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Support

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Objectives

- Identify and charge crimes co-occurring with intimate partner violence.
- Evaluate evidence and case dynamics to make appropriate charging decisions.
- Hold offenders accountable for the full extent of their criminal activity.

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What co-occurring crimes might you charge in a domestic violence case?



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Additional Offenses

Intimate Partner Sexual Assault

Stalking

Image Exploitation

Violation of Protection Orders

Witness Intimidation

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Case Analysis

What are the elements of the charge?

What physical evidence do we have?

What witnesses are there?

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Questions to Ask

- What are the possible charges?
- Are there crimes you “want” to charge and can’t?
- What’s missing?
- Can you fill in the blanks?
- Can you establish elements even if you ultimately do not have all the physical evidence or all of the witnesses listed?

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What is the benefit of charging co-occurring crimes?

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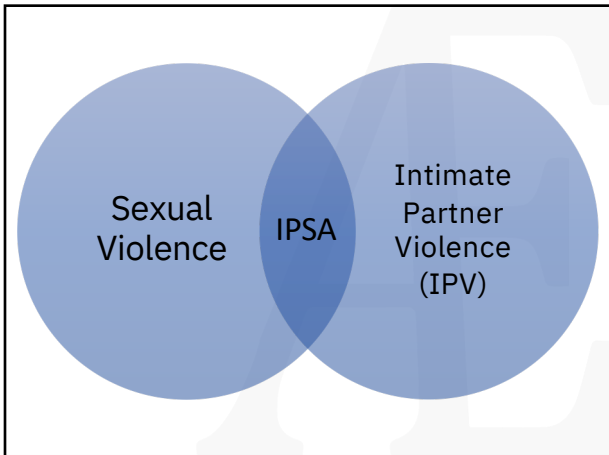
Goals

- Hold offender accountable
- Reflect extent of criminality
- Provide jury with adequate context
- Proceed with or without victim testimony
- Allow for restitution to be assessed and property to be returned
- Detain pretrial, when appropriate

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Forced sex has been found to be a lethality indicator when conducting risk assessments of domestic violence victims.

Jacquelyn C. Campbell, Danger Assessment (2001)
www.ncdsv.org/images/dangerassessment.pdf

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Prevalence

- Two thirds of women who were physically assaulted by an intimate partner were also sexually assaulted
- Nearly 80% of these women were victims of repeated sexual assaults by their intimate partner

LAUREN TAYLOR & NICOLE GASKIN-LANIYAN, SEXUAL ASSAULT IN ABUSIVE RELATIONSHIPS, NAT'L INST. JUST. (2007)

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Key Features

- Occurs in the context of a private relationship
- Accomplished by overt force or current threats or threats based on specific past behavior
- Victims are cognizant of consequences of disclosure

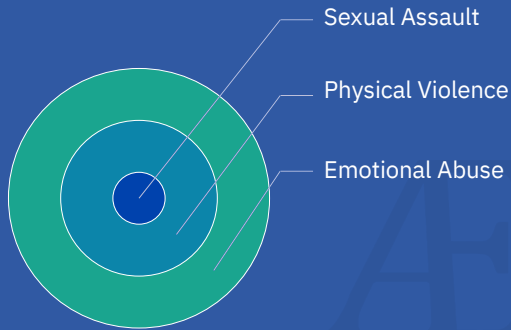
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Contextual Analysis

- Other abusive behaviors inform how offenders exert force or threats
- Comprehensive investigation into defendant's history can uncover additional victims and other acts of violence and sexual violence
- Additional charges may be appropriate
 - Assault and battery
 - Stalking
 - Burglary

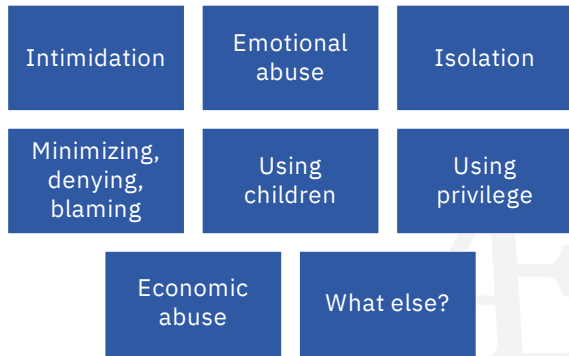
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Intimate Partner Violence



