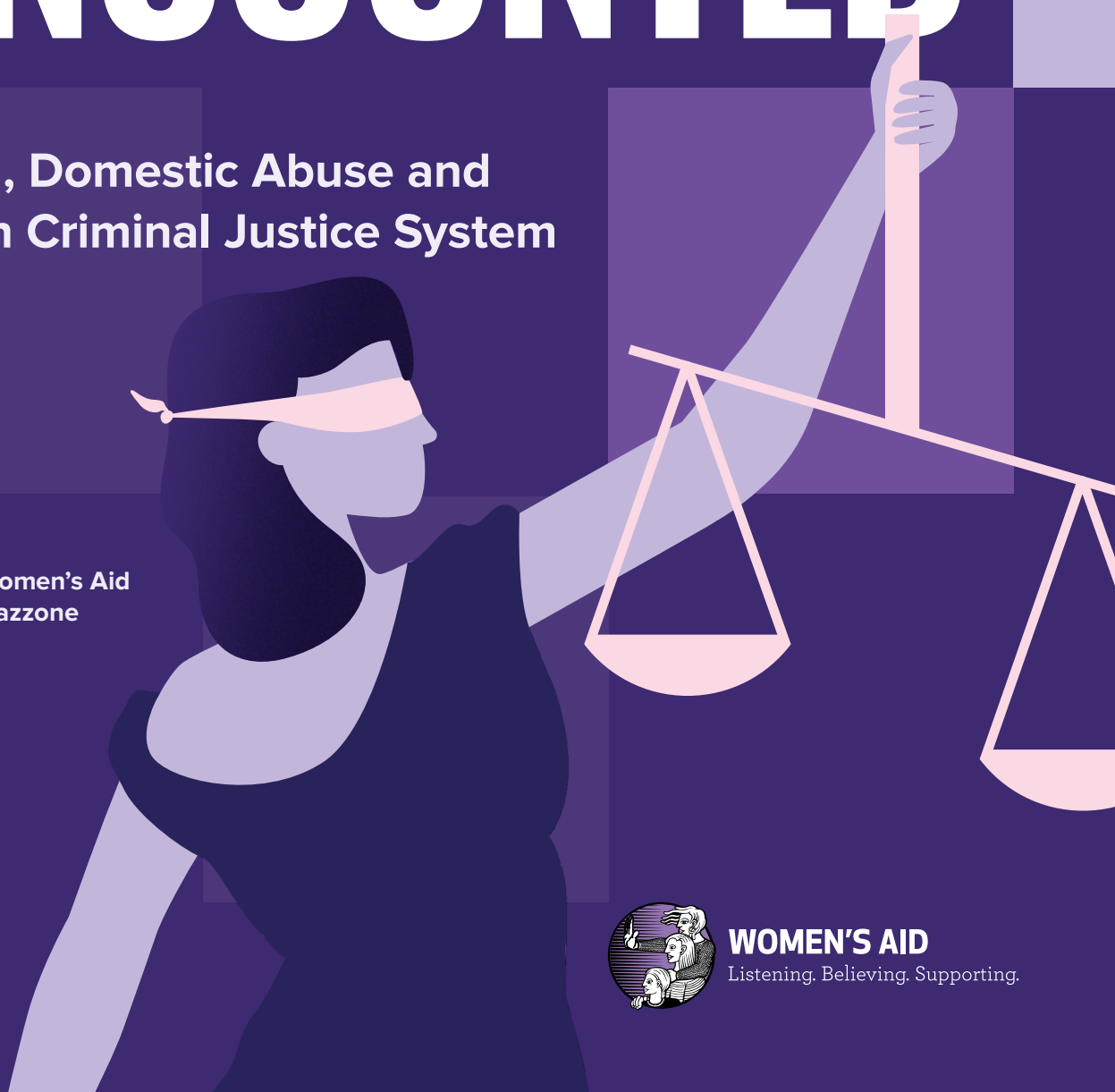


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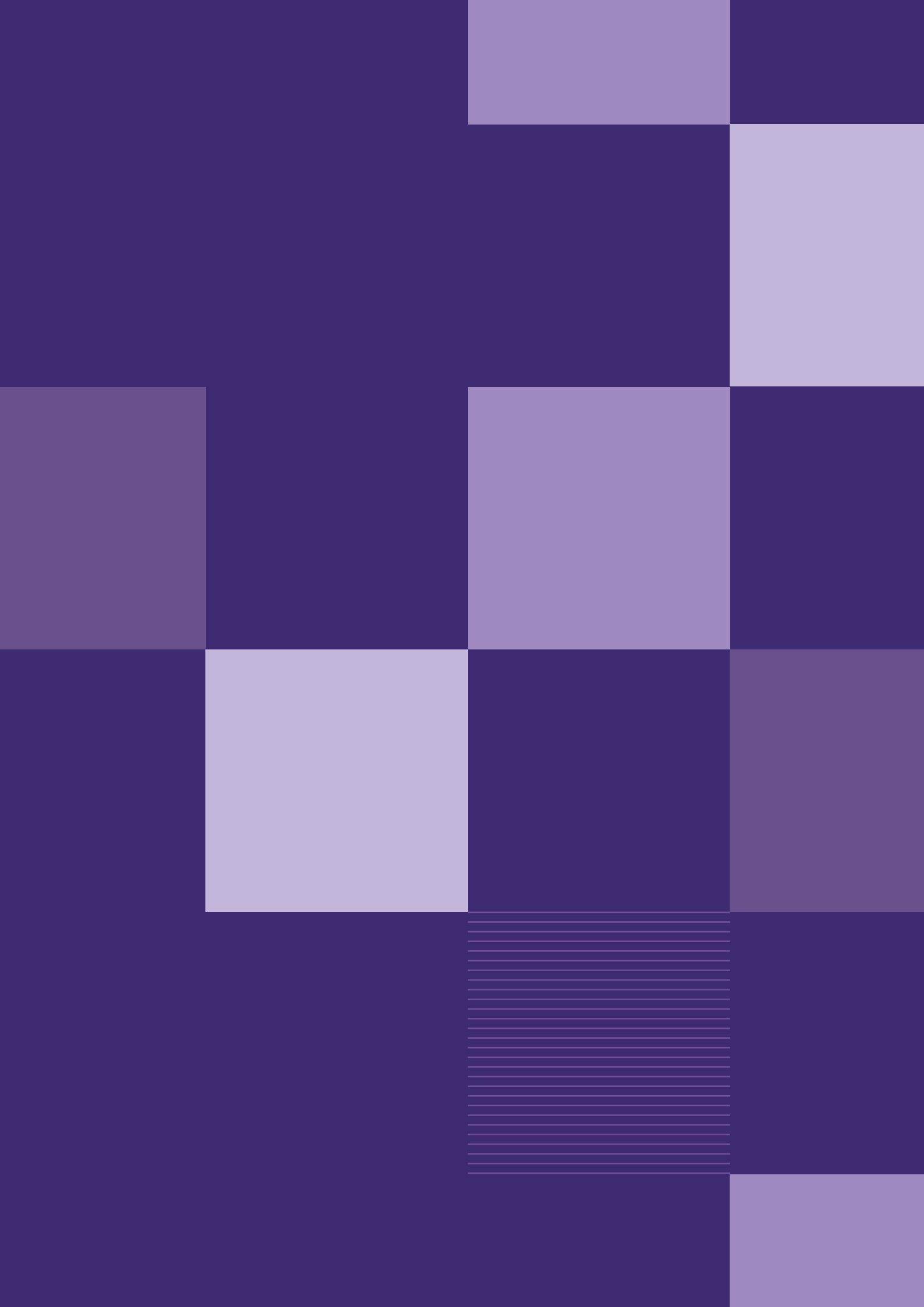
Women, Domestic Abuse and
the Irish Criminal Justice System

