

Advancing Alternative Legal Responses to Intimate Partner Violence in the Era of Pretrial Reform

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Within the context of a national movement toward pretrial reform—including reduced reliance on pretrial detention and money bail, and a push for data-driven decision-making—intimate partner violence (IPV)¹ poses a challenge to jurisdictions across the country seeking to weigh the goals of reform against potential risks to survivor safety.² The current study explores how jurisdictions already engaged in pretrial reform efforts maneuver this balance in their day-to-day operations. Specifically, we draw on a survey of 44 jurisdictions across the United States and five in-depth case studies to examine which components of general pretrial reform efforts have been adapted for application in IPV cases, what specialized practices have emerged, and how jurisdictions contend with the tension between ensuring the rights of the accused prior to any conviction and promoting survivor autonomy and safety.

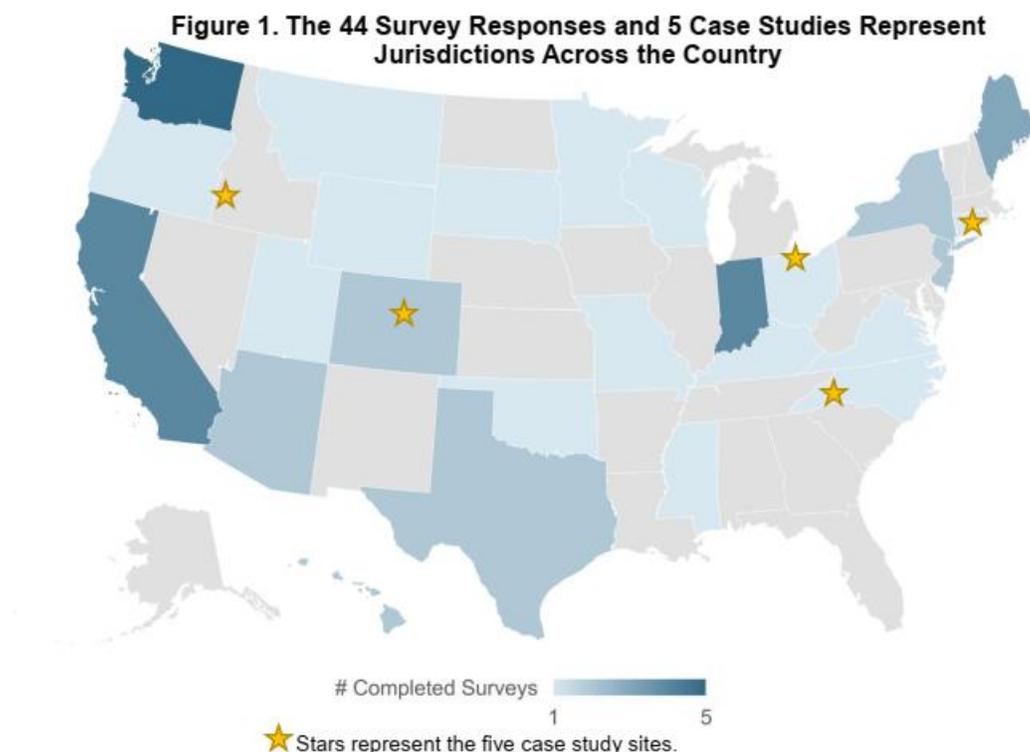
The Critical Pretrial Period

Criminal legal system responses to IPV allegations at the pretrial stage (i.e., after police have established probable cause and until a case is resolved by the court) are particularly critical for several reasons. First, there may be an increased risk of violence immediately following an arrest; many survivors cite fear of reprisal as a reason for not reporting violence.³ Second, early dismissal of IPV cases is still more common than not in many jurisdictions.⁴ Therefore, the pretrial period may be the *only* interaction with the criminal legal system for those involved in IPV cases. Negative experiences at this point can have adverse impacts on both survivors and those charged with IPV, including loss of jobs and income, exposure to trauma, family upheaval, and distrust for the criminal legal system. Finally, one of the central efforts of the general pretrial reform movement has been to minimize the use of pretrial detention except when necessary to safeguard public safety or ensure that those charged return to court. Decision-makers in many jurisdictions fear that release in cases of alleged IPV by definition comes at great risk to public safety—specifically, the safety of IPV survivors. However, some jurisdictions are considering the limitations of traditional pretrial approaches for preserving survivor safety and have viewed the current movement as an opportunity to consider alternatives to arrest and pretrial detention in IPV cases. Instead, some are exploring approaches thought to better address underlying causes of involvement with the criminal legal system in the first place—including opportunities for therapeutic interventions for individuals charged with violence and/or restorative and trauma-informed responses for both survivors and those charged with IPV.⁵

The Sample

Survey responses came from a diverse range of rural jurisdictions (33%), small cities (34%), and large urban centers (33%) across the country. Case study sites also came from geographically diverse jurisdictions: Ada County, Idaho; Buncombe County, North Carolina; Connecticut State; Denver (city and county), Colorado; and Lucas County, Ohio (Figure 1).