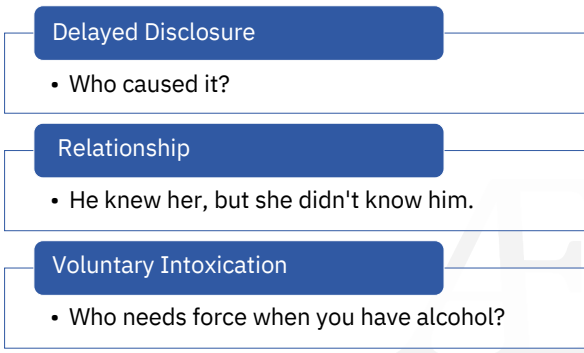
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Tactics

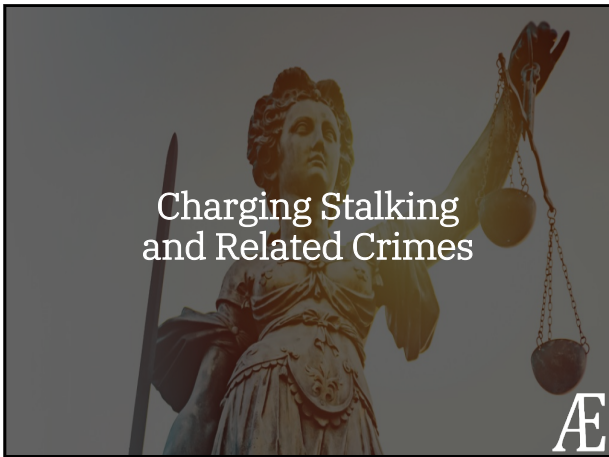


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Reframing the Consent Defense



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Objectives

- Recognize prevalence of stalking in abusive relationships
- Identify elements of stalking statutes and analyze cases in relationship to those elements
- Collaborate to hold offenders accountable and promote victim safety and privacy

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Intimate Partner Stalkers

are more likely to...

- Physically approach the victim
- Be interfering, insulting, and threatening
- Use weapons
- Escalate behaviors quickly
- Reoffend

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In 85% of attempted and 76% of completed intimate partner femicides, stalking occurred in the year prior to the attack.

Judith McFarlane et al., *Stalking and Intimate Partner Femicide*, HOMICIDE STUDIES 3 (1999).

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Reality

Stalking behavior most often occurs in the *context* of an interpersonal relationship

Characteristic of domestic violence relationship, past or present

Every DV case should be evaluated for presence of stalking — ask about proactively in victim interviews

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Analyze Stalking Elements

Pattern of Behavior

Directed at a person

Impact

On a person

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Pattern of Behavior

- Course of conduct
 - Specific number of instances required
 - Over a certain period of time
- Continuity of purpose
- Behavior does not have to be illegal
- Separate incidents may also be charged as separate crimes

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Directed at a Person

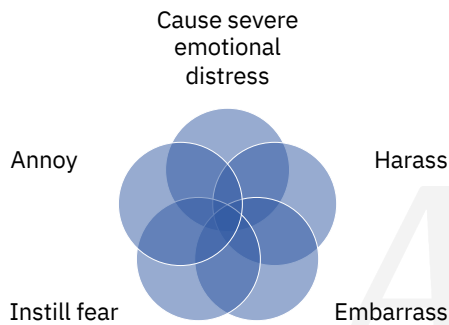
- Stalking can affect multiple people
- Consider multiple stalking charges with different victims
- Online posts may not be “directed at a specific person”

In a civil case, involving a business dispute, the court found that posts to online social media sites were not “directed to” a particular person.

David v. Textor, 189 So. 3d 871 (Fla. Dist. Ct. App. 2016)

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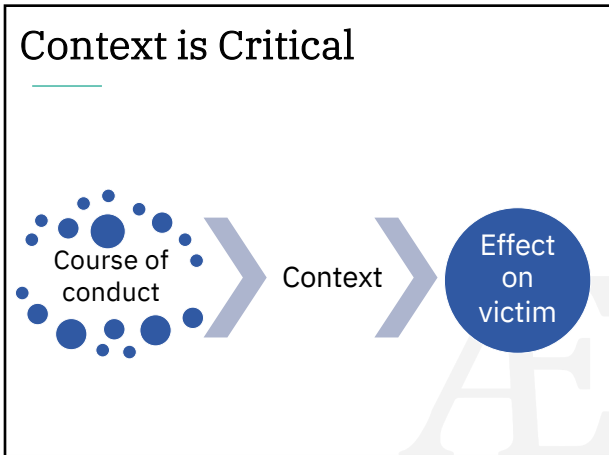
Required Impact