A Report by Women's Aid
and Monica Mazzone



WOMEN'S AID

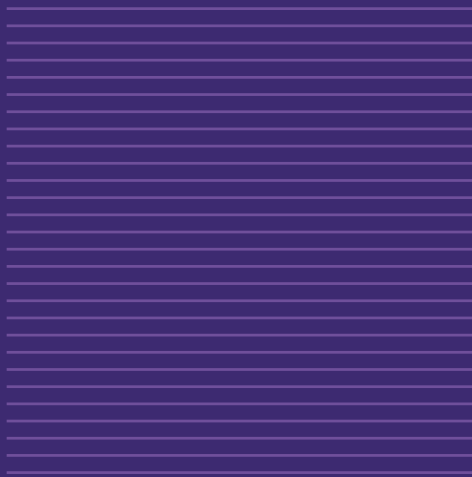
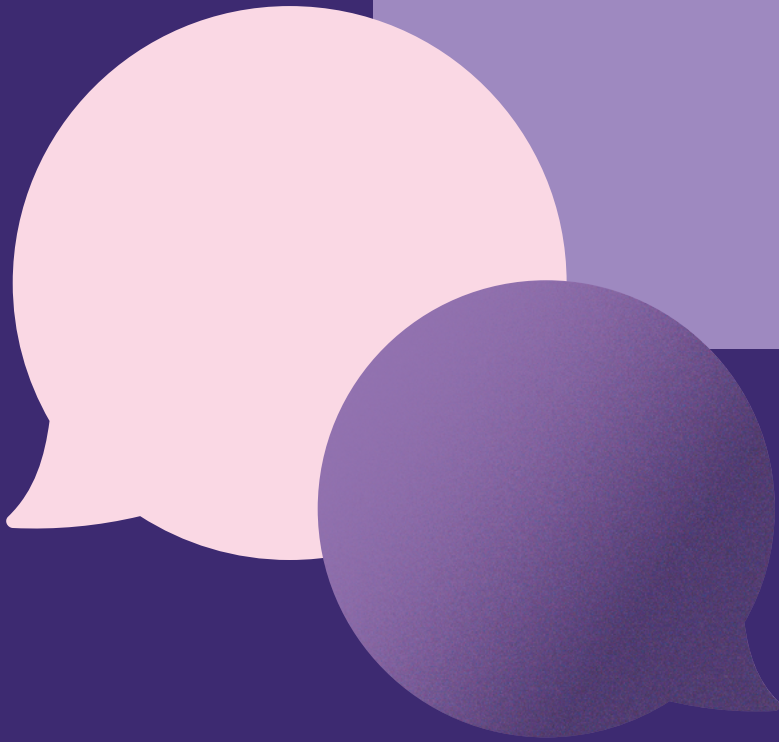
Listening. Believing. Supporting.



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FOREWORD





Women’s Aid must be commended for carrying out this important research into the treatment of women as survivors and victims of domestic abuse within the Irish criminal justice system. The findings and conclusions presented in this report make for disturbing reading – particularly those derived from the consultation carried out with women who have engaged with the criminal justice system.

Unfortunately, the report’s authors have been seriously hampered by the absence of reliable quantitative data on the treatment of domestic violence within our legal

system. The limited findings presented here from the Women’s Aid Sentencing Media Watch project confirm that it is impossible to establish even the most basic information about the numbers of domestic violence-related cases before the criminal courts, or about any patterns in sentencing practice. Our appalling lack of data in this area has been criticised repeatedly at both national and international level. It is long past time for An Garda Síochána, the Courts Service and the Central Statistics Office to reform data collection and recording practices – a strong recommendation from this report which deserves immediate implementation. It is simply not possible to derive reliable findings on case outcomes from media sources alone.

Important recommendations within this report derive, however, from the personal experiences recounted by the brave women who contributed to the consultation process organised by Women’s Aid. These women have provided an invaluable insight into the real impact of the law for them and for their children. The law on domestic and gender-based violence generally has changed significantly in recent years, largely because of the courageous women who have spoken out about their experiences as victims and survivors and the advocacy by the groups and frontline workers supporting them. Their interventions have helped to debunk many of the problematic myths around rape, sexual abuse and domestic violence; and have fed into a change in legal understanding of key concepts like ‘consent’.

As a result of this advocacy, some very positive legal changes have recently been introduced, notably through the passage of the Criminal Law (Sexual Offences) Act 2017, the Criminal Justice (Victims of Crime) Act 2017 and the Domestic Violence Act 2018. These new laws have provided for improvements in court processes and treatment of victims, as well as creating a new legal definition of ‘consent’ in rape cases and a vital new offence of ‘coercive control’.

Serious Ongoing Problems Despite Welcome Reforms

But despite these welcome reforms, we know that there remain low reporting rates, high attrition levels and low conviction rates in cases of gender-based violence, including domestic violence and sexual abuse. A more comprehensive review of the courts process to identify the ongoing problems experienced by victims of domestic violence is long overdue. Some serious ongoing problems are clearly evidenced by the women interviewed for this report. The most traumatic experiences of the criminal process that they describe have derived, in particular, from the lengthy delays with getting court dates; frequent adjournments or deferrals of cases; the ‘fragmentation’ of the criminal justice system and the lack of adequate communication structures between the criminal courts and the family courts. Currently, even where victims of domestic violence are eligible for legal protection, they often suffer due to the serious lack of co-ordination between different courts hearing

separate applications relating to the same family. Issues of custody and access to children, for example, may be dealt with by a judge who is unaware of parallel domestic violence proceedings. The deep frustration with the criminal system outlined by many of the women in this report is therefore understandable. Action must be taken to address these ongoing issues, and to reform court processes, so that they meet the real needs of the women and children most affected by domestic violence.

Acts of Domestic Violence are Rarely Isolated Events

Of course, a core problem with the criminal law, also highlighted in the experiences of the women interviewed here, is the fact that few acts of domestic violence are isolated events. The criminal law is generally designed to deal with once-off incidents, and to attribute liability for those isolated events to particular offenders. It can be difficult to apply it in the context of an ongoing abusive relationship. The statistics kept by police do not identify repeat call-outs, or what relationship exists between victim and perpetrator, so that it is impossible to know how many recorded incidents of violence involve the same individuals. It is also difficult to ascertain how effective or otherwise the criminal law is, given that most domestic violence goes unreported. It should also be said that the criminal and family law processes can only be one part of the solution. A whole package of other measures is necessary, such as increased provision of shelters for victims and their children, treatment for abusers, and adequate resources for support groups.

