

Pretrial Services & Intimate Partner Violence Cases

A Review of the Literature and Recommendations for Practice

Intimate partner violence (IPV) is prevalent across the United States (U.S.) and the world (World Health Organization, 2021). The World Health Organization (2021) defines IPV as “behavior by an intimate partner or ex-partner that causes physical, sexual or psychological harm, including physical aggression, sexual coercion, psychological abuse and controlling behaviors.” Well documented by research, IPV poses numerous threats to individual, child, family, and community well-being, for both the survivor¹ of IPV and the individual who has committed the harm (see Hardesty & Ogolsky, 2020 for a review). Studies frequently document disproportionate race and gender differences in IPV victimization. In their recent review, Hardesty and Ogolsky (2020) report nearly 36% of individuals identifying as women compared to 29% identifying as men experience IPV during their lifetime and inequitably higher rates for individuals of color and non-U.S. native individuals compared to White individuals. To date, IPV research has primarily focused on men-identifying individuals in heterosexual relationships who have caused harm, despite research suggesting that the severity of IPV incidents is similar regardless of gender identity (Chase Espinoza & Warner, 2016; Ménard et al., 2009) and in same-sex relationships (Hardesty & Ogolsky, 2020; Rollè et al., 2018); though studies of gender diverse and LGBTQ individuals’ experiences of IPV are needed in order to better understand how diverse relationship contexts and gender identity may influence IPV rates and experiences. Rates of IPV have continued to increase over the past decade, and emerging studies reviewing evidence collected during the coronavirus (COVID-19) pandemic document significant increases in IPV since its onset (Kourti et al., 2021; Piquero et al., 2021), especially during the initial period of safer-at-home and shelter-in-place orders.

Cases of IPV present a challenge for criminal legal system reform efforts aiming to reduce the use and impact of incarceration on communities (Sicilia, 2022). During the pretrial period – the period between an individual’s arrest and their case disposition (Naraharisetti et al., 2022) – individuals may be detained in jail or released, with or without a variety of conditions (e.g., monetary bail, community supervision). Recognizing the related financial, social, and personal liberty costs, reform efforts targeting pretrial have aimed to establish a presumption of release and decrease the use of pretrial detention, monetary “cash” bail, and excessive release conditions. Pretrial reform and decision-making in cases of IPV must balance maximizing survivor safety and holding the individual who caused harm accountable while ensuring an individual’s right to due process and presumption of innocence. Currently, limited rigorous evidence exists identifying effective strategies for addressing IPV concerns during pretrial, and the evidence that is available provides mixed results and unclear direction.

¹Due to the power that word choice can have on individuals and their experiences, the authors have made the explicit choice to use the words “survivor” and “individual who has caused harm” rather than “victim” and “perpetrator/offender/batterer/abuser” when referring to the individuals involved in IPV situations in this brief. This word choice is intentional, aiming to empower and capture the inherent strength of individuals who have experienced harm and to recognize the humanity of individuals who have caused harm within IPV contexts.

Pretrial Services & Intimate Partner Violence Cases

A Review of the Literature and Recommendations for Practice

The purpose of this research brief is to summarize the current state of the available literature regarding IPV within pretrial contexts as it pertains to pretrial decision-making and current recommendations for practice. This review is by no means exhaustive and is constrained by the available research, meaning much of the review revolves around instances of IPV with individuals who identify as men who have caused harm against women-identifying individuals. Furthermore, this review is specific to research conducted within the U.S., though studies conducted outside the U.S. are referenced in the absence of U.S.-based studies.

Intimate Partner Violence & Recidivism

The majority (roughly 77-84%) of individuals convicted of IPV are not rearrested for a subsequent IPV crime six months, 18 months, and up to four years after the initial IPV incident (Broidy et al., 2016; Ennis et al., 2017; Kingsnorth, 2006; Morgan et al., 2019), though differences in rates emerge between studies and when accounting for any reoffending (not just IPV-related) (e.g., Broidy et al., 2016). Evidence covering longer periods of time suggests approximately 50-60% are rearrested for either an IPV or non-IPV related offense within ten years after the initial incident (Broidy et al., 2016; Richards et al., 2014). Some evidence suggests that in cases of IPV where there was the use of a weapon, co-occurring drug and alcohol misuse, presence of prior arrests (especially for previous IPV offenses), and a current or prior violation of a protection order, individuals are significantly more likely to be rearrested for IPV (Hirschel et al., 2010; Kingsnorth, 2006; Morgan et al., 2019; Stansfield et al., 2022). Differences in IPV-related rearrest rates have been shown across men- and women-identifying individuals, with different individual-level factors predicting rearrests by gender such as violence severity and probation or parole history (Ménard et al., 2009). For the individuals who are rearrested, the rearrests are most likely to occur within the first two months of the initial incident, and those who are rearrested sooner are more likely to be rearrested multiple times, most often with the same survivor (Morgan et al., 2019; Richards et al., 2014). An important caveat: research on recidivism (broadly defined) in IPV cases have evidenced differences in rates when measured using official records (e.g., arrest or court records; commonly utilized in research) compared to survivor-report, where survivors tend to report more instances of re-abuse than that captured by official records (e.g., Cordier et al., 2021). Caution is recommended when interpreting results, recognizing the limitations of relying on official records as a measure of recidivism or revictimization.

