Review and Meta-analysis of Prevalence and Correlates*, 110 AM. J. PUB. HEALTH e1, e1 (2020); Autumn M. Bermea, Danielle C. Slakoff & Abbie E. Goldberg, *Intimate Partner Violence in the LGBTQ+ Community: Experiences, Outcomes, and Implications for Primary Care*, 48 PRIMARY CARE 329, 329–30 (2021). Most of the available data on criminalized survivors focuses on female victims of male abusers in heteronormative relationships, so that is the primary focus of this Note. However, it is important to note that IPV impacts everyone, and marginalized genders and sexualities are also at risk.

¹⁹ ELIZABETH DERMODY LEONARD, CONVICTED SURVIVORS: THE IMPRISONMENT OF BATTERED WOMEN WHO KILL 3 (2002).

Prior to the 1970s, IPV was considered a private matter that police departments and the criminal legal system at large were uninterested in addressing.²⁰ In the early 1970s, the feminist-led anti-domestic-violence movement began to challenge societal and legal attitudes toward IPV.²¹ Law enforcement's failure to intervene in IPV situations was a focal point of the movement, and activists lobbied for legal reform "to make prosecution more frequent and more successful and to signal the state's condemnation of gender-based violence," as they believed "state intervention via the criminal legal system was essential if gender-based violence was to be taken seriously."²² As a result of this advocacy, states began to adopt mandatory arrest laws, which require officers to make an arrest if they "find[] probable cause to believe that an offense has been committed."²³ The federal government further incentivized a criminal legal response to IPV with the Violence Against Women Act ("VAWA") of 1994,²⁴ which provided funding for preferred policy initiatives, including "mandatory arrest or proarrest programs."²⁵

As IPV was increasingly handled within the criminal legal system, there were unintended consequences, including a concurrent increase in the criminalization and incarceration of women.²⁶ States that enacted mandatory arrest laws saw a sharp increase in female arrests for domestic violence²⁷ with scant evidence to indicate that girls and women had become more violent.²⁸ Prosecutors charged with acting upon these arrests acknowledge that "[a]s mandatory-, pro-, and preferred-arrest policies have been instituted, an increasing number of victims of battering have been arrested."²⁹ Although some states have made efforts to rectify these issues, primarily through the adoption of "primary

²⁰ See Susan L. Miller, *Unintended Side Effects of Pro-Arrest Policies and Their Race and Class Implications for Battered Women: A Cautionary Note*, 3 CRIM. JUST. POL'Y REV. 299, 301 (1989).

²¹ *See id.*

²² LEIGH GOODMARK, *IMPERFECT VICTIMS* 7 (Claire M. Renzetti ed., 2023).

²³ David Hirschel, Eve Buzawa, April Pattavina & Don Faggiani, *Domestic Violence and Mandatory Arrest Laws: To What Extent Do They Influence Police Arrest Decisions?*, 98 J. CRIM. L. & CRIMINOLOGY 255, 255–56, 265 (2007).

²⁴ Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902.

²⁵ *Id.* sec. 40231, § 2101, 108 Stat. at 1932.

²⁶ *See* Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 BUFF. CRIM. L. REV. 801, 831 (2001).

²⁷ *See id.*

²⁸ Meda Chesney-Lind, *Criminalizing Victimization: The Unintended Consequences of Pro-Arrest Policies for Girls and Women*, 2 CRIMINOLOGY & PUB. POL'Y 81, 85 (2002).

²⁹ JEFFREY P. GREIPP, TOOLS! GOWIN MEISNER & DOUGLAS J. MILES, *AEQUITAS, INTIMATE PARTNER VIOLENCE VICTIMS CHARGED WITH CRIMES: JUSTICE AND ACCOUNTABILITY FOR VICTIMS OF BATTERING WHO USE VIOLENCE AGAINST THEIR BATTERERS* 2 (2010); *see also*, e.g., Deborah Epstein, *Redefining the State's Response to Domestic Violence: Past Victories and Future Challenges*, 1 GEO. J. GENDER & L. 127, 134–35 (1999) (discussing "no-drop" policies).

aggressor” statutes, this criminalization persists.³⁰ Antiviolence activists and legal scholars have labeled the “women, trans people, and gender-nonconforming people whose punitive encounters with the criminal legal system are directly linked to their own gender-based victimization” as “criminalized survivors.”³¹ The existence of criminalized survivors demonstrates that, although “[v]ictim and offender are binary categories used within law, social science, and public discourse to describe social experiences with a moral dimension,”³² when it comes to how people are treated by and interact with the criminal legal system, these categories are not mutually exclusive.³³

The histories of women incarcerated for killing their abusive partners indicate the existence of “an ‘abuse to prison pipeline’ where survivors are criminalized for using self-defense against abusers.”³⁴ Available data, although limited on a nationwide scale, suggests that criminalized survivors “may account for a large percentage of women serving sentences for murder or manslaughter.”³⁵ A 2024 study of people incarcerated for murder or manslaughter at two correctional facilities in California found that 110 of the 134 women convicted for the deaths of their intimate partners experienced abuse in the year leading up to the offense. Eighty of those 110 women were considered to be in “extreme” or “severe” danger of being killed by their partners according to their Danger Assessments, a survey used by police, health care workers, and domestic violence advocates to predict which victims are at imminent risk of death.³⁶ Another study conducted in New York found that two-thirds of women convicted of killing a person with whom they had a close relationship had been abused by the decedent.³⁷ One 2004 study of women imprisoned for violent crimes found that nearly half stated that they “acted in response to being pushed, slapped, punched, beaten, choked, raped, or threatened

³⁰ See Chesney-Lind, *supra* note 28, at 82–83; Susan L. Miller & Michelle L. Meloy, *Women’s Use of Force: Voices of Women Arrested for Domestic Violence*, 12 VIOLENCE AGAINST WOMEN 89, 92 (2006). Miller and Meloy note that, as of 2006, twenty-four states have primary or predominant aggressor assessments that instruct officers to consider the history of violence between parties. Miller & Meloy, *supra*. Jurisdictions have shown contradictory results concerning decreases in arrests of women or dual arrests. *Id.*

³¹ GOODMARK, *supra* note 22, at 12.

³² KATHLEEN J. FERRARO, NEITHER ANGELS NOR DEMONS 1 (Claire Renzetti ed., 2006).

³³ See *id.* at 1–3.

³⁴ LAUREN COURTNEY, JAMIE HALPER, HAYDEN HENDERSON, KARA SALOVAARA & EMILY VAUGHAN, STANFORD CRIM. JUST. CTR., GREAT WEIGHT: A REVIEW OF CALIFORNIA BOARD OF PAROLE HEARINGS TRANSCRIPTS TO ASSESS FREQUENCY AND CONSIDERATION OF INTIMATE PARTNER VIOLENCE AMONG WOMEN CONVICTED OF HOMICIDE OFFENSES 7 (2023).

³⁵ *Id.* at 9.

³⁶ DEBBIE MUKAMAL, ANDREA N. CIMINO, BLYSS CLEVELAND, EMMA DOUGHERTY, JACQUELINE LEWITTES & BECCA ZIMMERMAN, STANFORD CRIM. JUST. CTR., FATAL PERIL: UNHEARD STORIES FROM THE IPV-TO-PRISON PIPELINE AND OTHER VOICES TOUCHED BY VIOLENCE 13, 93 (rev. ed. 2024).

³⁷ COURTNEY ET AL., *supra* note 34, at 9.

with a weapon” prior to their crime.³⁸ The available data show a clear pattern of women who commit violent crimes most commonly committing them against individuals who were previously violent toward them—usually current or former intimate partners.

Although the right to use force to protect oneself from harm is a long and widely recognized principle of criminal law,³⁹ self-defense doctrine’s origin and development make the defense inaccessible for many criminalized survivors in practice. The right to self-defense was originally reserved for “white, property-owning men.”⁴⁰ Traditionally, one can defend oneself with deadly force only when they reasonably believe it necessary to defend against an imminent, unlawful threat of death or serious bodily harm.⁴¹ Although there have been modifications to self-defense doctrine meant to account for criminalized survivors—most notably the introduction of “Battered Woman’s Syndrome” (“BWS”) testimony, which theorizes that prolonged abuse can cause a specific type of post-traumatic stress disorder⁴²—self-defense doctrine still fails to serve criminalized survivors. To begin to fill this gap, practitioners should build a defense using a “social entrapment” paradigm, which focuses on (1) the coercive control exercised by the abusive partner as well as the (2) institutional issues and (3) social inequalities that compound the abuse. Courts should admit evidence speaking to these three different dimensions to best equip the factfinder to assess the reasonableness of the criminalized survivor’s actions.

Part I of this Note examines the criminalization of IPV, the increased incarceration of women generally, and the criminalized survivors that sit at the intersection of these two issues. Part II considers the limitations of traditional self-defense doctrine and the introduction and limitations of BWS evidence in cases of criminalized survivors. Part III explains what a defense modeled after the social entrapment framework could look like and argues courts can and should admit evidence necessary for this framework as relevant and probative of reasonableness.

I. THE CRIMINAL LEGAL RESPONSE TO INTIMATE PARTNER VIOLENCE AND ITS CONSEQUENCES

A. *Increasing Criminalization of Intimate Partner Violence*

By the end of the 1970s, anti-violence-against-women movements that targeted “rape and incest, wife beating, workplace sexual harassment,

³⁸ DANA D. DEHART, CTR. FOR CHILD & FAM. STUD., PATHWAYS TO PRISON: IMPACT OF VICTIMIZATION IN THE LIVES OF INCARCERATED WOMEN 18 (2004).

³⁹ See CAROLINE E. LIGHT, STAND YOUR GROUND 1 (2017).

⁴⁰ *Id.*

⁴¹ See JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW § 18.01 (7th ed. 2015).

⁴² See LENORE E.A. WALKER, THE BATTERED WOMAN SYNDROME 44–45 (3d ed. 2009).

and sex trafficking” surfaced as part of the larger civil rights movement and second-wave feminism.⁴³ Given the legal system’s history of “approval of and complicity in violence against women,” the battered women’s movement originally viewed the state with skepticism, but their strategy eventually advocated for greater “legislative and executive involvement at first through civil protection order legislation and later through mandatory arrest laws and no-drop prosecution policies.”⁴⁴

Prior to the passage of these policies, law enforcement regarded domestic violence as “a private matter,” and as a result, mostly did not intervene.⁴⁵ Social scientists and psychologists began advocating for more intervention, such as “mediation and advising” approaches, in the 1960s, but law enforcement and even some women’s groups dismissed these efforts.⁴⁶ Police believed they were inadequately prepared to act as mediators, and many women’s groups argued that this was a fundamentally flawed approach that “assumed equal bargaining power and equal culpability between the parties” that would not adequately impact recidivism in the long term.⁴⁷

The anti-violence-against-women movement advocated for “a number of far-reaching changes in criminal law,”⁴⁸ bolstered by several studies that examined the need and impact of mandatory arrest laws. One of the most notable studies was the 1984 Minneapolis Domestic Violence Experiment (“MDVE”), which posited that arrest reduced the risk of future assaults against the same victim by more than fifty percent during a six-month follow-up period.⁴⁹ Despite the fact that all six National Institute of Justice-sponsored studies to replicate these findings failed to do so, the MDVE was championed by the movement to promote the enactment of mandatory and preferred arrest policies nationwide.⁵⁰ Women

⁴³ Jami Ake & Gretchen Arnold, *A Brief History of Anti-Violence-Against-Women Movements in the United States*, in SOURCEBOOK ON VIOLENCE AGAINST WOMEN 3, 3 (Claire M. Renzetti et al. eds., 3d ed. 2017). There were earlier efforts to address domestic violence throughout the late nineteenth century, up until the 1960s, but “[w]hat was new in the era of civil rights and feminism was a perspective that defined *domestic violence* as a distinct form of violence” that was intrinsically linked to patriarchal oppression generally. *Id.* at 5.