However, we also need a fundamental change of emphasis in our laws and policies – to move more towards tackling the perpetrators and preventing the abuse, as well as trying to mend the damage that perpetrators do through the provision of shelters and supports to women and children who are victims of violence in the home. Given the right set of facts and a suitable litigant, there may even be potential for legal action to be taken against the State for the failure to provide adequate protections against domestic violence to women and children. But such litigation alone would not be enough to achieve the fundamental change in social attitudes that is required to really tackle the awful problem of domestic violence. True change can only be achieved through a combination of legal activism, sharing of experiences, advocacy and campaigning work. In particular, it is important that the many myths about gender-based violence are targeted through such work. These myths continue to abound. Even the phrase ‘domestic violence’ is problematic – it sounds trivial (‘only a domestic’). The phrases ‘gender-based violence’ or ‘violence in intimate relationships between women and men’ may be more accurate – but whichever term is used, this form of violence remains an issue fraught with difficulty in law; and a phenomenon which causes great human misery and suffering still, particularly to women and children.

Why Does Gender Based Violence Remain So Pervasive and Persistent?

The seriousness, frequency and pervasiveness of the violence, particularly when it occurs in a domestic or intimate setting, is often played down or denied; and it is all too often explained away by external factors. Even where victims are not implicitly blamed for provoking the violence, they are often regarded as blameworthy because they stay with their abusers. Fortunately, research evidence has contradicted these problematic myths, showing that domestic violence is not a rare or isolated event within otherwise happy families. But the key question in our law and policy responses to domestic violence remains - why is it so often women and children who must flee their homes, why does gender-based violence remain such a pervasive and persistent problem within our society?

More than twenty years ago, Susan Edwards wrote:

“Domestic violence until the 1970s was regarded as a rare phenomenon. Criminal law was rarely, if ever, invoked to prosecute aggressors... A far wider range of remedies is now available. But stereotypical attitudes and expectations of women and men persist, these inform the law and militate against the justice and protection victims receive. The law, whilst it makes claims to offer remedies and protection to victims, is replete with obstacles and difficulties for the applicant or complainant seeking safety and protection.”¹

Unfortunately these words still ring true today.

Ivana Bacik

Senator for Dublin University,
Reid Professor of Criminal Law,
Trinity College Dublin.

¹ *Sex and Gender in the Legal Process*, Edwards, S., Blackstone, 1996, at p. 178.

INTRODUCTION

Women's rights are human rights and the right to live free of violence and abuse is a fundamental one.

It is essential that the response of the Irish criminal justice system to domestic violence victims vindicates their right to justice and ensures their protection from violence.





In 1999 the Women's Aid ground-breaking research *Safety and Sanctions*² detailed gaps and issues with the response of both civil and criminal law to women applying to the courts for protection and justice.

Since then women have continued to report to Women's Aid the many barriers they meet when seeking safety and justice through the courts. We have heard about dissatisfaction with both the process and outcomes of criminal proceedings against perpetrators, which women often described as ***"a slap on the wrist"***.

This anecdotal evidence has been confirmed more recently by two Safe Ireland reports³. However, there is no hard data in Ireland regarding sentencing of perpetrators of domestic violence related offences.

In the absence of data, Women's Aid decided to collect information from cases reported in the media to fill this gap as best as possible by gathering information on the offences, charges and sentences of domestic violence crimes.

The Sentencing Media Watch project was therefore developed to get a picture of how domestic violence perpetrators are dealt with by the justice system.

In order to get qualitative data a consultation with women was also carried out, specifically looking at their engagement with the criminal justice system and how this responded to the women's need for safety and their right to justice.

Women's Aid would like to thank the Marathon Trust who funded the Media Watch part of the project. Idir Analytics for ongoing assistance with data analysis we would not be able to do otherwise.

We would like to acknowledge the extensive research and project co-ordination of Monica Mazzone, policy consultant and Christina Sherlock, Head of Communications and Fundraising at Women's Aid. The work was encouraged and supported by the Training and Development team and the National Helpline and Services teams. Mary O'Connor from Women's Aid deserves mention for excellent support in preparing this report for publication.

To all the women who participated in the consultation in person or by email, we are grateful for your time, your thoughts, your stories and your insights.

Thank you for your generosity and courage in sharing your experiences and for wanting to make the system better for other women and children experiencing abuse.

Sarah Benson

CEO, Women's Aid

September 2019

² *Safety and Sanctions: Domestic Violence and the Enforcement of Law in Ireland*, Kelleher P and O'Connor M., Women's Aid, 1999. Executive Summary available at https://www.womensaid.ie/download/pdf/safety_sanctions_executive_summary.pdf (accessed 18.9.19).

³ *The Lawlessness of the Home (2014)* and *In Search of Justice: Women in the Irish Legal System (2016)*, Safe Ireland, both available at <https://www.safeireland.ie/policy-publications/> (accessed 18.9.19).

KEY FINDINGS AND CONCLUSIONS

STRAND ONE: SENTENCING MEDIA WATCH 1ST MAY 2018 TO 30TH APRIL 2019

Key Findings

- 97% of the victims were women (63 of 65 cases) and over half (52%) of the incidents occurred in their own home (34 cases).
- At least 25 of the 65 perpetrators (38%) were reported to be former partners at the time of the offence, demonstrating that leaving an abusive relationship does not always end the abuse.
- Children were mentioned as part of the household in 39 cases (60%) and were reported to have been on the premises when the offence was committed in 21 cases. The emotional impact of witnessing violence against their mother and/or its aftermath should not be underestimated.
- Children were reported to have been physically injured in 5 cases.
- In 41 cases injuries were reported, ranging from bruises to injuries requiring hospitalisation (8 cases).
- In 16 cases the victim was reported to have been choked, strangled or otherwise made unable to breathe, and weapons were mentioned in 15 cases.
- A history of domestic violence was noted in 24 cases and 15 women were reported to have an Order under the Domestic Violence Act at the time of the incident. It is likely that this figure is underestimated due to the limitations of the methodology and that in more cases the incident reported was not the first the woman had experienced.
- A total of 104 charges were mentioned in the 65 cases, including many serious assaults and sexual offences.
- Of 50 cases where sentences were reported, 45 were prison sentences, ranging from 1 month to 8 life sentences. Of these 45 prison sentences, 32 were reported as suspended (7 fully and 25 in part).

Conclusions – Strand One

- The severity of domestic violence crime is illustrated by the use of weapons, the number of women choked or strangled as well as the number and gravity of the charges. The risk that violent perpetrators pose to their partners and children is very real and very prevalent. It is vital that when discussing domestic violence crime the data available should not be limited to breaches of Domestic Violence Orders and should include all offences committed by abusers.
- The lack of data prevents any effective monitoring of how the criminal justice system responds to domestic violence crimes. Women's Aid would have liked to be able to compare sentencing of crimes occurring in a domestic violence context with the same crimes more generally. This has proven impossible because of the lack of accurate sentencing data.

- Detailed data on sentencing by offence is quite limited in general. There is no official data on sentencing for domestic violence crime. The data gathered through the media watch is hampered by the limitations outlined above in terms of completeness, accuracy and not being a representative sample.
- What the sentencing media watch can do is offer us a limited picture in the absence of any data.
- Official court data is urgently needed to understand sentencing in domestic violence cases.