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Stalking-Related Charges

Harassment	Violation of Protection Order	Video Voyeurism	Invasion of Privacy
Extortion	Wiretapping	Unauthorized Use of Tracking Device	Nonconsensual Distribution of Intimate Images
Property Crimes	Burglary	Theft	Animal Cruelty
Computer Crimes	ID Theft	Witness Intimidation	Obstruction of Justice

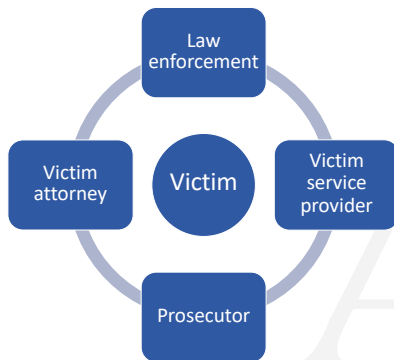
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Charging Strategies

- Articulate stalking as a lethality indicator
- Introduce evidence of “course of conduct”
 - Does not require 404(b) motion
 - Presents more complete picture of relationship
 - Helps to explain victim behavior
- Holds offender accountable for full range of criminal conduct
- May require filing a Statement of Particulars
- Charge stalking against multiple victims

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Collaboration



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Going Forward

- ▶ Conduct thorough interviews to identify evidence of stalking
- ▶ Charge stalking and other co-occurring crimes
- ▶ Collaborate to maximize victim safety and engagement

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Objectives

- Identify and preserve evidence of intimidation.
- Hold offenders accountable for acts of intimidation.
- Litigate admission of victim statements under the doctrine of forfeiture by wrongdoing.

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Urban criminal justice system professionals said more victims were intimidated in domestic violence cases each year than in gang or drug crime.

KERRY HEALEY, VICTIM AND WITNESS INTIMIDATION: NEW DEVELOPMENTS AND EMERGING RESPONSES (National Institute of Justice, Oct. 1995), <https://www.ncjrs.gov/pdffiles/witintim.pdf> (last accessed Dec. 19, 2018)

Domestic violence victims appear at elevated risk for retaliation, especially when living with or economically dependent on the offender, or in contact with the offender because of shared parenting.

DO ARRESTS AND RESTRAINING ORDERS WORK? (Buzawa & Buzawa eds., 1996)

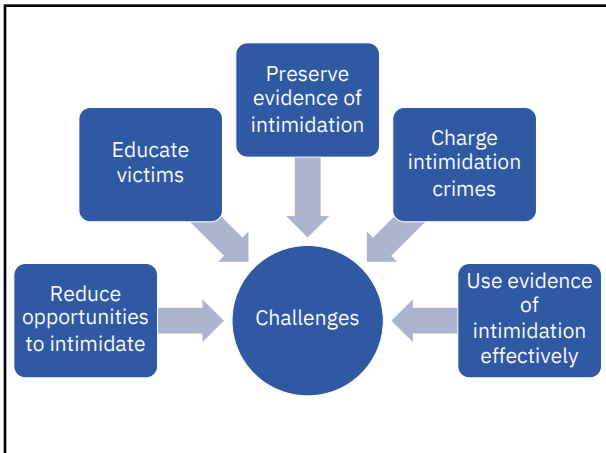
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Prepare for Recantation

Meet Me at the Hill Where We Used to Park



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“Only unsuccessful intimidation ever came to the attention of police or prosecutors.”

KERRY HEALEY, *VICTIM AND WITNESS INTIMIDATION: NEW DEVELOPMENTS AND EMERGING RESPONSES*(National Institute of Justice, Oct. 1995), available at <https://www.ncjrs.gov/pdffiles/witintim.pdf>

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Charge Intimidation Crimes

Obstruction of justice	Witness intimidation or tampering	Perjury-related crimes (attempt, suborn)
Stalking	Harassment	Property crimes

Consider joining additional charges with the original charge

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“The [Forfeiture by Wrongdoing] rule has its foundation in the maxim that no one shall be permitted to take advantage of his own wrong”

Reynolds v. United States, 98 U.S. 145, 159 (1878)

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Going Forward

- Hold offenders accountable for acts of intimidation
- Educate and protect victims
- Make effective use of intimidation evidence

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Do we have to charge everything we can?

When might we not charge?

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New Case Information:

Anthony Adams is charged with

- (1) count of Assault (for 5/20/22 incident at the Adams' residence)
- (1) count of Stalking (for course of conduct surrounding 5/20/22 assault, including Air Tag incident)
- (2) counts of Witness Tampering (for jail phone calls to Eva and Maggie)

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Going Forward

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Evaluate evidence and case dynamics to make appropriate charging decisions.

Hold offenders accountable for the full extent of their criminal activity.

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