⁴⁴ Epstein, *supra* note 29, at 128, 130. Much of both the anti-rape and anti-domestic violence movements’ early years were spent organizing around community support for shelters that acted as organizing hubs and resource centers. *Id.* at 128. For more information about the evolution of the anti-violence-against-women movements, see generally Ake & Arnold, *supra* note 43.

⁴⁵ See Alexandra Pavlidakis, Note, *Mandatory Arrest: Past Its Prime*, 49 SANTA CLARA L. REV. 1201, 1206 (2009).

⁴⁶ See *id.* at 1207–08.

⁴⁷ *Id.* at 1208. Recidivism refers to the likelihood that a person will repeat the battering conduct.

⁴⁸ Coker, *supra* note 26, at 802.

⁴⁹ Pavlidakis, *supra* note 45, at 1209; LAWRENCE W. SHERMAN & RICHARD A. BERK, THE MINNEAPOLIS DOMESTIC VIOLENCE EXPERIMENT 6–7 (1984).

⁵⁰ See Christopher D. Maxwell, Joel H. Garner & Jeffrey A. Fagan, *The Effects of Arrest on Intimate Partner Violence: New Evidence from the Spouse Assault Replication Program*, NAT’L INST.

also brought class action suits against police departments for their failure to protect them from abuse.⁵¹ This combination of lawsuits, advocacy by antiviolence activists, and findings in studies forced substantive change in law enforcement responses to IPV.⁵²

The first mandatory arrest statute was enacted in Oregon in 1977.⁵³ Twelve years later, more than three-quarters of jurisdictions allowed law enforcement to make misdemeanor arrests without warrants in response to suspected IPV calls.⁵⁴ As of 2022, twenty-two states and the District of Columbia have mandatory arrest policies, and seven additional states have preferred arrest policies, which direct officers to make an arrest while also permitting some discretion for special circumstances.⁵⁵

The passage of VAWA in 1994 further demonstrated the anti-violence-against-women movement's focus on the criminal legal system. VAWA views IPV primarily through the lens of criminal law, as illustrated by its definition of domestic violence, which remains largely the same today as it was in 1994:

[F]elony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, [or] by a person similarly situated to a spouse of the victim.⁵⁶

VAWA's passage was "part of a larger cultural shift in the 1980s and early '90s toward law enforcement approaches to solving social problems through criminalization."⁵⁷ Although VAWA made some changes to the substantive law governing IPV, its most significant impact was through its grant programs.⁵⁸ Since 1995, the Department of Justice's Office of

JUST. RSCH. BRIEF, July 2001, at 1, 4. None of the replication studies demonstrated the clear deterrent effect of the MDVE, with three studies instead showing higher levels of recidivism and three showing a modest reduction in recidivism. *Id.* at 1.

⁵¹ See Miller, *supra* note 20, at 301–02.

⁵² See *id.* at 302.

⁵³ Leigh Goodmark, *Assessing the Impact of the Violence Against Women Act*, 5 ANN. REV. CRIMINOLOGY 115, 117 (2022).

⁵⁴ Pavlidakis, *supra* note 45, at 1211.

⁵⁵ D.C. JUST. LAB, 50 STATE SURVEY: MANDATORY ARRESTS FOR DOMESTIC VIOLENCE CASES 1 (2022), <https://dcjusticelab.org/wp-content/uploads/2024/07/Mandatory-Arrests-50-State-Survey-April-19-2022.pdf> [<https://perma.cc/V4C4-QSUA>]. Some states have both preferred and mandatory arrest policies, where the amount of officer discretion is dictated by factors such as what type of violence is alleged and whether a protective or restraining order is in place. See, e.g., BATTERED WOMEN'S JUST. PROJECT, DOMESTIC VIOLENCE ARREST POLICIES 5, 7 (2023) (describing Arizona's and California's domestic violence arrest laws).

⁵⁶ Violence Against Women Act of 1994, Pub. L. No. 103-322, sec. 40231, § 2105(1), 108 Stat. 1902, 1933 (current version at 34 U.S.C. § 12291(a)(12)).

⁵⁷ Ake & Arnold, *supra* note 43, at 4.

⁵⁸ See Goodmark, *supra* note 53, at 118, 120.

Violence Against Women, which is responsible for administering most of the grant programs authorized in VAWA, has issued more than eight billion dollars in grants toward objectives like “encouraging states, tribes, and local governments to treat domestic violence as a serious crime and implement arrest policies” and “investigating and prosecuting domestic violence and related crimes.”⁵⁹ VAWA incentivized the adoption of mandatory arrest and more aggressive prosecution policies, making jurisdictions that enacted such policies eligible for federal grants.⁶⁰ Subsequent renewals of VAWA have continued to encourage arrest policies.⁶¹ This focus on the criminal legal system has led to unintended consequences for victims of IPV.

B. Impact of Mandatory Arrest and Prosecution Policies on Intimate Partner Violence

A stronger criminal legal response to IPV was considered by many a “corrective for the history of profoundly inadequate and sometimes hostile response of the criminal justice system to domestic violence cases.”⁶² However, some activists were wary that a focus on criminal intervention would come at the expense of other anti-domestic-violence strategies as well as poor and minority women.⁶³ Although subsequent reauthorizations of VAWA have created and supported noncriminal programs—such as “civil legal assistance, direct support for victims of violence, transitional housing, community education and prevention,”—the bulk of VAWA’s funding continues to go to the criminal legal system.⁶⁴

By some measures, the enactment of mandatory arrest and prosecution policies and VAWA have led to successes in the fight against IPV. Mandatory arrest “secures a victim’s immediate safety” and, according to advocates, demonstrates that the state considers IPV a serious issue.⁶⁵

⁵⁹ LISA N. SACCO & EMILY J. HANSON, CONG. RSCH. SERV., R45410, THE VIOLENCE AGAINST WOMEN ACT (VAWA): HISTORICAL OVERVIEW, FUNDING, AND REAUTHORIZATION 3, 4 (2019) (CRS report providing an overview of VAWA from initial passage to 2019).

⁶⁰ § 2101, 108 Stat. at 1932 (current version at 34 U.S.C. § 10461).

⁶¹ See 34 U.S.C. § 10461(c)(1) (providing grants to states that “encourage [the] arrest of offenders”).

⁶² Coker, *supra* note 26, at 803.

⁶³ See *id.* at 804–05; Goodmark, *supra* note 53, at 118. In 1994, Ms. Magazine, a leading voice in the feminist movement, published an article by law professor Mari Matsuda questioning the choice to focus on law enforcement intervention given the fact that “for women of color, for feminists of all colors . . . we know that police are a source of violence in our communities, not just a deterrent to it.” Goodmark, *supra* note 53, at 118. The National Women’s Law Center withheld their endorsement of VAWA at the urging of their general counsel Professor Brenda Smith due to their concerns about the impact of increased criminalization on communities of color. See *id.*

⁶⁴ Goodmark, *supra* note 53, at 120.

⁶⁵ Pavlidakis, *supra* note 45, at 1211–12.

VAWA has, according to some studies, led to “higher rates of arrest, prosecution, and conviction; increas[es in] the availability of victim services; the proliferation of specialized units addressing [IPV]; greater collaboration among service providers; and the specialization of bureaucrats focused on gender-based violence.”⁶⁶ Other studies show that no-drop prosecution policies, which limit prosecutorial discretion by encouraging or requiring prosecutors to try all cases involving domestic violence even where the victim is uncooperative, lower recidivism and homicide rates.⁶⁷

It is more difficult to assess the reforms’ effectiveness in decreasing IPV in concrete numbers. Although some have pointed to data showing that domestic violence has fallen 63% since 1994 as evidence of VAWA’s success, it is difficult to determine causality given the concurrent decrease in overall violent crime during that period.⁶⁸ For example, IPV decreased by 48% between 1994 and 2000 and by 25% between 2000 and 2005, while all violent crime decreased by 47% and 33% respectively during the same time periods.⁶⁹

At the same time, the mandatory policies adopted by states and incentivized by VAWA have had unintended consequences. Some activists question whether “efforts to increase state responsiveness resulted in an ‘overcriminalization’ of domestic violence, with an almost automatic initiation of criminal prosecution occurring regardless of the needs and desires of the victim and her family.”⁷⁰ There are concerns that by mandating certain state responses to police calls, the state is replicating the lack of control and harm done by the abuse, in effect “reproduc[ing] the emotional abuse of the battering relationship.”⁷¹ Knowing that their partner will inevitably be arrested as a result, many women do not reach out to police for help.⁷² In jurisdictions with mandatory arrest statutes, murders committed by intimate partners are approximately fifty percent higher than in those without them.⁷³ Moreover, mandatory arrest policies may “cause several adverse social and

⁶⁶ Goodmark, *supra* note 53, at 121.

⁶⁷ See Epstein, *supra* note 29, at 134–35. Epstein discusses a study focused on San Diego, which adopted a no-drop policy in 1985. See *id.* at 135.

⁶⁸ See Goodmark, *supra* note 53, at 122.

⁶⁹ *Id.* Although some have posited that increased reporting rates could be responsible for these disparities, National Crime Victimization Survey data indicates that reporting rates have not increased significantly since 1994, instead fluctuating. See *id.*

⁷⁰ Epstein, *supra* note 29, at 132.

⁷¹ Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 554–55 (1999).

⁷² See Pavlidakis, *supra* note 45, at 1214.

⁷³ Radha Iyengar, Opinion, *The Protection Battered Spouses Don't Need*, N.Y. TIMES (Aug. 7, 2007), <https://www.nytimes.com/2007/08/07/opinion/07iyengar.html> [https://perma.cc/R7SP-J6GT].

health outcomes for women, such as financial hardship, household disruption, loss of employment, and loss of custody of children.”⁷⁴

C. *Increased Arrests of Intimate Partner Violence Victims*

Increasing criminalization of IPV, particularly the adoption of mandatory arrest policies, has coincided with an increase in arrests of victims of IPV.⁷⁵ Although women are typically assumed to be the victim in situations with suspected IPV, mandatory arrest jurisdictions have seen a notable rise in arrests of women and in dual arrests.⁷⁶ For example, “[a]fter the passage of mandatory arrest laws in California, men’s arrests rose by 60% percent” while “women’s arrests increased by 400%.”⁷⁷ This occurred despite research suggesting that women’s use of violence is generally responsive to ongoing violence from their partner.⁷⁸ Women who are arrested “often lose the rights and privileges accorded to domestic violence victims, such as transportation to a safe location, temporary housing in a shelter for battered women, issuance of a restraining order, and participation in job training programs.”⁷⁹ This is likely to “disproportionately affect poor and minority women who are more dependent on the police for protection in cases of domestic violence” than more privileged women who often have more resources to handle their abuse privately.⁸⁰

II. SELF-DEFENSE AND ITS LIMITATIONS

Although the right to use force to protect oneself from harm is a long and widely recognized principle of criminal law, self-defense doctrine’s origins and elements make the defense inaccessible for many criminalized survivors in practice.⁸¹ Courts have addressed the issues faced by criminalized survivors primarily through the admission of BWS evidence, which is used to explain the impact that habitual abuse has on victims.⁸²

⁷⁴ Valli Rajah, Victoria Frye & Mary Haviland, “Aren’t I a Victim?”: Notes on Identity Challenges Relating to Police Action in a Mandatory Arrest Jurisdiction, 12 VIOLENCE AGAINST WOMEN 897, 898 (2006).