STRAND TWO: CONSULTATION WITH WOMEN

Key Findings

An Garda Síochána

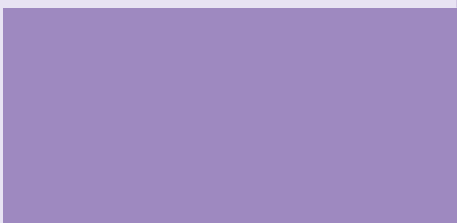
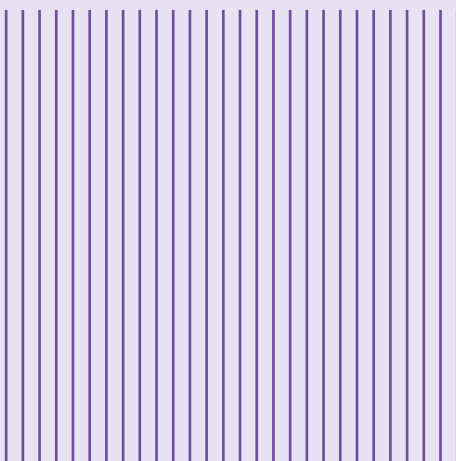
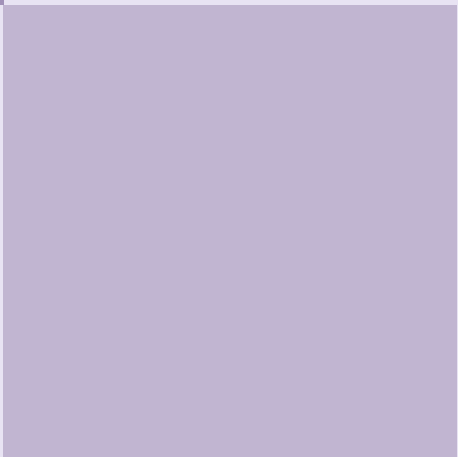
- The response from the Gardaí is inconsistent. Rating of the Gardaí by participants ranged from excellent to very poor. The quality of the response was dependent on the actions of the individual Gardaí.
- Participants clearly indicated that the components of a positive response include: fast attendance at call outs, understanding of the dynamics of domestic violence and of the risk to the woman's safety posed by the perpetrator, availability and continuity of contact with a specific Garda, referrals to support, thorough and quick investigations, risk assessment and minimisation.
- Women also reported mixed and negative experiences with the Gardaí. This included: police officers being rude and women feeling that they were not being taken seriously, Gardaí not trying to locate the perpetrator at large, women being given incorrect information and Gardaí minimising the abuse and the risk posed by the perpetrator.

Criminal Court

- The Court process is both prolonged and stressful and there is a lack of support for victims before, during and after criminal trials.
- Most women were dissatisfied with the sentences passed down and did not believe that justice was carried out. The majority of participants believed that the final sentence did not reflect the severity of abuse they experienced.
- Most women did not believe that the criminal justice process had made them safer.
- Irrespective of whether there was a conviction or not, most of the women said they would not go through the process again or were not sure if they would.
- A number of factors influence women's decision whether to engage or not with the criminal justice process. These considerations include the availability of support, safety and well-being of the children, belief that the process may or may not deliver justice and make them safer.

Conclusions – Strand Two

- Two overarching themes emerged from the consultation. The first theme is the **fragmentation of the criminal justice system** due to its incident based approach. The second is the **disconnection of the criminal and family law systems** when dealing with domestic violence.
- The consultation made clear the limitations of an **“incident”** based system in providing justice for victims.
- At each stage of the process, from the reporting and investigation to the trial, victim impact statement process and sentencing, the focus is on the particular incident which was reported. Years of abuse are reduced down to one or few charges for recent and in some cases relatively minor incidents. The impact of the cumulative abuse on the woman is lost to the Court. The illustration on page 51 shows how a victim’s whole experience of domestic abuse is fragmented, reduced and circumscribed at each stage.
- **The disconnect between the criminal and family law systems is dangerous.** When determining **access and custody**, criminal behaviour is not taken into account by the Family Law Court, even when there is a conviction and a sentence. Orders under the Domestic Violence Act are also not taken into account. Domestic violence is considered a *“separate issue”* with the result that access is granted in cases where it puts the children and the mother at risk and exposes them to further abuse.
- Women said that abusive men were granted access to the children, generally unsupervised. The women’s fears about the physical safety and the psychological well-being of the children were not heard by the Court. Cases were reported where children were forced to go to access visits against their will, even when they were terrified. Additionally, the safety of the women was generally not taken into consideration *at all* in access proceedings.



LEGISLATIVE, POLICY AND DATA CONTEXT

In the last few years there have been important positive developments in legislation, including the:

- Ratification of the Istanbul Convention
- Enactment of the Domestic Violence Act 2018
- Enactment of the Criminal Justice (Victims of Crime) Act 2017



Istanbul Convention

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence⁴ is a comprehensive legal framework to tackle violence against women and girls, covering domestic violence, sexual violence, female genital mutilation (FGM), so-called honour-based violence and forced marriage. It sets minimum standards in the areas of Integrated Policies, Prevention, Protection and Support, Prosecution and Monitoring.

In terms of criminal justice it requires the criminalisation of different forms of violence against women and girls, including psychological and physical violence, sexual violence and rape, stalking, female genital mutilation, forced marriage, forced abortion and forced sterilisation. It also requires parties to take action to ensure the prompt and effective investigation and prosecution of such offences and protection for victims.

Ireland ratified the Istanbul Convention on 8th March 2019 and it entered into force on 1st July 2019. While the Convention was not in force during this project, many positive legislative and other developments were implemented in preparation for its ratification.

Domestic Violence Act 2018

The Domestic Violence Act 2018 greatly improved domestic violence legislation in Ireland⁵. Among other measures: it extends eligibility for orders, introduces the new Emergency Barring Order, provides guidelines for the courts, provides for out of hours sittings of the Courts for emergency applications and includes a number of measures to improve the applicant's experience of court process.

In terms of criminal law, it introduces two new offences: **coercive control and forced marriage**. It also provides for aggravating circumstances when certain offences (such as assault, threats, harassment, false imprisonment and sexual assault offences) are committed against a partner.

The enacting of the Domestic Violence Act, while welcome, had no impact on the data collected for this project as it was only commenced on 1st January 2019.

Both the offences to which the Media Watch refers to and the consultation with the women occurred before this date. As the Media Watch is continuing it is hoped we will be seeing the impact of this Act, particularly in the use of aggravating circumstances in sentencing and the charge of coercive control.

⁴ Convention on Preventing and Combating Violence against Women and Domestic Violence, Council of Europe, 2011, available at <https://rm.coe.int/168008482e> (accessed 18.9.19).

⁵ A short guide to the Domestic Violence Act 2018 is available on Women's Aid website https://www.womensaid.ie/download/pdf/womens_aid_guide_on_the_domestic_violence_act_2018.pdf (accessed 12.9.19).

Criminal Justice (Victims of Crime) Act 2017

This Act transposes into Irish law the EU Victims of Crime directive, setting minimum standards on the rights of victims of crime. It includes a number of supporting measures for victims when they report crimes and during investigation and criminal proceedings. It provides for individual assessment of victims to establish their protection needs and consequent measures. It also provides for special measures in court to ensure victim safety and mitigate secondary victimisation.

Some sections of the Act were commenced on 27th November 2017 and some on 30th May 2018. Sections S30(b)(ii) and S30(d) relating to giving evidence through video links or screens have not yet commenced in respect of certain courts.

While the Victims of Crime Act was in force for most of the Sentencing Media Watch project, the media reports did not shed any light on its implementation. We asked women about some of its most relevant provisions in the consultation, but in most cases their court case took place prior to its commencement.