Survey recruitment efforts targeted agencies and individuals thought likely to have the most information about pretrial practices: pretrial service agencies and prosecutors' offices. Responses reflect these efforts; two-thirds of responses came from one of these two agency types. Victim advocates were the only other sizeable respondent group (14%).



IPV-Specific Practices

Survey respondents reported on specific pretrial practices in cases involving IPV, including when and how individuals charged with IPV are typically released, common conditions of release in IPV cases, and resources used to inform decision-making for judges or prosecutors (including risk assessment and victim input through victim advocates). Unless otherwise noted, case study practices were similar to those reported in surveys.⁶

Results from the research suggest few specialized pretrial responses for IPV cases. Responding jurisdictions largely reported continued adherence to the status quo (e.g., initial detention, reliance on money bail, protective orders, collaboration with advocates to provide survivor support), with a handful of specialized practices emerging. It is worth noting that there is scant evidence to support the use of status quo pretrial practices generally, and in IPV cases, the lack of evidence to support these practices is no exception. Further research is needed to determine the advisability of application to cases involving IPV.

Release Timing In general, the initial pretrial responses to IPV cases are more restrictive than in non-IPV cases—i.e., less likely to be released by police prior to arrest, booking, or first appearance. Most commonly, those charged with IPV are not released until after their first court appearance.

One limitation to circumventing arrest is the existence of mandatory arrest policies in IPV cases in many jurisdictions.

In the two sites without mandatory arrest policies (Ada and Buncombe Counties), interviewees report that misdemeanor IPV charges rarely result in an arrest, due to the particulars of law enforcement policies or practices in those sites.⁷

Mechanism for Release Three-quarters of jurisdictions report regularly using secured (“money”) bond in both IPV and non-IPV cases, despite widespread pretrial reform efforts across the responding jurisdictions. Responding jurisdictions are less likely to regularly release IPV cases through the least restrictive conditions compared to non-IPV cases (i.e., release on recognizance or unsecured bond).

Release Conditions Following initial bail hearings, conditions of release look remarkably similar in IPV and non-IPV cases. Exceptions in IPV cases include greater imposition of protective orders and firearms relinquishment orders.

Interviewees across case study sites indicated interest in the use of electronic monitoring to supplement pretrial supervision in hopes that the technology might enhance survivor safety. However, electronic monitoring and GPS do not significantly improve outcomes in general pretrial reform efforts⁸ and the limited research with IPV populations shows mixed results.⁹

NOTES FROM THE FIELD: SPECIALIZED PRETRIAL DIVERSION

The State of Connecticut has adopted a statewide pretrial diversion program for IPV cases. The nine-week abusive partner intervention program is available to those facing their first misdemeanor-level IPV charge.

Those who complete the program, avoid re-arrest, and comply with protective orders and other conditions may be eligible to have their charges dismissed after 13 months.