⁷⁵ See *id.*

⁷⁶ *Id.* Dual arrests are those where both partners are arrested, rather than just one. *Id.* at 897.

⁷⁷ GOODMARK, *supra* note 22, at 10–11; AYA GRUBER, THE FEMINIST WAR ON CRIME 88 (2020).

⁷⁸ See Miller & Meloy, *supra* note 30, at 91.

⁷⁹ Rajah et al., *supra* note 74, at 898.

⁸⁰ See *id.* at 898–99; Miller, *supra* note 20, at 304 (noting that “[w]omen with more income have . . . the ability to afford private physicians and safe shelters, which results in their being able to escape detection from law enforcement, hospital emergency rooms or social service agencies”).

⁸¹ See LIGHT, *supra* note 39, at 1.

⁸² See WALKER, *supra* note 42, at 349–51.

In general, “women’s use of violence within relationships is typically part and parcel of their ongoing victimization, using force to either stop or escape violence.”⁸³ This appears to be particularly true for women convicted of killing their abusers. Although the available dataset on women incarcerated for killing abusive partners is small, it “suggests that [they] may account for a large percentage of women serving sentences for murder or manslaughter.”⁸⁴ For example, a 2005 New York study found that “67% of women . . . convicted of killing someone close to them had been abused by that person.”⁸⁵ The American Civil Liberties Union estimates that “[a]s many as 90% of the women in prison today for killing men had previously been battered by those men.”⁸⁶ An analysis of homicides involving male decedents demonstrated that men were 10% more likely than women to obtain a justifiable homicide ruling.⁸⁷ Another analysis of Florida’s “Stand Your Ground” cases found that in domestic cases, the probability of conviction for accused men was about 40%, but it more than doubled for accused women.⁸⁸

A. *Traditional Self-Defense*

Generally, a person may defend themselves with deadly force only when they reasonably believe such force is necessary to defend against an imminent, unlawful threat of death or serious bodily harm.⁸⁹ Self-defense doctrine first emerged in American law in the seventeenth century as the “castle doctrine,” justifying a man’s use of force in “fighting back against an intrusion into his home.”⁹⁰ Given the doctrine’s connection to property and the fact that originally women and people of color were generally precluded from property ownership—or in some cases considered property themselves—“the right of self-defense

⁸³ Miller & Meloy, *supra* note 30, at 93; *see also* Sue Osthoff, *But, Gertrude, I Beg to Differ, a Hit Is Not a Hit: When Battered Women Are Arrested for Assaulting Their Partners*, 8 VIOLENCE AGAINST WOMEN 1521, 1526–27 (2002) (discussing the distinction between a single act of violence and “battering,” which typically denotes “a systematic pattern of using violence, the threat of violence, and other coercive behaviors and tactics, to exert power, to induce fear, and to control another person”).

⁸⁴ *See* COURTNEY ET AL., *supra* note 34, at 9.

⁸⁵ *Id.*

⁸⁶ *Words from Prison—Did You Know . . . ?*, AM. C.L. UNION (June 12, 2006), https://www.aclu.org/documents/words-prison-did-you-know?redirect=words-prison-did-you-know#_edn-ref43 [<https://perma.cc/BEU4-X6C5>].

⁸⁷ *See* Elizabeth Flock, *How Far Can Abused Women Go to Protect Themselves?*, NEW YORKER (Jan. 13, 2020), https://www.newyorker.com/magazine/2020/01/20/how-far-can-abused-women-go-to-protect-themselves?_sp=08e1114d-c129-46e6-8334-481df72d6132.1711219625502 [<https://perma.cc/S3FF-CU7E>].

⁸⁸ Justin Murphy, *Are “Stand Your Ground” Laws Racist and Sexist? A Statistical Analysis of Cases in Florida, 2005–2013*, 99 Soc. Sci. Q. 439, 451 (2017).

⁸⁹ *See* DRESSLER, *supra* note 41, § 18.01, at 223.

⁹⁰ *See* LIGHT, *supra* note 39, at 12, 20–21.

was essentially a privilege reserved to white, property-owning men.”⁹¹ Self-defense doctrine has evolved, most notably with the expansion of Stand Your Ground laws, but the original formulation of a self-defense scenario—“a *single* violent episode between two *male* individuals who are *strangers* to each other”—still colors the use of self-defense today.⁹²

Although states differ in the specifics, doctrine governing self-defense generally requires those claiming the defense to establish three elements: an imminent threat of serious harm, a reasonable belief that force is necessary to defend against this threat, and the use of proportional force to do so.⁹³ Although each of these elements presents an obstacle for criminalized survivors, and imminence and proportionality will be discussed briefly, this Note will focus on the reasonableness inquiry, as social-framework evidence is most relevant to this aspect of self-defense.

A person may only use deadly force if they are faced with an imminent, unlawful threat of death or serious injury.⁹⁴ This has been interpreted to require “strict temporal proximity between the decedent’s threat of harm and the defendant’s response.”⁹⁵ The imminence requirement ensures that the use of force was necessary.⁹⁶ A criminalized survivor’s challenges with the imminence element depend on whether the killing was confrontational, in which the survivor responds to an imminent attack with force, or nonconfrontational, in which the survivor uses deadly force during a break in violence.⁹⁷ In situations in which the accused killed the decedent in response to an imminent attack, as appears to be the case in most prosecutions involving criminalized survivors, imminence is often determined by “a host of nonempirical normative factors, some explicitly irrelevant to the legal inquiry.”⁹⁸ For example, courts often use imminence as a proxy for retreat, even in jurisdictions where retreat is not required, because factfinders assume that if retreat was available, a threat is not sufficiently imminent.⁹⁹ For criminalized survivors who may live or share children with their abusers, however, retreat is much more complex than it would be in a single

⁹¹ Inès Zamouri, *Self-Defense, Responsibility, and Punishment: Rethinking the Criminalization of Women Who Kill Their Abusive Intimate Partners*, 30 UCLA J. GENDER & L. 203, 219 (2023).

⁹² *Id.* at 220.

⁹³ See DRESSLER, *supra* note 41, § 18.01, at 224.

⁹⁴ See *id.* § 18.02, at 225.

⁹⁵ Zamouri, *supra* note 91, at 214.

⁹⁶ See Richard A. Rosen, *On Self-Defense, Imminence, and Women Who Kill Their Batterers*, 71 N.C. L. REV. 371, 380 (1993).

⁹⁷ See Holly Maguigan, *Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals*, 140 U. PA. L. REV. 379, 391–93 (1991).

⁹⁸ John H. Krause, *Distorted Reflections of Battered Women Who Kill: A Response to Professor Dressler*, 4 OHIO ST. J. CRIM. L. 555, 561 (2007); see also V.F. Nourse, *Self-Defense and Subjectivity*, 68 U. CHI. L. REV. 1235, 1253–54 (2001) (finding that the majority of battered-woman cases raising an imminence question were confrontational situations).

⁹⁹ See Nourse, *supra* note 98, at 1237.

violent incident. Additionally, some criminalized survivors are even questioned as to why they did not leave the relationship prior to the situation becoming deadly.¹⁰⁰

Traditionally, a person defending themselves must only use as much force as is necessary to remove the threat, meaning they ordinarily cannot use deadly force to address a nondeadly threat.¹⁰¹ To those outside the relationship, a threat may not appear to be deadly, but a woman who has been subject to abuse from her partner will perceive the danger posed by her partner differently.¹⁰² As such, “it is not uncommon for the abused woman to use deadly force to respond to what may appear to the outsider like a nondeadly threat.”¹⁰³ Women are also more likely to use a weapon in committing homicide and, therefore, receive weapons enhancements—additional charges or increased penalties when a weapon is allegedly used during the underlying offense—as they are “less able to commit homicide using personal weapons (fists, hands, and feet) compared to men.”¹⁰⁴

1. Reasonableness

A person may use deadly force only if they reasonably believe that such force is necessary to defend themselves against the threat.¹⁰⁵ Traditionally, courts used an objective standard of reasonableness, requiring juries to determine whether a “reasonable” or, in other formulations, “‘just and reasonable,’ ‘ordinary and reasonable,’” or “‘average’” person in the accused’s circumstances would have perceived self-defense as necessary.¹⁰⁶ The goal of this formulation of reasonableness is to ensure that “each member of the community is held equally to one standard of conduct: that of a reasonable person.”¹⁰⁷ The objective reasonableness requirement has posed issues as to who should be the objective “reasonable person” against which the accused is compared: an ordinary

¹⁰⁰ See *id.* at 1238 & n.13.

¹⁰¹ See DRESSLER, *supra* note 41, § 18.01, at 224.

¹⁰² See Zamouri, *supra* note 91, at 218.

¹⁰³ *Id.*

¹⁰⁴ COURTNEY ET AL., *supra* note 34, at 8.

¹⁰⁵ See Kevin Jon Heller, *Beyond the Reasonable Man? A Sympathetic but Critical Assessment of the Use of Subjective Standards of Reasonableness in Self-Defense and Provocation Cases*, 26 AM. J. CRIM. L. 1, 3 (1998).

¹⁰⁶ *Id.* at 8 (quoting Joshua Dressler, *Rethinking Heat of Passion: A Defense in Search of a Rationale*, 73 J. CRIM. L. & CRIMINOLOGY 421, 432–33 (1982)). Courts use other phrases or language as a stand-in for “reasonable,” such as “ordinarily prudent,” but each denote the use of an objective standard. *Id.*

¹⁰⁷ Lauren E. Goldman, Note, *Nonconfrontational Killings and the Appropriate Use of Battered Child Syndrome Testimony: The Hazards of Subjective Self-Defense and the Merits of Partial Excuse*, 45 CASE W. RESV. L. REV. 185, 198 (1994).

person, a woman, or a victim of IPV.¹⁰⁸ For those experiencing IPV, their intimate knowledge of the threat they face may mean that their beliefs will not align with that of a "reasonable person"—a legal fiction that, although purportedly representing an "abstract, universal person," is still "implicitly based on a (white, middle-class, heterosexual) male norm of behavior."¹⁰⁹ What looks harmless or nonthreatening to those outside an abusive relationship may ring alarm bells for the women who have suffered repeated abuse at their partners' hands and know to ascribe a wholly different meaning to that behavior.¹¹⁰

Most courts have moved away from a purely objective standard, incorporating varying degrees of subjectivity into the reasonableness inquiry.¹¹¹ The use of a purely subjective standard, which asks only whether the accused "honestly believe[d] it necessary to use force," is also rare,¹¹² and states have instead mostly adopted a hybrid inquiry with both subjective and objective elements.¹¹³ One such hybrid formulation is encompassed in Model Penal Code section 3.04, which states that the "use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force."¹¹⁴ Under this approach, the factfinder is asked to assess the "objective reasonableness of the defendant's act," but the analysis of the accused's perceptions is subjective.¹¹⁵ The factfinder assesses whether the person's use of force is reasonable "under the circumstances as he believes them to be when the force is used," regardless of the reasonableness of their beliefs.¹¹⁶

¹⁰⁸ See Heller, *supra* note 105, at 80–81.