Existing Good Practice on Victim Support

Some good practice examples of victim support are listed below:

- The revised **Garda Domestic Abuse Intervention Policy 2017** has been a positive development, bringing in an enhanced focus on victims' support and safety.
- An important area where progress has been made is a cluster of positive actions completed or in progress by An Garda Síochána (hereafter AGS) of which the establishment of **Divisional Protective Services Units and implementation of Risk Assessment** are key measures. However adequate resourcing of the Protective Services Units remains an issue.
- The **Domestic Abuse Coordination Team**, a local initiative of the Ballymun Garda station, works very well providing women with a consistent contact person and repeated check in, which greatly improves victim engagement and confidence.
- The **Dolphin House Family Law Court Support and Referral Service**⁶ is a free and confidential drop in service for women who are experiencing abuse in a relationship. This can include emotional, physical, sexual or financial abuse. This service has been recently replicated in Limerick District Court. It should be available in all court houses.
- **Victim Support at Court (V-SAC)** provides valuable court accompaniment to victims of crime, their families and witnesses in the criminal courts. The organisations does not currently cover all of the country but it plans to extend and become a national organisation by 2021.

⁶ <https://www.womensaid.ie/services/dolphinhousesup.html>

DATA CONTEXT

There isn't a specific offence of "domestic violence" in Ireland, so crimes committed in the course of domestic abuse are prosecuted under a number of offences, such as murder, assault, sexual assault, rape, stalking, property damage, breaches of Domestic Violence Orders and others⁷. However, as data on the relationship between victim and perpetrator is not collected, it is not possible to dis-aggregate offences committed in a domestic violence context.

The most recent and relevant data about the criminal justice system are summarised below.

Central Statistics Office (CSO) Data

The CSO has recently resumed publication of crime statistics, though they are still under reservation due to data accuracy issues⁸. It provides data on recorded victims and on recorded crime incidents.

CSO Recorded Crime Offences by Type of Offence 2018

The CSO provides information on recorded crime offences by type of offence and year. The table below was generated by selecting most relevant offences from the CSO StatBank.

Recorded Crime Offences Under Reservation (Number) by Type of Offence	2018
Homicide offences	74
Murder	42
Manslaughter	4
Sexual offences	3,182
Rape of a male or female	782
Aggravated sexual assault	11
Sexual assault (not aggravated)	1,785
Other sexual offences	401
Attempts/threats to murder, assaults, harassments and related offences	19,955
Murder-attempt	14
Murder-threat	1,062
Harassment and related offences	1,641
Assault causing harm, poisoning	4,401
Other assault	12,837
Endangerment with potential for serious harm/death	208
Abandoning a child, child neglect and cruelty	332
Kidnapping and related offences	128
False imprisonment	82
Abduction of person under 16 years of age	17
Possession of a firearm	185
Offensive weapons offences (n.e.c.)	1,955
Arson	1,690
Criminal damage (not arson)	19,695
Offences while in custody, breach of court orders	14,954

⁷ The Domestic Violence Act 2018 brought in a new offence of coercive control. However, as the Act commenced on 1st January 2019 there is no data available yet.

⁸ For more information on the Statistics Under Reservation category see <https://www.cso.ie/en/methods/crime/statisticsunderreservationfaqs/>

CSO Recorded Crime Victims 2018⁹

The CSO has recently started publishing very interesting information on type of offences by recorded victim. The following summarises relevant information from the Recorded Crime Victims 2018 release. In 2018 there were:

- 46 victims of murder or manslaughter, of which 36 were male and 10 female.
- 2,771 recorded victims of sexual violence (including rape and sexual assault only) of which 82% were female (2,266) and 18% (505) males.
- 18,939 recorded victims of Attempts/Threats to Murder, assaults, harassment and related offences, of which 59% were males (11,235), and 41% females (7,704).

Offences	Female	Male	Total
Murder or manslaughter	10	36	46
Dangerous Driving Leading to Death	7	21	28
Sexual violence	2,266	505	2,771
Attempts/Threats to Murder, assaults, harassment and related offences	7,704	11,235	18,939

Sexual Violence

- The CSO provides information on sexual violence dis-aggregated by **recent** violence (crime reported within one year of occurrence) and **historic** violence (crime reported more than one year from its occurrence) as sometimes there is a long period between sexual offences occurring and being reported.
- 63% of victims (1,754 victims) who reported sexual violence crimes to An Garda Síochána in 2018 reported offences which took place less than one year prior to the reporting of the crime.
- 89% of victims of sexual violence crimes reported in 2018 where the crime occurred within one year of its reporting were females.

Age of Victim

- The CSO provides a breakdown of the age of victims for the above offences. The table below summarises the age **of female victims at the time of the offence**.

Age of female victims 2018 at time of the offence	Homicide offences (include murder, manslaughter and Dangerous Driving Leading to Death)	Sexual violence (includes rape and sexual assault). Include recent and historic offences	Sexual violence (includes rape and sexual assault). Recent offences only (less than one year)	Attempts/Threats to Murder, assaults, harassment and related offences
Under 18	*	1,132	566	994
18-29	5	662	574	2,573
30-44	5	325	286	2,681
45-59	3	113	103	1,162
60 and over	*	34	33	294
Total	17	2,266	1,562	7,704

* indicates cells suppressed on grounds of confidentiality

For a number of the women recorded above the offences against them were committed by their partners. However, as data on the relationship between victim and perpetrator is not available, **it is not possible to determine this vital piece of information.**

⁹ Data from the Central Statistics Office, Recorded Crime Victims 2018, CSO statistical publication, <https://www.cso.ie/en/releasesandpublications/ep/p-rcv/recordedcrimevictims2018/> accessed 17.4.19

Courts Service Data

The Courts Service publishes statistical data in its Annual Report and online.

Domestic Violence Orders

- In 2018 there were 18,572 applications for an order under the Domestic Violence Act in the District Courts.
- In 2018, 9,917 orders under the Domestic Violence Act were granted in the District Courts (53%).
- No information on breaches of orders under the Domestic Violence Act is currently available.

The following data on selected offences, which are most relevant in a domestic violence context, is adapted from the Courts Service Annual Report 2018.

District Court

- In 2018 of the resolved sexual offences, there were 50 summary offences, 191 indictable offences dealt with summarily and 2,749 offences sent forward for trial.
- In 2018 of the resolved public order/ assault offences, there were 30,434 summary offences, 2,066 indictable offences dealt with summarily and 1,825 offences sent forward for trial.
- The outcomes are in the table below.

SUMMARY OFFENCES: OUTCOMES: ORDERS MADE : DISTRICT COURT												
	DIS	S/O	TIC	Fine	Bond	Disq	C/S	Prob	Imp	Susp	Other	Total
Sexual Offences	1	10	9	8	-	-	-	3	7	8	4	50
Public order/ assault	856	7,654	6,033	5,826	632	1	510	3,065	1,285	794	3,778	30,434
INDICTABLE OFFENCES DEALT WITH SUMMARILY: OUTCOMES: ORDERS MADE: DISTRICT COURT												
Sexual Offences	23	85	1	9	4	-	1	13	8	13	34	191
Public order/ assault	129	685	90	173	65	3	91	220	127	194	289	2,066

Note: There is usually only one order made when an offence is dismissed, struck out or taken into consideration. There may be more than one order made when the penalty imposed in respect of an offence is a fine, bond, disqualification, community service, probation, imprisonment/detention, or sentence suspended.