NOTES FROM THE FIELD: TRIAGE RESPONSES

In **Connecticut**, responding police officers administer an 11-question lethality assessment with survivors. Those situations deemed high risk initiate an immediate triage response. Officers connect high-risk survivors to the local family justice center and/or victim advocate resources while still on scene. **Buncombe** and **Lucas** Counties apply a similar approach: responding officers use an IPV-specific lethality assessment and refer high risk survivors to local victim service providers and/or the family justice center while on site.

In **Denver**, advocates collaborate in a triage team with the reported dual goals of ensuring timely services for survivors and accountability for the accused. The group meets three times weekly to review high-risk cases from the past 24-hours. The team brings together advocates from across the system to share information, discuss survivor needs and delegate outreach, and identify survivors deemed to be at high risk for serious violence or lethality.

IPV Risk Assessment Only eleven of the responding jurisdictions report utilizing an IPV-specific risk assessment tool to inform pretrial practice. Jurisdictions seem open to implementing risk assessments; 89% of those responding report that pretrial decisions are informed by a *general* risk assessment tool. The limited application of IPV specific tools may suggest a need for additional guidance on and access to IPV assessments.¹⁰

Two case study sites use an IPV-specific risk assessment tool to inform detention and supervision decisions. Connecticut uses the revised Domestic Violence Screening Instrument (DVSI-R) coupled with the Supplement Risk Instrument (SRI), and Denver uses the Ontario Domestic Assault Risk Assessment (ODARA) to inform pretrial decisions.

Victim Advocates The vast majority of responding jurisdictions report connecting survivors to advocates as a matter of course. While not an area probed in the survey, victim advocates in case study sites report regularly linking survivors with resources (e.g., emergency housing, civil legal services). Advocates do not make direct recommendations for release or conditions of release. However, their communication on survivors' behalf may inform others' decisions regarding appropriate charges and release.

Recommendations

Given resource discrepancies and differential support for pretrial reform across the country, the recommendations that follow will be more feasible in some jurisdictions than in others. Nonetheless, these recommendations are informed by survey and case study results and pose important areas for consideration and goal-setting when developing pretrial approaches to IPV.

1. Center Survivor Voices Either by directly engaging survivors themselves or through community-based advocates who can accurately speak on their behalf, jurisdictions can engage in efforts to meaningfully integrate the voices of survivors in developing local pretrial options. (See sidebar, incorporating survivor voices.)

2. Assess for IPV-Specific Risk & Needs Jurisdictions should select a tool that is not only validated and reliable,¹¹ but that is sustainable in their community (e.g., based on available staff to administer assessments, cost of the tool).

3. Develop Robust Service Options Jurisdictions should consider options that take into account the risks and needs of those charged, as well as the general evidence base regarding what leads to success in treatment.

Beyond voluntary pretrial diversion programs offered to the accused, jurisdictions can make use of local service resources by integrating referrals to community-based providers (e.g., for job training and employment services, housing assistance, financial literacy, substance use treatment, trauma-informed therapy, restorative justice). While *mandating* such services is not necessarily feasible or appropriate in the pretrial stages of a case, promoting access to high-quality services stands to potentially benefit all parties facing IPV involvement.

4. Minimize the Footprint of the Criminal Legal

System Arrest and initial detention—the most frequently applied response reported by the majority of jurisdictions surveyed—will likely continue to be the most appropriate response in some IPV situations. We recommend that jurisdictions strive to (a) detain only those at the highest risk for repeated violence or failure to appear and (b) provide high-quality substantive programming relevant to individuals’ specific needs during the detention period.

Where initial detention is not essential for safety or to ensure appearance in court, jurisdictions might consider an approach that marries law enforcement responses with

NOTES FROM THE FIELD: INCORPORATING SURVIVOR VOICES

Beyond meeting the immediate needs of survivors during the pretrial period, case study sites found ways to incorporate survivor voices throughout the process.

In Ada County, remote court appearances were introduced out of necessity in response to COVID-19. Stakeholders reflected that remote appearances facilitated greater engagement of survivors and advocates in the process.