Intimate Partner Violence Risk Assessments

In general, actuarial (i.e., based on measured data, weighting, and formulas) risk assessments assess the degree of “risk” that an individual exhibits for a future event or outcome (e.g., medical diagnosis, crime recidivism), often represented by percentages or predetermined levels (American Psychological Association, n.d.). Numerous risk assessments specific to identifying the risk for future abuse or homicide in contexts of IPV have been created, with varying degrees of accuracy and reliability (Fanarraga et al., 2022; Graham et al., 2021; van der Put et al., 2019). Looking across multiple studies with various instruments, IPV specific risk assessment instruments on average

Pretrial Services & Intimate Partner Violence Cases

A Review of the Literature and Recommendations for Practice

predict any IPV-related rearrests (not exclusive to the pretrial period) in instances of IPV with moderate accuracy, though accuracy ranged from small to moderate effects depending on the specific measure (Fanarraga et al., 2022; Graham et al., 2021; van der Put et al., 2019). In a meta-analysis of 28 IPV risk assessment tools analyzed across 48 studies, Fanarraga et al. (2022) reported an average Area Under the Curve (AUC) estimate of 0.63 across all assessments, indicating that on average the assessments correctly predicted an individual's risk for IPV-related rearrests in general and during the pretrial period in approximately 63% of cases (AUC estimates for specific assessment tools ranged from 0.56 to 0.71). Furthermore, stronger effects were found for studies incorporating continuous monitoring of the IPV risk assessment fidelity, or how well the instrument's recommendations and administration are adhered to over time. Overall, in addition to general risk assessments, this suggests that IPV-specific risk assessments may be useful and effective in evaluating risk for IPV-related rearrests in IPV cases during the pretrial period (compared to no risk assessment use), especially if service providers continuously monitor their fidelity to the instruments' recommended use and guidelines.

Like all risk assessments, IPV specific risk assessments have limitations. First, most of the evidence across specific IPV risk assessment tools are from community-based settings (e.g., clinical practice) compared to legal system contexts, and only a few included pretrial populations and focused exclusively on the pretrial period (Fanarraga et al., 2022). Second, most studies focused on individuals identifying as men in heterosexual relationships (or the reported gender of the survivor was unknown) (Graham et al., 2021), with very few specifically investigating IPV risk assessment use with individuals who identify as women, are gender diverse, or are in same-sex relationships. Further, because of the limited representation of diversity in the studies' samples, limited studies have been able to rigorously evaluate potential gender or racial bias in these assessments (Fanarraga et al., 2022; Garcia-Vergara et al., 2022; Graham et al., 2021). This lack of research limits the understanding of how these tools perform across diverse contexts (e.g., whether they consistently or variably predict risk based on context, gender identity, race, or relationship). Further research is needed to better assess potential racial and gender bias and their use with individuals who identify as women or LGBTQ.

Common Pretrial Strategies & Available Evidence in Intimate Partner Violence Contexts

Arrest and Pretrial Detention in Jail

While some evidence shows mixed results, most evidence does not suggest that arrests (whether mandatory or at police discretion) or pretrial detention are more effective at reducing reoffending compared to other interventions or conditions (Bridgett, 2020; Erez et al., 2012; George, 2012; Kingsnorth, 2006; Trevena & Poynton, 2016; Xie & Lynch, 2017). Instead, some evidence suggests individuals detained without other treatment or conditions may have increased recidivism rates (George, 2012). This may be due to specific impacts of incarceration on individuals, such as disruption to social support networks or community and economic disengagement. Ample evidence exists that supports relations between future violence engagement post-incarceration and experiences during incarceration, such as family disconnection, estrangement, and distrust

Pretrial Services & Intimate Partner Violence Cases

A Review of the Literature and Recommendations for Practice

(Stansfield et al., 2022), which may contribute to recidivism rates for individuals detained pretrial for IPV offenses. Furthermore, evidence shows similar rates of rearrests across legal interventions (e.g., mandatory arrests, protection orders, detention), suggesting that reoffending is more strongly related to personal characteristics than to specific legal interventions (Broidy et al., 2016). However, the available literature is limited overall regarding IPV and rates of rearrests committed by woman-identifying individuals (compared to man-identifying individuals) (Graham et al., 2021; Fanarraga et al., 2022), though available evidence does not suggest differences in effectiveness of arrests or detainment based on gender.