Key: Dis = dismiss, S/O = strike out, TIC = taken into consideration, Disq = disqualified, C/S = community service, Prob = probation, Imp = imprisonment or detention*, Susp = suspended sentence

* refers to detention of a person under 18 in a detention centre

Offences: Circuit Court

	Incoming		Resolved offences						
	Offences	Defendants*	Guilty pleas	Trials		N/P	TIC	Quashed	Dec
				Convicted	Acquitted				
Sexual	1,503	237	611	112	385	369	120	0	12
Assault	1,460	1,038	1,047	85	103	214	83	0	4
Manslaughter	6	6	2	0	0	1	0	0	0

Key: N/P = nolle prosequi, TIC = taken into consideration, Quash = quash return for trial, Dec = accused deceased

* There may be more than one offence brought against a defendant

Offences: Outcomes Following Convictions: Circuit Court

	TIC	Fine	Bond	Dis	C/S	Prob	Imp	Susp	Other	Total
Sexual	229	1	153	0	0	8	266	60	33	750
Assault	84	3	331	5	37	32	316	263	59	1,130
Manslaughter	0	0	0	0	0	0	1	0	1	2

Key: TIC = taken into consideration, Disq = disqualified, C/S = community service, Prob = probation, Imp = imprisonment or detention*, Susp = suspended sentence

* refers to detention of a person under 18 in a detention centre

Central Criminal Court

Offence type	Incoming		Resolved offences						
	Offences	Defendants	Guilty Pleas	Trials	N/P	TIC	Quashed	Accused Deceased	
Murder (including attempted)	26	26	10	25	2	0	0	2	
Manslaughter	0	0	3	1	0	0	0	0	
Rape (including attempted)	432	79	88	419	153	54	0	2	
Indecent/ sexual assault	541	48	130	471	85	231	0	3	
Assault	16	7	5	5	6	4	0	0	

Key: TIC – 'taken into consideration' - offences may be taken into consideration where an offender is sentenced on other multiple offences, N/P = nolle prosequi

Central Criminal Court: Offences Resolved, Outcomes of Trials

Offence type	Convicted	Acquitted	Disagreed	Committal: not guilty by reason of insanity	Prohibited	Total
Murder*	14	5	4	2	0	25
Manslaughter	1	0	0	0	0	0
Rape *	194	127	98	0	0	419
Indecent/ sexual assault	248	141	82	0	0	471
Assault	0	0	4	1	0	5

* including attempted

Central Criminal Court: Offences Resolved, Penalties Impose on Convictions

	Detention (minors)	Imprisonment fully suspended	Imprisonment/ detention part suspended	Imprisonment	Total
Murder*	0	0	6	18	24
Manslaughter	0	0	2	2	4
Rape *	0	2	147	133	282
Indecent/ sexual assault	1	14	54	308	377
Assault	0	0	0	5	5

* including attempted

Central Criminal Court Length Of Sentences Imposed On Conviction*

	Up to 2 years	Over 2 years to 5 years	Over 5 years to 10 years	Over 10 years	Life
Murder**	0	0	2	6	16
Manslaughter	0	0	4	0	0
Rape**	0	12	148	122	0
Indecent/ sexual assault	72	120	180	5	0
Assault	3	1	0	1	0

* including suspended sentences

** including attempted

As there is no published data on gender of perpetrator and victim and on their relationship **it is not possible to know how many of the above offences were committed in a domestic violence setting.**

Lack of Data

The lack of specific data on criminal acts of domestic violence has been repeatedly highlighted by Women's Aid and others for a long time.

It is impossible to determine how many victims of crime had offences committed against them in a domestic violence context. Furthermore, we cannot obtain information on how many such offences were prosecuted nor any outcomes or sentences in such cases.

The lack of such data prevents important analysis of how the criminal justice system responds to domestic violence offenders. Additionally it is difficult to gauge the effectiveness of domestic violence policy and legislation.

The lack of accurate data may lead to an under-estimate of domestic violence crime. For example the Central Statistics Office (CSO) found in January 2019 that Gardai recorded sexual offences and assaults in official crime figures **but not the fact that they were domestic violence offences.**

When a sample of 100 sexual crime cases were reviewed, the CSO¹⁰ found 19 cases should have been recorded as domestic violence but only one was. In a sample of 100 assault cases studied 41 should have been described as domestic violence but only 19 were. This meant domestic violence was being under-recorded, or underestimated, by a "considerable amount".¹¹

Moreover, even the data that is collected is often recorded inaccurately. The 2014 Garda Inspectorate report¹² found a number of issues in relation to Garda accurately recording and classifying incidents on PULSE. While this was a concern for all crimes, particularly high rates of non-recording, incorrect recording and incorrect classification of domestic violence incidents and crimes were noted.

Following this report the CSO suspended publication of recorded crime statistics due the huge issues identified therein with data quality. Currently recorded crime statistics are published "under reservation", as the quality of these statistics does not meet CSO standards.

The National Strategy for the Prevention of Domestic, Sexual and Gender-Based Violence includes the establishment of a "**gold standard**" of data collection on domestic and sexual violence whereby all datasets should be dis-aggregated by:

- Age of victim.
- Age of perpetrator.
- Sex of victim.
- Sex of perpetrator.
- Relationship between victim and perpetrator.

This should apply to An Garda Síochána and Courts data (among others). However, the gold standard has not been implemented and this data remains unknown.

¹⁰ Review of the Quality of Recorded Crime Statistics, p. 25, CSO, 2018, available at https://www.cso.ie/en/media/csoie/releasespublications/documents/crimejustice/2017/Review_of_Quality_Crime_2017.pdf (accessed 12.9.19).

¹¹ Gardai underestimating level of hate crime by 'at least 27%', Conor Lally, The Irish Times, 11th December 2018, available at <https://www.irishtimes.com/news/crime-and-law/garda%C3%AD-underestimating-level-of-hate-crime-by-at-least-27-1.3728081>, (accessed 12.9.19).

¹² Crime Investigation, Report of the Garda Síochána Inspectorate (2014), available at <http://www.gsinsp.ie/en/GSINSP/Crime%20Investigation%20-%20Full%20Report.pdf/Files/Crime%20Investigation%20-%20Full%20Report.pdf> (accessed 12.9.19).

The Istanbul Convention requires states to gather and publish relevant statistical data on a regular basis:

Article 11 – Data collection and research

1 For the purpose of the implementation of this Convention, Parties shall undertake to:

- a) collect dis-aggregated relevant statistical data at regular intervals on cases of all forms of violence covered by the scope of this Convention;
- b) support research in the field of all forms of violence covered by the scope of this Convention in order to study its root causes and effects, incidences and conviction rates, as well as the efficacy of measures taken to implement this Convention.

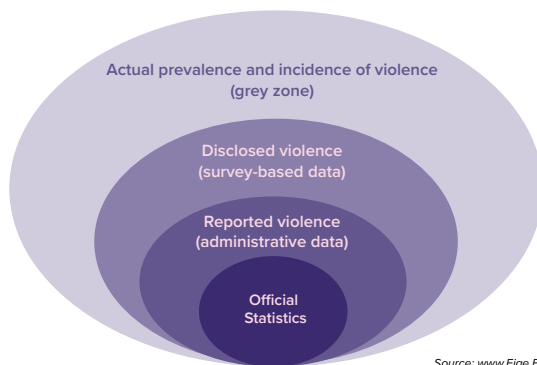
The Istanbul Convention Explanatory Reports details these requirements as follows:

as a **minimum requirement**, recorded data on victim and perpetrator should be dis-aggregated by **sex, age, type of violence** as well as the **relationship of the perpetrator to the victim, geographical location**, as well as other factors deemed relevant by Parties such as disability. Recorded data should also contain information on **conviction rates** of perpetrators of all forms of violence covered by the scope of this Convention, including the number of protection orders issued¹³ (emphasis added).