¹⁰⁹ Zamouri, *supra* note 91, at 216–17.

¹¹⁰ See FERRARO, *supra* note 32, at 160.

¹¹¹ See Heller, *supra* note 105, at 54. Heller analyzes four distinct reasonableness standards used in American courts:

(1) the *objective standard*; (2) a standard that eliminates the reasonableness requirement entirely . . . the *purely subjective standard*; (3) a standard that retains a reasonableness requirement but asks the jury to assess the objective reasonableness of the defendant's act under the circumstances as he believed them to be . . . the *Model Penal Code or MPC standard*; and (4) a standard that retains a reasonableness requirement, but requires the jury to take into account one or more of the defendant's personal characteristics when assessing the objective reasonableness of her act . . . the *particularizing standard*.

Id. at 5.

¹¹² See *id.* at 56–57 (quoting Moor v. Licciardello, 463 A.2d 268, 272 (1983)). Four states (Delaware, Kentucky, North Dakota, and Ohio) have used a purely subjective standard. *Id.* at 57.

¹¹³ See *id.* at 54; see also, e.g., State v. Wanrow, 559 P.2d 548, 555, 559 (Wash. 1977) (requiring a self-defense claim to be "evaluated in light of all the facts and circumstances known to the defendant").

¹¹⁴ MODEL PENAL CODE § 3.04(1) (AM. L. INST. 1985).

¹¹⁵ See Heller, *supra* note 105, at 5, 66.

¹¹⁶ MODEL PENAL CODE § 3.04(2)(c) (AM. L. INST. 1985).

Washington adopted a similar standard in the seminal case *State v. Wanrow*,¹¹⁷ where the Washington Supreme Court reversed Yvonne Wanrow's second-degree murder conviction because "the jury should have been allowed to consider" Wanrow's knowledge of the victim's reputation for aggressive acts "in making the critical determination of the 'degree of force . . . which . . . a reasonable person in the same situation . . . seeing what [s]he sees and knowing what [s]he knows, then would believe to be necessary.'"¹¹⁸

In their brief, Wanrow's attorneys explicitly argued for consideration of Wanrow's position as a woman, writing that the trial court's jury instruction "established an erroneous, sex-stereotyped and inflexible standard[,] which directed the jury to exclude [Wanrow's] own perspective."¹¹⁹ A plurality of the Washington Supreme Court agreed, holding that imposition of an objective standard of reasonableness was incorrect and the jury instructions did "not make clear that the defendant's actions are to be judged against her own subjective impressions and not those which a detached jury might determine to be objectively reasonable."¹²⁰ The "reasonable woman" standard endorsed by *Wanrow* has become an essential tool for criminalized survivors arguing self-defense.¹²¹ Under this standard, reasonableness is frequently assessed through the lens of BWS testimony provided by expert witnesses.¹²²

B. *Battered Woman's Syndrome Evidence*

Since its advent in the late 1970s, expert testimony on BWS has been the primary way courts have addressed the issues criminalized survivors face with traditional self-defense doctrine.¹²³ BWS testimony is typically used to prove the reasonableness of the accused's actions, though it has been applied to the other elements

¹¹⁷ 559 P.2d 548 (Wash. 1977).

¹¹⁸ *Id.* at 557 (quoting *State v. Dunning*, 506 P.2d 321, 322 (Wash. Ct. App. 1973)) (alterations in original). Yvonne Wanrow was initially convicted of second-degree murder and first-degree assault for killing a friend's neighbor and shooting another man. *Id.* at 550–51. Wanrow shot the decedent, who had previously allegedly been violent toward Wanrow's son and abused his own children, and another man as they attempted to enter her friend's house. *Id.* For an in-depth discussion of the significance of race and gender in *State v. Wanrow*, see generally Donna Coker & Lindsay C. Harrison, *The Story of Wanrow: The Reasonable Woman and the Law of Self-Defense*, in *CRIMINAL LAW STORIES* 213 (Donna Coker & Robert Weisberg eds., 2013).

¹¹⁹ Respondent's Supplemental Brief at 2–3, *Wanrow*, 559 P.2d 548 (No. 43949).

¹²⁰ *Wanrow*, 559 P.2d at 558.

¹²¹ See Coker & Harrison, *supra* note 118, at 245–51 (discussing the legal significance of *Wanrow* for women accused of homicide, specifically IPV victims who defended themselves against abusive partners, even though Wanrow was not defending herself against an intimate partner).

¹²² See *id.* at 249–50.

¹²³ See Zamouri, *supra* note 91, at 221, 225.

of self-defense as well.¹²⁴ BWS is not a defense in itself but rather a type of evidence that can be used to assist juries or judges in their assessment of the accused's self-defense claim.¹²⁵ Dr. Lenore Walker first formulated the theory underlying BWS in her book, *The Battered Woman*, describing how women become trapped in abusive relationships through a cycle of violence that leads to "learned helplessness."¹²⁶ This cycle consisted of three stages: (1) a "tension-building" phase, (2) an "acute battering incident," and (3) a "loving contrition" stage.¹²⁷ Through these stages, there was a slow build-up of abusive behavior, a violent incident, and then a de-escalation.¹²⁸ Walker argued that survivors caught in this repetitive cycle suffer from "learned helplessness," where "repeated exposure to negative outcomes or stressors eventually causes an individual to stop trying to escape from the aversive situation even when opportunities to escape become available."¹²⁹ As this cycle repeats, the survivor may, according to Walker, resort to violence to free herself.¹³⁰

BWS theory has been thoroughly criticized for its limited insight and contradictory messaging.¹³¹ Critics say the portrait of a helpless woman painted by the theory has led to a stereotype of what a battered woman looks like, to the detriment of those who do not match the profile, whether for individual reasons or because this conceptualization of a helpless woman conflicts with other stereotypes based on race, class, or culture.¹³² This stereotype also runs contrary to the lived reality of many survivors, who actively "develop strategies to stay alive and minimize their physical and psychological injuries . . . [and] take fierce measures to fight back, get away from their abuser, seek the law's protection, or terminate the relationship."¹³³

¹²⁴ See Jessica R. Holliday, Dale E. McNiel, Nathaniel P. Morris, David L. Faigman & Renée L. Binder, *The Use of Battered Woman Syndrome in U.S. Criminal Courts*, 50 J. AM. ACAD. PSYCHIATRY & L. 373, 375–76 (2022).

¹²⁵ See Zamouri, *supra* note 91, at 225.

¹²⁶ See WALKER, *supra* note 42, at 91.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Zamouri, *supra* note 91, at 223.

¹³⁰ See Lenore E.A. Walker, *Battered Women Syndrome and Self-Defense*, 6 NOTRE DAME J.L. ETHICS & PUB. POL'Y 321, 333 (1992).

¹³¹ See, e.g., Zamouri, *supra* note 91, at 223 n.78; Marilyn McMahon, *Battered Women and Bad Science: The Limited Validity and Utility of Battered Woman Syndrome*, 6 PSYCHIATRY, PSYCH. & L. 23, 37–38 (1999); Mary Ann Dutton, *Critique of the "Battered Woman Syndrome" Model*, AM. ACAD. OF EXPERTS IN TRAUMATIC STRESS, <https://www.aets.org/traumatic-stress-library/critique-of-the-battered-woman-syndrome-model> [<https://perma.cc/RPU6-MBFS>].

¹³² See Dutton, *supra* note 131.

¹³³ Zamouri, *supra* note 91, at 226.

The pathologizing nature of BWS also undercuts those using BWS evidence to demonstrate the reasonableness of their actions.¹³⁴ It is difficult for jurors to square expert testimony explaining BWS with the case in front of them because “learned helplessness is antithetical to the notion that a woman would use lethal force.”¹³⁵ This is counterproductive because “[f]or factfinders, someone who suffers from a syndrome, by definition, cannot be deemed to have acted reasonably; thus, a woman suffering from BWS cannot possibly meet the reasonable person standard required in self-defense claims.”¹³⁶ Therefore, the introduction of BWS testimony “may persuade jurors to interpret the woman’s actions within the context of her ‘psychological (dys)functioning’” rather than as evidence of her reasonableness.¹³⁷ Information gathered via jury simulation studies indicates that BWS may influence jurors’ perception of the accused, viewing them as “having less capacity for responsible choices and as being more distorted in her thinking.”¹³⁸ This indicates that BWS testimony may have the opposite impact than intended, convincing jurors not of the accused’s reasonableness but rather of her diminished capacity.¹³⁹

The acceptance of BWS evidence was an important development in understanding and highlighting the peculiar challenges faced by criminalized survivors, but courts and practitioners should adopt new frameworks more in line with current understanding of IPV when considering the self-defense claims of those accused of killing abusive partners.

III. IMPLEMENTING A SOCIAL ENTRAPMENT MODEL IN THE UNITED STATES

A “social entrapment” paradigm should inform how defense counsel build a criminalized survivor’s case because it is better suited than the BWS approach to explain the circumstances as a criminalized survivor

¹³⁴ See Mary Ann Dutton, *Validity of “Battered Woman Syndrome” in Criminal Cases Involving Battered Women*, in *THE VALIDITY AND USE OF EVIDENCE CONCERNING BATTERING AND ITS EFFECT IN CRIMINAL TRIALS: REPORT RESPONDING TO SECTION 40507 OF THE VIOLENCE AGAINST WOMEN ACT pt. I*, at 19 (Malcom Gordon ed., 1996) (“[E]xpert testimony can mistakenly suggest to the factfinder that it is a battered woman’s aberrant psychological condition that explains, for example, her acting in self-defense . . .”).

¹³⁵ Cheryl A. Terrance, Karyn M. Plumm & Katlin J. Rhyner, *Expert Testimony in Cases Involving Battered Women Who Kill: Going Beyond the Battered Woman Syndrome*, 88 N.D. L. REV. 921, 939 (2012).

¹³⁶ Zamouri, *supra* note 91, at 227.

¹³⁷ Terrance et al., *supra* note 135, at 942.

¹³⁸ Norman J. Finkel, Kristen H. Meister & Deirdre M. Lightfoot, *The Self-Defense Defense and Community Sentiment*, 15 L. & HUM. BEHAV. 585, 598 (1991).