Protection Orders

Protection orders (e.g., no-contact orders, orders prohibiting returning to shared spaces) are commonly used in IPV cases as a means of protecting survivors from further abuse. Some evidence exists suggesting protection orders can be effective at reducing re-abuse, though rates of protection order violations and rearrests vary widely depending on the study (Cordier et al., 2021). Activists have argued for the use of protection orders in instances of IPV due to the flexibility they allow survivors in how they approach the case, but also call for increased support from legal systems in reducing barriers to and assisting survivors through the process of implementing a protection order (see Harper et al., 2019 for a review). The available evidence suggests that the effectiveness of protection orders depends on numerous other factors, such as ease of access and structural barriers preventing the survivor from seeking or implementing the order, legal follow-up on violations of the orders and survivors' perceptions of violations, and personal and relational dynamics (Broidy et al., 2016; Cordier et al., 2021; Hefner et al., 2022; Messing et al., 2021; Sullivan et al., 2021). Emerging research suggests that one area where protection orders may be effective is in reducing risk for intimate partner homicide, specifically when the removal of a firearm is explicitly included in the protection order (Lyons et al., 2021). However, effectiveness of state and federal firearm prohibitor laws has also been shown to vary based on individual characteristics such as race (Wallin et al., 2022) and challenges exist in enacting firearm restrictions based on the laws (see Cloud et al., 2022 for a review).

Electronic Monitoring (EM)

The majority of research on EM focuses on offenses generally, with few studies focusing on IPV cases specifically (Grommon et al., 2017). Limited evidence for EM shows reductions in reoffending/rearrest in IPV cases (Erez et al., 2012), though some studies show no difference in recidivism outcomes when compared to case management without EM (Grommon et al., 2017). Further, EM has been argued as a "short-term" response to IPV that may only be effective under specific conditions (e.g., determination of the individual to cause harm, effectiveness of EM supervising agents in responding to violations) (Harper & Gover, 2020). Regardless of the lack of supporting evidence, EM continues to be common practice in IPV cases. Recognizing this,

Pretrial Services & Intimate Partner Violence Cases

A Review of the Literature and Recommendations for Practice

researchers and practitioners recommend EM be reserved for use in significant threats to safety due to its increased cost, limited availability, limited effectiveness, and increased invasion of individual liberties (e.g., stigma, shame, invasion of privacy, restriction of movement/confinement) (Kaylor, 2022; Sardar, 2019; Sicilia, 2022).

Mandatory Orders to IPV Counseling/Interventions

Various community-based interventions for individuals who have caused harm in IPV cases have shown some effectiveness in reducing re-abuse and recidivism, such as cognitive-behavioral therapies and Duluth Model approaches (Eckhardt et al., 2013; Karakurt et al., 2019; Travers et al., 2021), though outcomes vary depending on numerous factors (e.g., specific intervention, relationship factors, personal characteristics of the individual such as comorbidity with substance or alcohol misuse). While existing research is limited, compared to traditional “one size fits all” interventions, a recent meta-analysis by Travers et al. (2021) suggests that interventions based on a Risk-Need-Responsivity framework (Bonta & Andrews, 2016) may be effective in instances of IPV. However, limited studies have specifically evaluated intervention effectiveness in situations of mandatory orders to IPV treatment (especially during pretrial), and the evidence that does exist is insufficient to suggest they are indeed effective (Wilson et al., 2021). As with other similar mandatory conditions involving treatment or assessment, multiple legal considerations exist when considering mandatory orders to IPV treatment/interventions in the case of pretrial. Namely, since the individual has not yet been found guilty, orders to treatments or interventions as part of pretrial release conditions have been challenged as conflicting with an individual’s presumption of innocence (Sicilia, 2022). Discretion is recommended when considering mandating IPV counseling/interventions as part of the pretrial process, aiming to balance survivor and public safety with individual liberties and presumption of innocence.