The European Institute for Gender Equality (EIGE) has recently provided **Recommendations to improve data collection on intimate partner violence by the police and justice sectors**¹⁴ to help each Member State meet the monitoring requirements outlined in both the Victims' Rights Directive and the Istanbul Convention. This document includes detailed suggestions on indicators and practical steps needed to enable the justice system to gather meaningful data.

More generally, EIGE (2018) suggests that data on violence against women should be obtained from many sources, including via sample surveys to determine prevalence and incidents rates and administrative data on disclosed violence from the police, justice, or health and social services.

While administrative data will not capture the full extent of violence against women, it is an important mechanism to assess how public services respond to the needs of women who have experienced violence, and to monitor trends over time.



Source: www.Eige.Europa.Eu

¹³ Council of Europe, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence– CETS 210 – page 15, paragraph 76 , available at <https://rm.coe.int/16800d383a>, (accessed 13.9.19).

¹⁴ EIGE, 2018, Ireland. Recommendations to improve data collection on intimate partner violence by the police and justice sectors, available at <http://eige.europa.eu>, (accessed 13.9.19).

Recording the relationship between victims and perpetrator or at the very least signposting the offence as intimate partner abuse, would allow for dis-aggregating the CSO and Courts data summarised above to allow us identify offences committed in a domestic violence context.

Women's Aid believes that this is an essential step to provide evidence based policy and monitor the effectiveness of the criminal justice system and should be implemented without delay.

There is very little information available on sentences. The data collection cycles for the Sentencing Information System database have now been concluded and it is not possible to search for domestic violence cases.

There are no published guidelines on sentencing in relation to domestic violence which could be used as a benchmark unlike, for example, in the UK¹⁵. It is hoped that the recently passed Judicial Council Act 2019 providing for the introduction of sentencing guidelines in Ireland will remedy this gap.

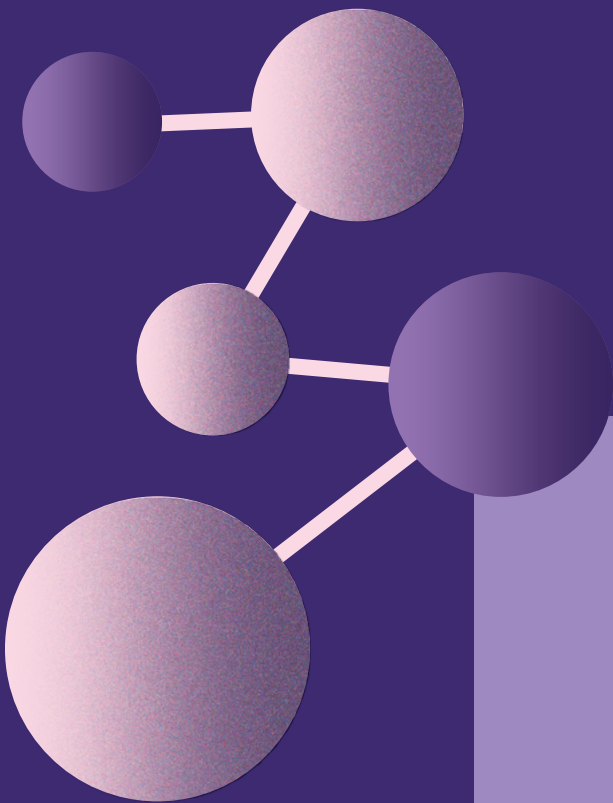
It is, therefore, currently not possible to gather a comprehensive picture of what domestic violence sentencing in Ireland looks like.

¹⁵ Overarching Principles: Domestic Abuse Definitive Guideline, Sentencing Council, <https://www.sentencingcouncil.org.uk/wp-content/uploads/Overarching-Principles-Domestic-Abuse-definitive-guideline-Web.pdf>, (accessed 13.9.19).

DOMESTIC VIOLENCE SENTENCING MEDIA WATCH

The Sentencing Media Watch project aims at filling the knowledge gaps above as best as possible in the absence of statistical and official data.

It was started on 1st May 2018 and is ongoing. This report analyses findings up to 30th April 2019 (one year).



BACKGROUND

The cases included in the Sentencing Media Watch were gathered through our internal weekly media watch¹⁶, which includes national and regional newspapers as well as other news sources available online and the Court News Ireland website, a courts news dedicated service¹⁷.

Criteria for inclusion:

- All cases relating to criminal law where the victim and perpetrator were or had been in an intimate relationship.
- The article appeared in the Women's Aid internal media watch or in the Court News Ireland website between 1st May 2018 and 30th April 2019.
- The cases reported took place in Ireland.
- Murder and manslaughter offences are not included. Comprehensive information on such crimes are collected and published annually in the Women's Aid Femicide Watch (Republic of Ireland).¹⁸

The information collected from the media articles (as available) includes:

Demographic information:

name of defendant, date, county and location of incident, gender of defendant, gender of victim, relationship between them and if they have children in common or not.

Incident information:

short description of incident and any injuries, hospitalisation required, if there was choking or strangulation, weapon used in incident, if children were on the premises during incident, if children or others were injured, if incident happened during access, perpetrator's substance abuse during incident.

Information on court hearing:

date of hearing, type of court, outcome, appeal outcome.

Information on charges:

charges, pleas, verdicts, if multiple charges were pressed.

Information on sentences:

type of sentence, duration of imprisonment, if suspended fully/in part and duration, conditions of suspension.

Other information:

previous orders under the Domestic Violence Act, previous breaches, history of domestic violence mentioned, any previous convictions, protective measure in place during hearing.

In most cases only partial data was available in the media articles.

¹⁶ Courtesy of *Electric Search*, the UK & Ireland's leading web intelligence and media monitoring solution. www.zenark.com.

¹⁷ www.courtsnewsireland.ie

¹⁸ See Femicide Watch 2018: Republic of Ireland, Women's Aid, November 2018, available at https://www.womensaid.ie/download/pdf/womens_aid_femicide_watch_2018_republic_of_ireland_embargoed_231118.pdf, (accessed 13.9.19).

Limitations

- The findings are based on media reports **only**. Women's Aid did not have any access to the original case files or notes, nor any way of verifying accuracy of the details. The findings are solely based on partial details as reported in the media.
- As the cases were collected as available in the media, they are not representative of cases going through the courts, but reflect media interest at the time. This methodology skews the cases towards more media worthy incidents, including cases that are more serious or where well known people are involved.
- In cases when there was an adjournment it is not possible to know the final outcome of the case as further hearings were not reported.
- Information available on certain cases is quite limited and at times not clear.

YEAR ONE ANALYSIS (1ST MAY 2018 – 30TH APRIL 2019)

No. of Cases Identified: 65

Sources: 92 articles, some relating to the same case.

Gender of Victims

63 victims female, 1 male, and 1 not specified.

Gender of Perpetrators

63 male and 2 female.