¹³⁹ See Terrance et al., *supra* note 135, at 942–43 (discussing how BWS evidence can lead jurors to pathologize accused persons).

understood them to be and, therefore, is better suited to explain the reasonableness of her actions.¹⁴⁰ Victims of IPV suffer from a form of “social entrapment,” where the coercive control of their abusive partner, the insufficient responses of institutions, and the structural inequalities experienced by people with marginalized identities coexist and reinforce each other, limiting victims’ options for help.¹⁴¹ Defense attorneys representing criminalized survivors should use the social entrapment framework to advance their clients’ self-defense claims. Viewing criminalized survivors’ self-defense claims through this framework would require courts to consider not only the violence experienced by a criminalized survivor at the hands of her abuser but also the ways institutional access, apathy, and structural inequalities influence both the abuser’s actions and the criminalized survivor’s options for escape.¹⁴²

This Note approaches the self-defense claims of criminalized survivors from the perspective of survivors and practitioners, not legislators. The framework discussed below argues within the typical current evidentiary rules regarding relevance and reasonableness rather than proposing a new model evidentiary rule for this reason. This approach is meant to be adaptable to different jurisdictions, which have an array of different evidentiary rules and caselaw regarding self-defense and criminalized survivors.

This Note also does not put forward a model rule of evidence out of concern that doing so would be proposing a “reformist reform” that would replicate many of the barriers already faced by marginalized survivors.¹⁴³ An evidentiary rule specific to self-defense claims from criminalized survivors would require the court to act as a gatekeeper, determining who qualifies as a “survivor” such that they are permitted to introduce

¹⁴⁰ The definition of social entrapment was first developed by James Ptacek. See JAMES PTACEK, *BATTERED WOMEN IN THE COURTROOM* 9, 10 (Claire Renzetti ed., 1999). Ptacek expands on the idea of “coercive control,” where abusive partners utilize coercive tactics, including but not limited to violence, to dominate their partners, by considering “the inescapably social dimension” of domestic violence, “link[ing] private violence to community responses,” and “connecting poverty, racism, and political disempowerment to women’s abilities to survive violent relationships.” *Id.*

¹⁴¹ See Julia Tolmie, Rachel Smith, Jacqueline Short, Denise Wilson & Julie Sach, *Social Entrapment: A Realistic Understanding of the Criminal Offending of Primary Victims of Intimate Partner Violence*, 2018 N.Z. L. REV. 181, 183, 185 (arguing that “the appropriate conceptual model to use when investigating, presenting and interpreting facts involving intimate partner violence is an understanding of intimate partner violence as a gendered pattern of harm that operates as a form of social entrapment” and explaining how this conceptual framing applies in the New Zealand context).

¹⁴² See PTACEK, *supra* note 140, at 10.

¹⁴³ Reformist reforms are those that “legitimize the system,” whereas nonreformist reforms are those that aim to “decrease the power of the ‘prison-industrial complex’ through decarceration and decriminalization.” Ben Vagle & Kyle Mullins, *Mariame Kaba Advocates for Transformation of the Criminal Justice System*, NELSON A. ROCKEFELLER CTR., <https://rockefeller.dartmouth.edu/news/2019/11/mariame-kaba-advocates-transformation-criminal-justice-system> [https://perma.cc/5LST-N4AJ].

additional evidence of their victimization. As the criminal legal system's treatment of criminalized survivors thus far has shown, "[s]ome victimization claims are deemed more credible than others," with those who "fail to conform to traditional female gender roles" facing much higher barriers to be considered victims at all.¹⁴⁴ Black women and other women of color, sex workers, immigrants, poor women, lesbians, trans people, and other marginalized people are already often denied "victimhood" by the criminal legal system.¹⁴⁵ This Note does not propose an evidentiary rule carving out self-defense claims of survivors in part out of concern that doing so will simply erect additional barriers for criminalized survivors to clear before their self-defense claims are considered.

Deven Grey's case, discussed in the Introduction, will be used to illustrate the types of evidence that a defense informed by the social entrapment model could introduce.¹⁴⁶ Though Deven's self-defense immunity claim was denied in her Stand Your Ground hearing and she ultimately elected to plead guilty,¹⁴⁷ her story is a helpful example that demonstrates how IPV operates through coercive control and how barriers to accessing institutional help and systematic inequality can keep people trapped in abusive relationships. Evidence of that violence and the context in which it operated could have allowed a hypothetical jury to more comprehensively evaluate the reasonableness of Deven's actions that night—a key issue had she elected to go to trial with her claim of self-defense. This Part uses Deven's case throughout as an example of the different aspects of a possible defense grounded in the social entrapment model.

A. *The Case of Deven Grey*

Deven Grey and John Vance dated for six years prior to John's death.¹⁴⁸ In 2017, when Deven shot John, they lived in rural Calera, Alabama.¹⁴⁹ According to Deven, John had been abusive throughout their relationship, but the abuse escalated when they left New York, where Deven grew up, to live on John's family's land in Alabama.¹⁵⁰ In the early hours of December 12, 2017, the physical abuse escalated to

¹⁴⁴ GOODMARK, *supra* note 22, at 9.

¹⁴⁵ See Sharon Angella Allard, Essay, *Rethinking Battered Woman Syndrome: A Black Feminist Perspective*, 1 UCLA WOMEN'S L.J. 191, 194 (1991); GOODMARK, *supra* note 22, at 9.

¹⁴⁶ See *supra* Introduction. Deven Grey eventually chose to plead guilty. See *Blind Plea*, *supra* note 14, at 29:40. Use of this case is not intended as a commentary on her defense strategy or counsel but rather to illustrate the additional context and details that could be offered with a defense informed by social entrapment, had she elected to go to trial.

¹⁴⁷ See *supra* text accompanying notes 13–14.

¹⁴⁸ See *Someone Is Lying*, *supra* note 1, at 44:23.

¹⁴⁹ See *id.* at 02:30.

¹⁵⁰ See *Blind Plea*, *supra* note 7, at 31:20.

the point where Deven says she was so fearful for her life that she saw no option but to kill John.¹⁵¹ She said that night when he woke her up with a slap to the face was "different."¹⁵² She was sure that she had a choice between her life and his, and she says "I just didn't want it to be me."¹⁵³

The state did not believe Deven's version of events, instead believing John's other girlfriend, Alexis, who insisted John was never abusive to Deven.¹⁵⁴ When first questioned on December 12, before learning that John was dead, Alexis said she had spoken to John twice early that morning at 12:33 a.m. and 1:23 a.m. Alexis said that on those calls Deven and John were verbally arguing, and John wanted Alexis to pick him up, which she declined to do.¹⁵⁵ When the detective asked Alexis whether Deven and John were "fighting" rather than verbally arguing, she said, "not like that."¹⁵⁶ Alexis's story changed abruptly when the detective told her that Deven had shot John earlier that day; she then insisted that she could hear Deven firing John's gun and threatening to kill him while she was on the phone but that she chose not to pick him up because she did not take the threats seriously.¹⁵⁷

These were the competing stories presented to the judge in Deven's Stand Your Ground hearing.¹⁵⁸ The judge was charged with deciding whether Deven's use of force was legal, but he made his decision based on incomplete information, as he barred testimony regarding abuse that occurred prior to December 12 and therefore did not have the complete picture necessary to make that determination.¹⁵⁹ A defense informed by the social entrapment model could better equip factfinders in similar situations, enabling a more comprehensive consideration of a criminalized survivor's reasonableness.

B. *The Social Entrapment Model*

Social entrapment operates across three overlapping dimensions: "(a) the social isolation, fear and coercion that the predominant

¹⁵¹ See *Someone Is Lying*, *supra* note 1, at 42:30.

¹⁵² See *id.*

¹⁵³ *Blind Plea*, *supra* note 8, at 36:56.

¹⁵⁴ See *Someone Is Lying*, *supra* note 1, at 35:22.

¹⁵⁵ See *id.* at 24:40.

¹⁵⁶ *Id.* at 25:19.

¹⁵⁷ See *id.* at 26:58.

¹⁵⁸ See *Blind Plea*, *supra* note 8.

¹⁵⁹ See *id.* at 21:00. Alabama law instructs:

Prior to the commencement of a trial in a case in which a defense is claimed under this section, the court having jurisdiction over the case, upon motion of the defendant, shall conduct a pretrial hearing to determine whether force, including deadly force, used by the defendant was justified or whether it was unlawful under this section.

ALA. CODE § 13A-3-23(d)(2) (Westlaw through Act 2025-103).

aggressor's coercive and controlling behaviour creates in the victim's life; (b) the indifference of powerful institutions to the victim's suffering; and (c) the exacerbation of coercive control by the structural inequities associated with gender, class, race and disability."¹⁶⁰ Aspects of this model have been partially implemented in jurisdictions with a similar common law tradition as the United States, with some success, which can serve as a model for adoption in the United States.¹⁶¹

When representing a criminalized survivor, it is crucial to introduce expert and fact witness testimony explaining the particularities of her relationship and circumstances in order to inform the factfinder's inquiry into the reasonableness of her actions.¹⁶² Much of the necessary evidence will come from the accused's testimony because an abusive relationship is, in many ways, intentionally rendered invisible to anyone outside the relationship.¹⁶³ However, testifying "will be more difficult for defendants who have brain injury, trauma responses, and are intimidated by the courtroom and cross-examination,"¹⁶⁴ and the accused and their attorney will need to consider the ramifications of waiving her Fifth Amendment rights and opening herself up to cross examination. The accused person's testimony can be bolstered and corroborated by family, friends, and members of the community.¹⁶⁵ Expert witnesses can act as the scaffolding for the fact witness's testimony, further clarifying how the social entrapment dimensions function in practice, and the criminalized survivor's "perception of threat and the impossibility of escape."¹⁶⁶

¹⁶⁰ Tolmie et al., *supra* note 141, at 185.

¹⁶¹ See CTR. FOR WOMEN'S JUST., MAKING SELF-DEFENCE ACCESSIBLE TO VICTIMS OF DOMESTIC ABUSE WHO USE FORCE AGAINST THEIR ABUSER: LEARNING FROM REFORMS IN CANADA, NEW ZEALAND AND AUSTRALIA 9, 13, 15 (Jenny Earle & Katy Swaine Williams eds., 2023); Tolmie et al., *supra* note 141, at 187–88 (discussing New Zealand's and the United Kingdom's approaches to coercive control); Vanessa Bettinson & Nicola Wake, *A New Self-Defence Framework for Domestic Abuse Survivors Who Use Violent Resistance in Response*, 87 MOD. L. REV. 141, 170 (2024).

¹⁶² See Zamouri, *supra* note 91, at 215–16.

¹⁶³ See Elizabeth Sheehy, Julie Stubbs & Julia Tolmie, *Securing Fair Outcomes for Battered Women Charged with Homicide: Analysing Defence Lawyering in R v Falls*, 38 MELB. U. L. REV. 666, 700–01 (2014).

¹⁶⁴ Heather Douglas, Stella Tarrant & Julie Tolmie, *Social Entrapment Evidence: Understanding Its Role in Self-Defence Cases Involving Intimate Partner Violence*, 44 U.N.S.W. L.J. 326, 335 (2021) (footnote omitted) (considering how to build a social-entrapment-informed defense in Australia).