In Buncombe County, a local non-profit holds monthly survivor meetings to elicit ongoing feedback, hold system players accountable, and encourage survivors to advocate for systemic change.

NOTES FROM THE FIELD:
WRAP-AROUND ADVOCACY

Three sites use wrap-around service hubs to connect survivors to advocates and services. In **Buncombe** and **Ada**, this takes the form of a family justice center; in **Denver**, the Rose Andom Center similarly brings together both system- and community-based services in a single-stop location, including access to civil legal services, with additional off-site services available for specific needs.

embedded community-based advocates, potentially enhancing survivor safety while avoiding the collateral consequences and trauma of custodial arrest.¹²

5. Consider Culture Negative experiences with the criminal legal system have the potential to leave survivors re-traumatized.¹³ Historic over-policing and disproportionate use of carceral responses in BIPOC¹⁴ and immigrant communities make choices around involving the criminal legal system particularly fraught for survivors and those charged with IPV in these communities.¹⁵

Despite only being mentioned in one of the case study sites (Buncombe County), we recommend that sites promote culturally responsive services and policies. Services that can engage with individuals' race, ethnicity, gender identity, cultural background, sexual orientation, language, disability, and community trauma are theorized to enhance engagement and applicability.¹⁶

6. Create Sustainable, Quality Training Materials A quarter of survey respondents identified insufficient training as a barrier to implementing pretrial reform in IPV cases. Additionally, a variety of interviewees across the case study sites mentioned insufficient training as an ongoing need. We recommend that jurisdictions prioritize regular, high-quality training specific to issues of intimate partner violence, including but not limited to: dynamics of IPV, access to justice, self-represented litigants, working with people who cause harm, trauma-informed practice, risk-need-responsivity, risk and lethality assessment.

7. Build a Cross-Disciplinary Collaborative While not always explicitly taking the form of a coordinated community response,¹⁷ interviewees across the case study sites spoke of the importance of collaboration across system- and community-based agencies in promoting community and survivor safety during the pretrial period. Benefits of cross-agency collaboration include the potential for information-sharing—including immediate notification of release and violations, problem-solving in real time, and training. Where a coordinated community response already exists, jurisdictions may be easily able to incorporate pretrial considerations to regular collaborative discussions.