Temporary Incarceration Holds and “Cooling off” Periods

Survivor advocates argue that the period at and immediately following a survivor’s separation from the individual committing harm in IPV cases is the most dangerous for the survivor and may pose a critical window for survivor protection and connecting survivors to supportive services (Gutenplan, 2020). To address this immediate safety concern, multiple states have allowed for the use of temporary holds, or a “cooling off” period (Gutenplan, 2020; Sicilia, 2022). Lengths of these holds vary from state to state, with some having a mandatory 6 hours and others requiring 72 hours. However, currently there is no research evaluating the use of temporary holds in reducing IPV rearrests or re-abuse. While longitudinal research documenting rearrests over time in IPV cases does exist, many studies capture rearrests broadly over wide spans of time (e.g., 6 months, 1 year, 5 years), with few studies assessing the days or even hours post-initial arrest. Notably, two longitudinal studies – one based in the U.S. and one in Australia - suggest that rearrests for both future IPV-related and non-IPV related offenses occurs as early as 3 to 14 days after the initial

Pretrial Services & Intimate Partner Violence Cases

A Review of the Literature and Recommendations for Practice

incident (Richards et al., 2014 and Morgan et al., 2019, respectively), though these reflect a small number (roughly 5%) of cases (Morgan et al., 2019). As discussed above, detention pretrial in general has shown mixed effectiveness suggesting that issuing very brief temporary holds would show similar mixed results in preventing rearrests or re-abuse. Further, the use of temporary holds would conflict with the individual's right to the presumption of innocence. Considerations of utilizing temporary holds should balance survivor immediate safety and preferences (i.e., to detain or not) with an individual's presumption of innocence.

Survivor-Focused Criminal Legal System Interventions

While survivor-focused IPV interventions in community-based settings have shown promising outcomes (Eckhardt et al., 2013; Trabold et al., 2018), few studies exist that document the effectiveness for criminal legal system-based survivor-focused interventions, such as those promoting survivor education (e.g., information on how to obtain a protection order, definitions of stalking) and awareness of their legal rights and court processes (e.g., alerts regarding release; EM location alerts) (e.g., Brame et al., 2015). Survivor-focused interventions range widely in length and intensity, from a phone call from a pretrial services agency regarding brief education or referrals, to in-depth, evidence-based therapies. Survivor-focused criminal legal system interventions may prove an effective pathway for preventing future arrests or re-abuse as they shift the focus to supporting and empowering the survivor and promoting their use of safety planning strategies, which in turn avoids violating an individual's presumption of innocence inherent in many of the other commonly utilized IPV approaches. For example, one study comparing the use of mandatory prosecution compared to a therapeutic jurisprudence (e.g., survivor-empowerment approaches) model in IPV cases across two jurisdictions found that survivors were significantly less likely to experience revictimization 6 months after case disposition in the jurisdiction enacting the therapeutic jurisprudence model (Finn, 2013). Similarly, Xie and Lynch (2017) report significant reductions in revictimization when individuals are involved with IPV support services (whether self-initiated or facilitated by police), compared to arrests. However, more research is needed evaluating survivor-focused approaches and interventions in criminal legal system settings.

IPV Courts

Similar to other specialized problem-solving courts, IPV courts (also referred to as domestic violence courts) aim to integrate therapeutic approaches with the criminal legal system in addressing IPV cases (Gover et al., 2021). IPV courts aim to hold the individual who has harmed accountable and maximize safety for the survivor through use of assessments, treatment, court compliance, and connections to community services. To date, few studies have rigorously evaluated the effectiveness of IPV courts, and the evidence that does exist is unclear, with some studies identifying decreases in re-abuse while others document increases (Cissner et al., 2015; Gover et al., 2021). Overall, IPV courts may be promising, given their common use of established effective legal

Pretrial Services & Intimate Partner Violence Cases

A Review of the Literature and Recommendations for Practice

practices (e.g., shorter court processing times, connections to community services, and use of risk-need-responsivity models) (Collins et al., 2021; Gover et al., 2021; Tutty & Babins-Wagner, 2019), but much more research is needed.

Summary

Due to survivor and public safety risk involved in IPV cases, pretrial reform efforts encounter challenges when considering pretrial practices in IPV contexts. Overall, jurisdictions across the U.S. are enacting a wide variety of strategies in order to address IPV cases during pretrial (see Appendix A for recommended practices related to pretrial). Strategies utilized on average have little to no empirical support, with many studies reporting limited or mixed effectiveness or no research existing to date. A handful of these strategies may be promising in reducing the likelihood of IPV-related rearrests and revictimization, namely the use of evidence-based risk assessment tools, survivor-focused approaches, IPV courts, and protection orders, though continued empirical research is needed to understand for whom and when these strategies are effective as well as best practice guidelines for their implementation. Nevertheless, considerations and challenges remain regarding how to best implement these strategies, balancing safety with individuals' right to the presumption of innocence and maintaining the use of least restrictive conditions of release. Further rigorous research is needed that includes diverse samples (e.g., gender, race, relationship context), utilizes comprehensive definitions and assessments of recidivism (e.g., rearrest, reconviction, revocation), and that occurs in a variety of contexts (e.g., community-based vs. criminal legal system-based) that specifically occur during the pretrial period.