¹⁶⁵ See Sheehy et al., *supra* note 163, at 678–79, 681 (discussing the use of witnesses like the accused person's hairdresser, an employee, a landlord, and a day care director, among others, to provide indirect corroboration of the decedent's violence). Sheehy et al. break down the successful defense of Susan Falls, who was charged with murder after she dosed her husband with sleeping pills and later shot him in the head. *Id.* at 669. She was acquitted on the basis of self-defense. *Id.*

¹⁶⁶ KATHLEEN J. FERRARO & NOËL BRIDGET BUSCH-ARMENDARIZ, THE USE OF EXPERT TESTIMONY ON INTIMATE PARTNER VIOLENCE 4 (2009), https://vawnet.org/sites/default/files/materials/files/2016-09/AR_ExpertTestimony.pdf [<https://perma.cc/8W8C-LKZL>]; see also EVAN STARK,

1. Coercive Control

Academic understanding of the dynamics of IPV has increasingly shifted toward a “coercive control” model, which “emphasizes the batterer’s pattern of coercion and control rather than his violent acts or their effect on victim psychology.”¹⁶⁷ Rather than focusing on discrete violent incidents, this framework considers violent attacks as one tool of many used to destabilize and isolate the victim in an effort to limit their autonomy and liberty.¹⁶⁸ The “critical elements” of coercive control “are the isolation of victims from support systems (e.g., friends, family, workmates, and helping professionals) and the exploitation and micro-regulation of their everyday lives in areas that extend from such survival resources as food or money to everyday routines.”¹⁶⁹ This “microregulation” can be especially intense when it comes to how survivors behave in their gendered roles as homemakers, mothers, and lovers, with the abusive partner policing “how the victim dresses, cooks, cleans, looks after children and performs sexually.”¹⁷⁰

The coercive control framework has gone through numerous iterations, with its application to IPV dating back to the late 1970s after earlier iterations were used as a framework for understanding things like prisoners of war and cult survivors.¹⁷¹ The first states later explicitly incorporated coercive control into their family law doctrines in 2020.¹⁷² According to a survey conducted by the Battered Women’s Justice Project, five U.S. states have explicitly incorporated coercive control in their protective order or family law statutes, and ten states have language in their statute that references coercive control or similar language.¹⁷³ Jurisdictions in the United States can look abroad for further guidance:

COERCIVE CONTROL 381 (2d ed. 2023) (discussing the expert testimony he provided regarding coercive control in Donna Balis’s murder trial in New Jersey); Douglas et al., *supra* note 164, at 336–37.

¹⁶⁷ Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973, 975–76 (1995).

¹⁶⁸ See Tolmie et al., *supra* note 141, at 186.

¹⁶⁹ Evan Stark, *Commentary on Johnson’s “Conflict and Control: Gender Symmetry and Asymmetry in Domestic Violence,”* 12 VIOLENCE AGAINST WOMEN 1019, 1021–22 (2006).

¹⁷⁰ Charlotte Bishop & Vanessa Bettinson, *Evidencing Domestic Violence, Including Behaviour that Falls Under the New Offence of “Controlling or Coercive Behaviour,”* 22 INT’L J. EVIDENCE & PROOF 3, 9 (2018).

¹⁷¹ See STARK, *supra* note 166, at 250 (discussing the precursors to the current coercive control model developed by Stark).

¹⁷² *Coercive Control Bill Tracker*, AMS. CONF. TO END COERCIVE CONTROL, <https://www.theacecc.com/billtracker> [<https://perma.cc/CX73-7WKM>]. There are significant concerns about criminalizing coercive control among anticarceral feminists, who worry that further criminalization will do more harm than good by exacerbating the issues discussed in Part I. See *supra* Part I; see also, e.g., Courtney K. Cross, *Coercive Control and the Limits of Criminal Law*, 56 U.C. DAVIS L. REV. 195, 235–37 (2022). This Note is not advocating for the criminalization of coercive control but arguing for adopting coercive control as a more accurate framing of how IPV functions.

¹⁷³ See BATTERED WOMEN’S JUST. PROJECT, COERCIVE CONTROL CODIFICATION MATRIX 2 (2022).

Several countries, including England, Northern Ireland, Scotland, Australia, Canada, and France, have enacted similar statutes.¹⁷⁴

When presenting a defense based on coercive control, the focus should not be on individual acts of violence but on how the abusive partner has established control over the criminalized survivor, with violence acting as one of those tools. Abuse is personalized, and different forms compound each other, so “tactics will be fact specific and will take effect cumulatively.”¹⁷⁵ The goal should be to demonstrate how the pattern of behavior is tailored to the victim and how the control exercised by the abusive partner affected the criminalized survivor’s belief about what alternatives to force were reasonably available to her.

Evidence demonstrating how the abusive partner isolated the criminalized survivor from friends, family, and support services and deprived the criminalized survivor of access to finances, transportation, sleep, food, medical care, housing, employment, and other resources would all be relevant to establishing the accused person’s reasonable beliefs.¹⁷⁶ Deven’s isolation was a key aspect of John’s control; for example, Deven moved with John to his family’s isolated piece of land in Alabama.¹⁷⁷ She left behind her family and friends in New York, whom John did not allow her to contact.¹⁷⁸ She had no job, license, or car and therefore no ability to leave home without an escort.¹⁷⁹ She was largely reliant on John or, at times, his aunt Sheila who lived on the property, for transportation and access to the outside world.¹⁸⁰ According to Deven, she left John’s land only four times in 2017.¹⁸¹ After John knocked out one of Deven’s front teeth, she had to wait six months for Sheila to take her to the dentist.¹⁸² John’s acts of physical violence were just one of many ways in which he exercised control over Deven.¹⁸³

Examples of “microregulation,” in which the abusive partner sets rules dictating many aspects of the criminalized survivor’s life, are also relevant despite often seeming arbitrary or obscure, because the rules “are about conditioning the primary victim to obey the predominant aggressor’s commands without regard to their substance.”¹⁸⁴ In this formulation, violence, or the threat of it, is another tool used by the abusive partner to “establish the costs of non-compliance and create fear in

¹⁷⁴ See STARK, *supra* note 166, at 2.

¹⁷⁵ Douglas et al., *supra* note 164, at 332.

¹⁷⁶ See *id.* at 334.

¹⁷⁷ See Blind Plea, *supra* note 7, at 05:55.

¹⁷⁸ See *id.* at 13:10, 32:30.

¹⁷⁹ See *id.* at 29:02.

¹⁸⁰ See *id.* at 21:00.

¹⁸¹ See *id.* at 33:30.

¹⁸² See *id.* at 29:20.

¹⁸³ See *id.* at 33:30.

¹⁸⁴ Douglas et al., *supra* note 164, at 334.

the victim.”¹⁸⁵ In between the acts of violence are constant instances of microregulation designed to keep the victim under the abuser’s control. Although people who knew Deven during her relationship with John describe her as shy, she says her behavior was because John kept close tabs on her—she kept to herself because “she was always worried she might say or do the wrong thing or break one of his many rules.”¹⁸⁶ When they were in public, John would frequently accuse Deven of watching or flirting with other men.¹⁸⁷ When questioned by police on December 12, Deven could not provide the last name of the man who had been at their house that day because John did not allow her to know it.¹⁸⁸ When John was drinking, he wanted her to be drinking too.¹⁸⁹ John did not allow her to contact the family and friends she left behind in New York, and he surveilled her calls and texts to ensure compliance.¹⁹⁰ When he learned that she had been in communication, despite his rules, John got her a new phone number.¹⁹¹ When Deven tried to leave during the first year they lived in Alabama, he pushed and slapped her around to scare her out of trying again.¹⁹² Eventually, Deven says, she was not allowed to leave their trailer without John present, and he installed security cameras on the property so he could monitor who was coming and going.¹⁹³ John’s aunt noticed that when the couple did attend family events, John kept Deven within three feet of him at all times.¹⁹⁴

State statutes defining coercive control and recognizing the non- or previolent acts of microregulation, despite often only applying in a family law context,¹⁹⁵ can help guide a defense strategy. Some examples of coercive control provided in Hawaii’s definition, for instance, are “[c]ontrolling how much money is accessible to the individual” and “[m]onitoring the individual’s activities, communications, and movements.”¹⁹⁶ Phone, text, social media, and bank records, including even “who has passwords to which accounts and who does not, can potentially be useful”¹⁹⁷ to demonstrate this type of controlling behavior. Although much of the evidence of John’s coercive control of Deven would need to be introduced via her own testimony, Deven’s

¹⁸⁵ *Id.*

¹⁸⁶ *See Blind Plea, supra* note 7, at 24:10.

¹⁸⁷ *See id.* at 32:40.

¹⁸⁸ *See id.* at 14:14.

¹⁸⁹ *See Blind Plea, supra* note 7, at 26:26.

¹⁹⁰ *See id.* at 32:30.

¹⁹¹ *See id.* at 33:11.

¹⁹² *See id.* at 28:09.

¹⁹³ *See id.* at 28:25.

¹⁹⁴ *See id.* at 21:32.

¹⁹⁵ *See, e.g.,* CAL. FAM. CODE § 6320 (West, Westlaw through Ch. 1 of 2025 Reg. Sess.); HAW. REV. STAT. § 586-1 (2024).

¹⁹⁶ HAW. REV. STAT. § 586-1 (2024).

¹⁹⁷ Douglas et al., *supra* note 164, at 335.

family and friends in New York, Sheila, and even the dentist Deven visited could provide corroborative testimony.¹⁹⁸ Records from the bank, phone company, the dentist's office, and video security company could bolster Deven's story.¹⁹⁹ Defense attorneys should be creative in offering and interpreting corroborative evidence, thinking outside of the traditional evidence offered to demonstrate the accused and decedent's relationship. Evidence that does not directly show violence can nonetheless provide illustrations of how the control played out in the criminalized survivor's everyday life. Other members of their community could all offer relevant evidence: medical professionals such as dentists and reproductive healthcare providers, mental health practitioners, social workers, domestic violence service providers, and even children's teachers.²⁰⁰

2. Institutional Issues

Understanding a criminalized survivor's history of interaction with, and especially her lack of access to, institutional support is essential to accurately assessing the reasonableness of her actions. Although society and the criminal legal system's understanding and treatment of IPV is significantly different from when the initial anti-violence-against-women movements began gaining ground fifty years ago,²⁰¹ "[t]he unfortunate reality is that the proportion of women exposed to the most serious form of partner abuse remains unchanged."²⁰² Interaction with support agencies often ends up causing harm due to underlying biases against the survivors.²⁰³

Receiving support from formal IPV service agencies—which provide “emergency shelter, transitional housing, advocacy, counseling, economic support . . . children's services” and other vital assistance—reduces the impact of IPV on survivors and “has been linked to reduced

¹⁹⁸ See *supra* text accompanying notes 177–82.

¹⁹⁹ See *supra* text accompanying notes 190–93.

²⁰⁰ See Douglas et al., *supra* note 164, at 335–36; Jodie Valpied & Kelsey Hegarty, *Intimate Partner Abuse: Identifying, Caring for and Helping Women in Healthcare Settings*, 11 *WOMEN'S HEALTH* 51, 54 (2015) (noting possible IPV indicators a medical professional may observe during patient interactions); Jana Lauren Bregulla, Marcel Hanisch & Bettina Pfeleiderer, *Dentists' Competence and Knowledge on Domestic Violence and How to Improve It—a Review*, 19 *INT'L J. ENV'T RSCH. & PUB. HEALTH*, no. 4361, Apr. 2022, at 2 (noting injuries commonly resulting from IPV that dentists might observe), <https://www.mdpi.com/1660-4601/19/7/4361/pdf?version=1649239584> [<https://perma.cc/87J7-CVZY>].

²⁰¹ See Ake & Arnold, *supra* note 43, at 3–4.

²⁰² STARK, *supra* note 166, at 65.