Endnotes

- ¹ The terms “intimate partner violence” and “domestic violence” are often used interchangeably. Throughout this brief, we opt for the former term, as it less ambiguously excludes violence between non-intimate family members.
- ² Both the terms “survivor” and “victim” are frequently used to describe those who have been harmed through IPV. We have opted for the terminology of survivor throughout this brief, except when referring specifically to advocates, who have historically been described as victim advocates.
- ³ Reaves, B. A. 2017. *Police Response to Domestic Violence, 2006-2015*. Special Report, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. <https://bjs.ojp.gov/content/pub/pdf/prdv0615.pdf>.
- ⁴ Garner, J. H., & Maxwell, C. D. 2009. “Prosecution and Conviction Rates for Intimate Partner Violence.” *Criminal Justice Review* 34(1):44–79. doi:10.1177/0734016808324231.
- ⁵ McKay, T., Bir, A., Lindquist, C., Steffey, D., Keyes, V., & Siegel, S. Y. 2013. *Addressing Domestic Violence in Family Strengthening Programs for Couples Affected by Incarceration*. ASPE Research Brief, U.S. Department of Health and Human Services. Accessed at https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/139246/rpt.pdf; Bonomi, A., Zeoli, A. M., Shanahan, S., & Martin, D. 2021. “Saving Lives: Working across Agencies and Individuals to Reduce Intimate Homicide among those at Greatest Risk.” *Journal of Family Violence* 36:523-526. doi:10.1007/s10896-021-00266-5.
- ⁶ For more information on practices observed by the case study sites, see our companion piece, *Pretrial Responses to Intimate Partner Violence: Notes from the Field*.
- ⁷ In Idaho, law enforcement must witness a crime to make an arrest in misdemeanor-level crimes, including IPV. In Buncombe County, interviewees reported that law enforcement has interpreted a requirement for probable cause to mean that they cannot make an arrest without visible physical harm to one of the parties. Parties can file a request with the court for an arrest to be made after the initial law enforcement response.
- ⁸ VanNostrand, M., Rose, K., & Weibrecht, K. 2011. *State of the Science of Pretrial Release Recommendations and Supervision*. Rockville, MD: Pretrial Justice Institute; Belur, J., Thornton, A., Tompson, L., Manning, M., Sidebottom, A., & Bowers, K. 2017. *A Systematic Review of the Effectiveness of the Electronic Monitoring of Offenders*. London: What Works Centre for Crime Reduction. Accessed at <https://perma.cc/K6LH-3R6F>; Sainju, K. D., Fahy, S. Hamilton, B. A., Baggaley, K., Baker, A., Minassian, T., & Filippelli, V. 2018. “Electronic Monitoring for Pretrial Release: Assessing the Impact.” *Federal Probation* 82(3):3-10.
- ⁹ Erez, E. & Ibarra, P. R. 2004. “Electronic Monitoring of Domestic Violence Cases: A Study of Two Bilateral Programs.” *Federal Probation* 68(1):15-20.
- ¹⁰ See Fanarraga, I., Yang, J., & Koetzle, D. 2021, *forthcoming*. *Intimate Partner Violence and Risk Assessment: A Systematic Review*. Draft report submitted to Arnold Ventures.
- ¹¹ For more information on which assessment tools have been previously validated (and for which populations), see See Fanarraga, I., Yang, J., & Koetzle, D. 2021, *forthcoming*. *Intimate Partner Violence and Risk Assessment: A Systematic Review*. Draft report submitted to Arnold Ventures.
- ¹² Jäggi L.J., B. Mezuk, D.C. Watkins, & J.S. Jackson. 2016. “The Relationship between Trauma, Arrest, and Incarceration History among Black Americans: Findings from the National Survey of American Life.” *Society and Mental Health* 6(3):187-206. doi:[10.1177/2156869316641730](https://doi.org/10.1177/2156869316641730).
- ¹³ Walker, L. E. A., & Conte, C. B. 2017. “Women, Domestic Violence, and the Criminal Justice System: Traumatic Pathways. Pp. 48-74 in *Gender, Psychology, and Justice: The Mental Health of Women and Girls in the Legal System*, edited by C. C. Datchi & J. R. Ancis. New York, NY: New York University Press; Katirai, N. 2020. “Retraumatized in Court.” *Arizona Law Review* 62:81-124.

¹⁴ i.e., Black, indigenous, and people of color.

¹⁵ Reina, A. S., Lohman, B. J., Maldonado, M. M. 2013. “‘He Said They’d Deport Me’: Factors Influencing Domestic Violence Help-Seeking Practices Among Latina Immigrants. *Journal of Interpersonal Violence* 29(4):593-615; Smith, S. G., Chen, J., Basile, K. C., Gilbert, L. K., Merrick, M. T., Patel, N., Walling, M., Jain, A. 2017. *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010-2012 State Report*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.

¹⁶ Bourgon, G., & Bonta, J. 2014. “Reconsidering the Responsivity Principle: A Way to Move Forward.” *Federal Probation* 78(2):3-10. For a discussion of culturally-responsive abusive partner intervention programs, see <https://www.courtinnovation.org/publications/culture-matters-grounding-abusive-partner-intervention-work-culture-and-community>. For other responsivity considerations and services, see <https://www.childwelfare.gov/topics/systemwide/cultural/services/domviolence/>.

¹⁷ A coordinated community response (CCR) model is a multidisciplinary team, typically bringing together stakeholders from the criminal and civil legal systems and community-based organizations to coordinate local responses to IPV. The specific goals and structure of CCRs varies across sites, but generally prioritizes survivor safety and offender accountability. The model originated in Duluth, Minnesota in the 1980s and has since become a standard approach to collaborative system responses to domestic and intimate partner violence.

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