Additional Resources

- [Association of Prosecuting Attorneys: Domestic Violence Programs](#)
- [Association of Prosecuting Attorneys \(2021\) Position Statement on Pretrial Release in Domestic Violence Cases](#)
- [The Duluth Blueprint for Safety – Chapter 7: Pretrial and Probation, Arrowhead Regional Corrections, Duluth Office](#)
- [Center for Court Innovation – Advancing Alternative Legal Responses to Intimate Partner Violence in the Era of Pretrial Reform \(Naraharisetti et al., 2022\)](#)
- [Checklist for Implementation of IPV Risk Assessment \(Fanarraga et al., 2022, p.32\)](#)
- [Pretrial Strategy for Handling Intimate Partner Violence Cases: An Innovation Fund Case Study from Buncombe County, North Carolina \(Duane & Vasquez-Noriega, 2018\)](#)
- [Prosecutor-Led Diversion Toolkit: Planning a Domestic Violence PLD Program](#)

Pretrial Services & Intimate Partner Violence Cases

A Review of the Literature and Recommendations for Practice

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Pretrial Services & Intimate Partner Violence Cases

A Review of the Literature and Recommendations for Practice

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Pretrial Services & Intimate Partner Violence Cases

A Review of the Literature and Recommendations for Practice

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Pretrial Services & Intimate Partner Violence Cases

A Review of the Literature and Recommendations for Practice

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Pretrial Services & Intimate Partner Violence Cases

A Review of the Literature and Recommendations for Practice

Appendix A

Recommendations for Pretrial Service Agencies*

- Incorporate survivor-involved strategies that balance survivor protection and voice while mitigating re-traumatization and the survivor's contact and conflict with the individual who has caused harm (e.g., maintaining anonymity of survivor-sourced information/reports, survivor's choice to attend court appearances). These include but are not limited to:
 - Facilitating survivor's contact with an IPV advocate as early in the process as possible, with continued advocate presence throughout the process
 - Using survivor completed risk assessments
 - Emphasizing survivor support, resource access, and education/awareness of IPV and legal options
 - Consulting with survivors on conditions imposed that directly affect the survivor (e.g., no contact orders, residency restrictions)
 - Connections to programs that provide resources/referrals for survivors and support survivor independence from the individual who has caused harm
- Implementing required IPV continuing education for legal-affiliated individuals (e.g., judges, prosecutors, public defenders, pretrial service coordinators, etc.).
- Thorough collection of information specific to the case should be collected and presented as a report to the judge, including information gathered from the survivor and the individual who has caused harm, including general and IPV-specific risk information.
- Programs looking to implement an IPV-specific risk assessment should incorporate plans for continuous monitoring of validity, fidelity, and potential racial and gender bias. Currently, measures with the most evidence for their effectiveness include (Fanarraga et al., 2022, p. 26):
 - [Domestic Violence Risk Appraisal Guide](#) (DVRAG; Hilton, 2021; Hilton et al., 2008)
 - [Level of Service Inventory – Revised](#) (LSI-R; Andrews & Bonta, 2001; Schmidt et al., 2017; Vose et al., 2008)
 - [Ontario Domestic Assault Risk Assessment](#) (ODARA; Hilton, 2021; Hilton et al., 2021)
 - [Spousal Assault Risk Assessment](#) (SARA; Helmus & Bourgon, 2011; Kropp et al., 1998)
- Implementing no-contact orders when appropriate and limited use of temporary holds when deemed necessary (depending on case-specific details) during risk assessment and case-specific data collection to ensure survivor immediate safety and limit potential influence on data collection and survivor reporting prior to an individual's initial appearance in court.
- If Electric Monitoring is to be used, it should only be considered if also imposing residence or movement restrictions and when there are no other ways in which to ensure survivor safety.
- Continued review of the release conditions and their efficacy and appropriateness, with modifications to the conditions or release modified to better fit case-specific needs/situations.

**Adapted from Sicilia (2022) and Association of Prosecuting Attorneys (2021). These recommendations are based on those provided by the referenced authors and current research and are not necessarily the recommendations nor views of the Bureau of Justice Information & Analysis or the Wisconsin Department of Justice.*