²⁰³ See Sarah R. Robinson, Kristen Ravi & Rachel J. Voth Schrag, *A Systematic Review of Barriers to Formal Help Seeking for Adult Survivors of IPV in the United States, 2005–2019*, 22 *TRAUMA VIOLENCE & ABUSE* 1279, 1290 (2020).

negative post-trauma outcomes and increased general well-being.”²⁰⁴ However, significant barriers to accessing this help persist.²⁰⁵ Many survivors are unaware of services available to them or lack services because of their location, language, immigration status, or disability status.²⁰⁶ Others fear the consequences of seeking help or lack the material resources to effectively seek help.²⁰⁷

A criminalized survivor’s testimony about her engagement with and understanding of agency services and her outreach to others in the community can shed light on her perception of her circumstances, which is key to the reasonableness analysis.²⁰⁸ Agency records and testimony from providers both about the individual’s engagement with services and the general services realistically available could also provide valuable context.²⁰⁹

In Deven’s case, John had isolated her in a small trailer on his family’s land in rural Alabama.²¹⁰ Without access to transportation—and with John monitoring her calls, texts, and movement—she had few opportunities to reach out to support services.²¹¹ Deven lacked the material resources that would have made it more likely for her to access help,²¹² as she was unemployed with no independent housing or finances.²¹³ Deven also had her daughter to worry about; she became pregnant in 2013, in what Deven felt was another of John’s attempts to tie her to him more tightly.²¹⁴ Deven did not see any way out, stating, “I can’t leave. I don’t have a license. I don’t have a car. I don’t have friends. I don’t have anything.”²¹⁵

For many survivors, the pathway to accessing these services runs through law enforcement, but there is evidence that “[c]ollaboration between service providers and law enforcement . . . does not necessarily translate to improvements in case outcomes or victim well-being.”²¹⁶ Mandatory arrest and no-drop prosecution policies may impact survivors’ willingness to go to law enforcement because they may be concerned about the lack of control they have over the criminal legal

²⁰⁴ *Id.* at 1279–80.

²⁰⁵ *See id.* at 1291.

²⁰⁶ *See id.* at 1290–91.

²⁰⁷ *Id.*

²⁰⁸ *See* Douglas et al., *supra* note 164, at 337–38.

²⁰⁹ *See id.* at 339.

²¹⁰ *See* Blind Plea, *supra* note 7, at 6:02.

²¹¹ *See id.* at 29:02, 32:30.

²¹² *See* Robinson et al., *supra* note 204, at 1289 (discussing multiple studies that showed a lack of independent housing, finances, insurance, transportation, healthcare, and education all pose barriers to seeking help for IPV).

²¹³ *See* Blind Plea, *supra* note 7, at 32:22.

²¹⁴ *See id.* at 28:45.

²¹⁵ *Id.* at 29:02.

²¹⁶ Goodmark, *supra* note 53, at 122.

response or about their own exposure to criminalization.²¹⁷ These policies may have benefited some survivors, but they have also “ushered in a host of consequences for others that range from difficult to devastating including retaliatory violence, financial instability, forced separation, and even survivors’ own incarceration.”²¹⁸

It is impossible to know how the police would have reacted had Deven reported John’s abuse prior to December 12. However, as one Shelby County defense attorney remarked, “people living in [Deven’s] conditions don’t get the same treatment from the police that people living in the nicer neighborhoods might.”²¹⁹ The police investigator responsible for investigating Deven’s case was skeptical of Deven’s claims of abuse.²²⁰ Despite the fact that when police arrived at their trailer on December 12, Deven was bleeding from her ear because of a busted eardrum, covered in cuts and bruises, and suffering from multiple facial fractures,²²¹ the investigator stated, “[Deven] claimed he beat her, but I don’t have any proof of that” because “there was never any evidence that John inflicted that injury on her.”²²² The officer was sure this was not a case of self-defense because “she could’ve walked right out the front door, and he would’ve never been the wiser.”²²³ This attitude from law enforcement officials indicates a troubling misunderstanding of how IPV operates and raises questions regarding how Deven’s efforts would have been received had she reached out for help.

Survivors may struggle to successfully report instances of IPV to law enforcement. For example, when Deven tried to call 911 multiple times, John’s abuse escalated, and he began turning off and hiding her phone when they got into arguments.²²⁴ Even if Deven had been able to report John to law enforcement, it is not clear that she would have been able to access additional support services, which can be scarce in Alabama.²²⁵ Despite “consistently ha[ving] one of the highest rates of domestic violence [and] number of women killed by intimate partners,” only sixteen programs provide domestic violence services to Alabama’s

²¹⁷ See Mills, *supra* note 71, at 612. Mills argues that mandatory interventions, including both arrests and prosecutions, may not serve the best interests of survivors, as they may replicate the “rejection, degradation, terrorization, isolation, missocialization, exploitation, emotional unresponsiveness, and confinement intrinsic to the battering relationship.” *Id.*

²¹⁸ Cross, *supra* note 172, at 200.

²¹⁹ Blind Plea, *supra* note 8, at 11:54.

²²⁰ See *id.* at 26:55.

²²¹ See *Someone Is Lying*, *supra* note 1, at 34:03.

²²² Blind Plea, *supra* note 8, at 26:55.

²²³ *Someone Is Lying*, *supra* note 1, at 45:10.

²²⁴ See Blind Plea, *supra* note 7, at 32:45.

²²⁵ See Maddie McQueen, *More Domestic Violence Shelters Needed in Central Alabama*, CBS 42 (Feb. 16, 2024, 7:09 AM), <https://www.cbs42.com/news/local/more-domestic-violence-shelters-needed-in-central-alabama/> [<https://perma.cc/8Z58-ALJA>].

sixty-seven counties.²²⁶ This lack of access to services in rural Alabama is consistent in rural areas around the country; survivors living in rural areas “are almost twice as likely to be turned away from services as urban women due to lack of capacity.”²²⁷

Each of these barriers to accessing sustainable support colors Deven’s decision to shoot John that night. Her perceptions of what options were available to her for help and what the consequences of seeking out that help would be informed her beliefs regarding what type of danger she was in that night. Evidence regarding a survivor’s material situation, her prior attempts to reach out for help, and the institutional resources available can help answer the question all too commonly asked of IPV survivors: “Why did she stay?”²²⁸

Testimony regarding the accused person’s interactions with institutions should be brought into the courtroom, as it has an appreciable impact on a survivor’s beliefs regarding their alternatives to using force.²²⁹ Explaining the options available to a survivor can help jurors “realistically examine the safety options available to the defendant in her circumstances” when they might otherwise assume she could have gone to the police or sought other assistance before the situation escalated to the point that she felt responsive force was her only realistic option.²³⁰ Understanding the individual survivor’s interaction, or lack thereof, with these options is key to the reasonableness analysis because the question before jurors is whether the criminalized survivor’s actions were reasonable in light of the circumstances as she believed them to be.²³¹ Evidence of not just the options available but any attempts she made to seek help, any barriers faced, any previous attempts to seek services, and what services were realistically available should all be considered.²³² The community response to help seeking “influence[s] the victim’s decision whether to seek assistance or not.”²³³

3. *The Exacerbating Effect of Structural Inequalities*

The structural inequalities faced by criminalized survivors are relevant to the reasonableness of their responses because they “affect which

²²⁶ Amber Sutton, “*It Was Like a Volcano Erupted*”: *Community-Based Advocates’ Observations of Intimate Partner Violence and Intimate Femicide in Alabama During COVID-19*, 39 *AFFILIA* 320, 321 (2024).

²²⁷ See NAT’L ADVISORY COMM. ON RURAL HEALTH & HUM. SERVS., *INTIMATE PARTNER VIOLENCE IN RURAL AMERICA 2* (2015), <https://www.hrsa.gov/sites/default/files/hrsa/advisory-committees/rural/2015-partner-violence.pdf> [<https://perma.cc/MF4Z-3WVG>].

²²⁸ See FERRARO & BUSCH-ARMENDARIZ, *supra* note 166, at 4.

²²⁹ See Douglas et al., *supra* note 164, at 337.

²³⁰ *Id.*

²³¹ See *supra* Section II.A.1.

²³² See Douglas et al., *supra* note 164, at 327–28.

²³³ Bettinson & Wake, *supra* note 161, at 146.

coercive and controlling behaviours are adopted by the abuser, how victim/survivors respond to the behaviour and how they engage or otherwise [interact] with the frontline services which become involved.”²³⁴ The “intersecting structural inequities in the IPV victim’s life circumstances” inform how coercive control and institutions function in their lives.²³⁵ Although IPV is often focused on the actions of the individuals in a relationship, “patterns of violence are connected to social systems and social institutions.”²³⁶ A criminalized survivor’s race, ethnicity, immigration status, poverty level, gender identity or sexuality, and a whole host of other identities influence the tactics of the abusive partner and the survivor’s ability to access safety resources.²³⁷

Deven was a Black woman in a relationship with a white man in Alabama,²³⁸ the last state to overturn its ban on interracial marriage.²³⁹ Studies show that Black women are disproportionately affected by IPV, with four in ten experiencing IPV in their lifetime.²⁴⁰ “Compared to White women, Black women are less likely to utilize formal help-seeking (e.g., legal aid services, police, and mental health treatment),” which analysts believe is due to the intersection of historical, structural, community-level, and interpersonal barriers.²⁴¹ This may also be because of the “lack of formal resources available to Black women.”²⁴²

²³⁴ *Id.*

²³⁵ Douglas et al., *supra* note 164, at 328.

²³⁶ Stephanie Rose Montesanti, *The Role of Structural and Interpersonal Violence in the Lives of Women: A Conceptual Shift in Prevention of Gender-Based Violence*, 93 BMC WOMEN’S HEALTH, no. 93, Oct. 2015, at 2, <https://bmcwomenshealth.biomedcentral.com/counter/pdf/10.1186/s12905-015-0247-5.pdf> [<https://perma.cc/9MST-YWWK>].

²³⁷ See Douglas et al., *supra* note 164, at 340.

²³⁸ See *Blind Plea*, *supra* note 7, at 12:44.

²³⁹ Aaron Blake, *Alabama Was a Final Holdout on Desegregation and Interracial Marriage. It Could Happen Again on Gay Marriage*, WASH. POST (Jan. 9, 2015, 1:00 PM), <https://www.washingtonpost.com/news/the-fix/wp/2015/02/09/alabama-was-a-final-holdout-on-desegregation-and-interracial-marriage-it-could-happen-again-on-gay-marriage/> [<https://perma.cc/4HLA-8W4X>]. Alabama overturned its antimiscegenation statute in 2000, more than three decades after the Supreme Court ruled that such laws were unconstitutional. *Id.* Still, more than forty percent of Alabama voters did not support the change. *Id.*

²⁴⁰ Lorin C. Kelly, Chelsea M. Spencer, Brooke Keilholtz, Paige McAllister & Sandra M. Stith, *Is Separate the New Equal? A Meta-Analytic Review of Correlates of Intimate Partner Violence Victimization for Black and White Women in the United States*, 61 FAM. PROCESS 1473, 1474 (2022). Kelly et al. also noted that 31.5% of all women experience some form of IPV in their lifetime. *Id.*

²⁴¹ *Id.* (citation omitted). Historical barriers include “slavery and its subsequent social and psychological ramifications on race relations in the United States, gender-based stereotypes, and discrimination by the legal and justice systems.” *Id.* Structural barriers include “victim-blaming, minimization, [and] power dynamics from police, such as fear of physical harm or incarceration.” *Id.* Community-level barriers include “mores of not involving outside systems and not wanting to be seen as disloyal.” *Id.* And interpersonal barriers include “fear of [a] partner’s reaction and/or not wanting to make the IPV worse.” *Id.*

²⁴² *Id.*

Deven was aware of how her marginalization may have impacted her interactions with the criminal legal system; she chose to plead guilty in part because of her concerns about going in front of an all-white jury.²⁴³

Deven was also impoverished, living in a small trailer on isolated property.²⁴⁴ Studies demonstrate that women experiencing IPV in rural areas "are more likely to be murdered by a partner than those living in cities."²⁴⁵ Social factors, such as "traditional gender roles and a high degree of social cohesion in rural communities," can make it harder for rural women to access help, and rural women are "less likely to seek out help, and perceive the justice system as less helpful than urban women."²⁴⁶ Rural women experiencing IPV often struggle more than their urban counterparts to become economically independent.²⁴⁷ They typically live further from support services as previously discussed, and like Deven, they often "face the additional barrier of their abuser controlling the family's transportation and communication channels."²⁴⁸ Deven's race and geographic location were tools John could use to enforce his coercive control and limit Deven's options for escape, making them relevant to the question of reasonableness because they are probative of Deven's reasonable belief regarding the danger she was facing.

Evidence demonstrating the impact of structural inequality and its impact on the criminalized survivor may be difficult to present through lay testimony. However, the criminalized survivor and other members of her community may be able to testify to how their interactions with the decedent, the larger community, and institutions are colored by their marginalization. This evidence is relevant because it demonstrates the nature of the threat the survivor faced and "provides a jury with a rational basis . . . for determining questions about the particular accused's conduct and beliefs."²⁴⁹ Here, expert testimony from those with "specific cultural expertise of relevant communities"²⁵⁰ may play a particularly important contextualizing role.

C. *Admissibility of Social Entrapment Model Evidence*

When a criminalized survivor is on trial, the admission of general and case-specific testimony is crucial to explain the reasonableness of her fear at the time of the charged offense. Testimony from the accused

²⁴³ See *Blind Plea*, *supra* note 7, at 25:24.

²⁴⁴ See text accompanying notes 210–15.

²⁴⁵ NAT'L ADVISORY COMM. ON RURAL HEALTH & HUM. SERVS., *supra* note 227, at 3.

²⁴⁶ *Id.* at 4–5.

²⁴⁷ See *id.* at 5.

²⁴⁸ *Id.* at 6.

²⁴⁹ Douglas et al., *supra* note 164, at 345.

²⁵⁰ *Id.* at 342.

person, friends, family, and community members can help explain the relationship between the survivor and the decedent, which will better equip the factfinder to assess the survivor's state of mind.²⁵¹ There is widespread agreement that evidence pertaining to battering and its effects is relevant to a factfinder's analysis; for over four decades courts have admitted testimony about IPV to help factfinders interpret the facts before them.²⁵² Courts should adopt an approach to this evidence that acknowledges an intersectional, evidence-based understanding of how IPV operates and admit evidence speaking to the three dimensions of social entrapment detailed above.²⁵³ This evidence is highly probative of the criminalized survivor's belief that the survivor was in imminent danger when the charged offense occurred.

1. Admissibility of Fact Witness Testimony

When claiming self-defense, evidence pertaining to the survivor's relationship with the decedent is relevant as it is offered to show the reasonableness of her belief that she was in danger of serious bodily injury or death.²⁵⁴ The decedent's prior abusive behavior toward the accused is an important factor for a factfinder to consider when asked to determine whether the survivor was put in fear of serious bodily harm or death.²⁵⁵

Failure to admit this evidence risks unjust outcomes. In Deven's Stand Your Ground hearing, the court sustained the Shelby County District Attorney's objection to Deven's testimony discussing prior abuse suffered at John's hands, ruling that only the violence occurring specifically that night was relevant to her self-defense claim.²⁵⁶ This means that the judge did not hear from Deven nor from John's Aunt Sheila about the years of abuse John inflicted, nor did the judge see the texts from John admitting to and apologizing for his behavior.²⁵⁷ The judge did not hear from John's father, who had told police that his son

²⁵¹ See *id.* at 335.

²⁵² See Shelby A.D. Moore, *Battered Woman Syndrome: Selling the Shadow to Support the Substance*, 38 How. L.J. 297, 312–13 (1995) (discussing *Ibn-Tamas v. United States*, one of the first cases in which an accused person tried to introduce BWS testimony when on trial for shooting her husband (citing *Ibn-Tamas v. United States*, 407 A.2d 626 (D.C. 1979))); FERRARO & BUSCH-ARMENDARIZ, *supra* note 166, at 1.

²⁵³ See Tolmie et al., *supra* note 141, at 185; *supra* Section III.B.

²⁵⁴ See *United States v. Saenz*, 179 F.3d 686, 688–89 (9th Cir. 1999) (holding that Federal Rule of Evidence 404(b)'s prohibition on prior-bad-acts evidence does not bar the admissibility of an accused person's knowledge of a decedent's prior bad acts as probative of the accused person's mental state).

²⁵⁵ See Douglas et al., *supra* note 164, at 332.

²⁵⁶ See *Blind Plea*, *supra* note 8, at 22:21.

²⁵⁷ See *id.* at 21:49, 41:34.

frequently fired shots around his trailer²⁵⁸ and that he often had to turn up his TV to drown out the sounds of John and Deven when John “slung her around.”²⁵⁹ In the prosecution’s version of the story, Deven was simply a jealous girlfriend, upset that John was seeing another woman, who killed John in cold blood as revenge.²⁶⁰ The district attorney cast doubt on Deven’s injuries from that night, suggesting that she could have fabricated them herself as part of her premeditation.²⁶¹ Without being able to introduce evidence of John’s prior abuse, Deven’s hands were tied; she was not allowed to introduce crucial evidence that would have tended to prove that her version of the night’s events was true. She was not able to show the judge why something was different that night when John told her that he would kill her if she “tried to lay down next to him, or if he heard me breathing, or if he thought I was using the phone,” nor why she, given her six years of experience with John, believed he meant it.²⁶²

2. Admissibility of Expert Testimony

Both general and case-specific expert testimony likely would have provided important context for Deven’s case as well. Expert testimony is admissible if “scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.”²⁶³ The introduction of expert testimony covering how coercive control functions, both generally and in a case-specific manner; institutional responses—or lack thereof—to IPV; and structural inequalities that impact the survivor’s experience of coercive control and ability to access help will help jurors judge the reasonableness of an accused’s beliefs and actions.

For decades, criminalized survivors have been permitted to introduce evidence regarding BWS to inform the factfinder’s assessment of their reasonableness.²⁶⁴ As criticism of BWS testimony mounted, defense counsel and courts have moved toward expert testimony on the totality of “battering and its effects” rather than tailoring evidence into the ill-fitting BWS framework.²⁶⁵ Expert testimony on coercive control has already been found admissible under current evidentiary rules in

²⁵⁸ *See id.* at 29:41.

²⁵⁹ *Someone Is Lying*, *supra* note 1, at 34:44.

²⁶⁰ *See Blind Plea*, *supra* note 8, at 28:43.

²⁶¹ *See id.* at 26:55.

²⁶² *Someone Is Lying*, *supra* note 1, at 42:01.

²⁶³ FED. R. EVID. 702(a).

²⁶⁴ *See supra* note 252 and accompanying text.

²⁶⁵ *See Dutton*, *supra* note 134, at 19–21 (concluding that BWS was “an inadequate term to represent the scientific and clinical knowledge concerning battering and its effects”).

the United States,²⁶⁶ and others have already advocated for the adoption of “social agency” testimony, which “can highlight the inadequacies that exist within the formal help sources.”²⁶⁷

General testimony regarding institutional issues in addressing IPV and the social inequities that exacerbate it would fall within this “social agency” category.²⁶⁸ This type of testimony can “substantiate the defendant’s claim that she believed she had no other alternative but to kill her abusive spouse without having to excuse her behavior as the actions of a woman suffering from a syndrome.”²⁶⁹ This testimony is relevant to one of the critical elements of a self-defense claim: a person may use deadly force only if they reasonably believe that such force is necessary to defend themselves against the threat.²⁷⁰ What the accused believed at the time of the charged offense and the evidence relevant to the honesty of her stated belief are material to the factfinder’s analysis of objective and subjective reasonableness.²⁷¹ This evidence will enable a jury to better answer the question of whether an “ordinary and reasonable” person in the accused’s circumstances would have perceived self-defense as necessary, as required for an objective reasonableness inquiry,²⁷² and whether force was reasonable “under the circumstances” the person employing protective force “believe[d] them to be when the force [was] used,”²⁷³ as required for a subjective reasonableness inquiry.²⁷⁴

Expert testimony can serve multiple functions for criminalized survivors. It can explain how IPV functions day-to-day and contextualize the lay-witness testimony discussed earlier.²⁷⁵ In this way, it can function similarly to other testimonial “social framework evidence” that courts permit to “provide the factfinder, usually a jury, with information about the social and psychological context in which contested adjudicative facts occurred.”²⁷⁶ It can correct juror misconceptions about IPV and help “bridge the gap between the legal requirements of self-defense and the accused’s evidence.”²⁷⁷ Jurors’ analysis of whether the accused’s

²⁶⁶ See, e.g., STARK, *supra* note 166, at 381 (discussing the expert testimony he provided regarding coercive control in Donna Balis’s murder trial in New Jersey).

²⁶⁷ See Terrance et al., *supra* note 135, at 947–48.

²⁶⁸ See *id.*

²⁶⁹ *Id.* at 950.

²⁷⁰ See Heller, *supra* note 105, at 3.

²⁷¹ See *supra* Section II.A.1.

²⁷² See Heller, *supra* note 105, at 8.

²⁷³ MODEL PENAL CODE § 3.04(2)(c) (AM. L. INST. 1985).

²⁷⁴ See Heller, *supra* note 105, at 66–67.

²⁷⁵ See Sheehy et al., *supra* note 165, at 706; *supra* Section III.C.1.

²⁷⁶ Neil J. Vidmar & Regina A. Schuller, *Juries and Expert Evidence: Social Framework Testimony*, 52 LAW & CONTEMP. PROBS. 133, 133 (1989). Examples include testimony regarding the reliability of eyewitness testimony, predictions of dangerousness, and various psychological conditions. *Id.*

²⁷⁷ Sheehy et al., *supra* note 165, at 691.

behavior was reasonable, in light of her circumstances, will be much better informed by the presentation of evidence regarding how coercive control operates generally and, in the accused person's life, how institutional responses and structural inequalities reinforced the abusive partner's control and limited the criminalized survivor's alternatives.

CONCLUSION

Adopting a social entrapment framework when considering criminalized survivors' self-defense claims would ensure courts better understand the circumstances as the criminalized survivor experienced them, making it possible for the factfinder to answer the question of whether their use of force was necessary and reasonable. Although more extensive changes to self-defense doctrine and a reconsideration of how our society addresses IPV are necessary, adoption of this framework would ensure more accurate and just outcomes for criminalized survivors.