Relationship Victim/Perpetrator

Perpetrator Gender	Spouse	Ex-Spouse	Partner	Ex-partner	Other or unclear
Male	13	5	24	20	1
Female	1	0	0	0	1
Total	14	5	24	20	2

The relationship was reported as current at time of incident in 38 cases, while the parties were reported as separated in 25.¹⁹

Location of Incident

Location	No of Cases
Victim's home	17
Couple/Family home	17
Perpetrator's home	5
Other	14
Unknown	12

Other locations reported: third person's house, workplace, hotel, shopping centre, pub, outside crèche, street.

¹⁹ Notes: ex-spouse includes estranged/separated spouse (even if not divorced)

In some cases it was difficult to understand from the media reports if an ex-spouse or partner was already so at the time of the incident or became such later, so this data may not be accurate.

Injuries

Out of 65 cases:

- 41 victims were reported to have sustained injuries (63%).
- 8 victims were reported to require hospitalisation (12%).
- 16 victims were reported to have been choked, strangled or otherwise made unable to breathe (25%).

Weapons

- Use of weapons was reported in 15 cases, of which 10 were sharp weapons.
- The weapons/implements mentioned in the other cases were hammer, boiling water, biro, baseball bat, brush handle.

Children

- Victim and perpetrator were reported to have children in common in 29 cases (45%).
- Children not in common were reported in 10 cases.
- Children were reported as present (on the premises though not necessarily in the room) in 21 incidents (32%) and injured in 5 of these.

Substance Abuse During Incidents

- Alcohol and/or other drug abuse by perpetrator during the incident was mentioned in 24 cases.
- In a number of other cases a history of substance abuse was mentioned. While substance abuse is not the cause of intimate partner violence, it may increase risk of severe abuse.

Orders Under the Domestic Violence Act and History of Domestic Violence

- 15 women were reported to have an order under the Domestic Violence Act at the time of the incident (23%).
- Previous breaches of orders (ie not related to this incident) were noted in 7 cases and previous convictions of the accused (any conviction, not only domestic violence related) were mentioned in 24 cases.
- Previous history of domestic violence was noted in the media in 24 cases.

Courts

Type of Court	No of Cases
District Criminal Court	23
Circuit Criminal Court	23
Central Criminal Court	8
Court of Appeal ²⁰	8
Not reported/other	3

²⁰ One case was first reported in the Central Criminal Court, then went to appeal within the reporting period. It is counted under Central Criminal Court

Reported Charges

A total of 104 charges were reported in the 65 cases. This illustrates the wide range of crimes committed against these victims of domestic violence.

Multiple charges were reported in 24 cases²¹.

Charge	No. of times charged
Assault causing harm (S3)	19
Assault (S2)	14
Breach of Domestic Violence Act order	11
Threat to kill	9
Rape	8
Criminal damage	7
False imprisonment	6
Intentionally or recklessly causing serious harm (S4)	5
Harassment	4
Burglary	3
Production / possession of an article /weapon	2
Aggravated sexual assault	2
Attempted murder	2
Public Order	2
Attempted rape	2
Sexual assault	2
Trespassing	1
Endangering of an infant	1
Aggravated burglary	1
Firearms offence	1
Abduction of a child	1
Contempt of court	1

Pleas

The media reported that 36 accused pleaded guilty, 12 pleaded not guilty and for the remaining the plea is unknown or not applicable (e.g. the article related to a bail hearing).

Verdicts

The following verdicts were reported in the media:

- The accused was found guilty in 78% of cases (51 cases and of these in 3 cases guilty to some charges but not to all).
- For the remainder of the cases the verdict was unknown (case ongoing at the time of writing).
- The sample includes 9 cases in the Court of Appeal. In 6 cases the accused lost his appeal either against the conviction or the sentence and in 3 case the Court of Appeal found the original sentence too lenient and increased it.

Sentences

The media reported information on sentencing (including appeal cases) in 50 cases.

Of the remaining cases, 8 were released on bail, 1 remanded in custody, 1 dismissed, 4 not reported, 1 other outcome.

²¹ This does not include multiple counts of same charge nor charges re secondary victims.

Of these 50 cases, 45 offenders were given prison sentences, ranging from 1 month to one perpetrator receiving 8 life sentences. **Of these 45 prison sentences, 71% were reported as suspended (32 cases – 7 fully and 25 in part).**

Conditions of Suspension

In 21 of the suspended sentences cases conditions were reported.

The most common conditions mentioned were:

- probation/supervision (13).
- no contact with the woman (8).
- attending a domestic violence perpetrator program (8).
- attending an Addiction program (4).
- compensation (4).
- keep the peace/good behaviour bond (7).
- attending anger management program (1).
- attending sex offenders program (2).
- attending mental health services (1).
- structured access to children (1).

Other (non prison) Outcomes

In the 5 remaining cases the sentence reported was:

- fine and community service.
- fine only.
- 12 months probation bond.
- a previous suspended sentence was extended.
- the perpetrator was held in custody for 3 hours for contempt of court.

In 5 other cases additional penalties were reported in addition to imprisonment (such as deportation after serving prison time, compensation, and a fine).

In one case the defendant (not guilty due to insanity) was committed to the Central Mental Hospital.

Charges and Sentences

More details on charges and sentences for the most common charges are provided below for the cases where the sentences were reported. **It is important to note that the information may be partial and/or inaccurate, as there was no way to double check the media reports.**

Assault (S2)

Of the 13 defendants found guilty of Assault S2, 9 got a prison sentence (including all 6 cases charged with multiple charges), 1 got community service, 1 community service and fine and the last 2 are not known/awaiting sentence.

- **Five of the 9 prison sentences were suspended** fully (2) or in part (3).
- The range of time in prison was from 1 month to 4 years.
- 6 cases included multiple charges.

Assault Causing Harm (S3)

Out of 17 cases where the defendant was found guilty of assault causing harm, 16 were given prison time, ranging from 9 months to 5 years. **However in 15 cases the sentence was suspended** either fully (3) or in part (12). In the remaining case the accused was given 12 months Probation bond.

In 6 cases the accused was found guilty of multiple charges of which S3 was one.

Intentionally or Recklessly Causing Serious Harm (S4)

All 4 cases received a prison sentence, ranging from 8 to 13 years, one of which was partly suspended.

Sentence for one case included a charge of aggravated sexual assault as well as S4.

Rape

All 8 defendants found guilty of rape were sentenced to prison ranging from 5 years to life. 4 were partly suspended. 3 were multiple charges cases.

The average sentence is 101.14 months or 8.43 years before suspensions are taken into account, 89.14 months or 7.43 years after suspensions.

4 out of 7 (57%) of the rape charges were at least partially suspended. The average months suspended (where a suspension applies) is 21 Months²².

By way of comparison, a 2016 Irish Times²³ study which analysed every rape offence conviction in the Central Criminal Court between 2013 and 2015 found that the average sentence was 10 years. When suspended portions of sentences are taken into account, the average was eight years.

The Irish Times study also found that the vast majority of offenders (70%) received a partially suspended sentence.

It is now accepted in law that rape occurring in intimate relationships (current or former) should not be considered any less serious than rapes occurring outside of such relationships. It is suggested that in fact it may carry aggravating factors, such as betrayal of trust or “punishment” for separation.²⁴

The small number of cases in the Media Sentencing Watch and the limitations of the methodology do not allow us to draw conclusions from this comparison at this stage. However, it raises the question of whether sentences handed down to partners committing rape are more/less lenient than sentences handed to non-partners. It demonstrates the need for hard data in order to be able to answer this question.

False Imprisonment

All 4 cases received a prison sentence, ranging from 3 years to life. One was fully and 2 partly suspended. 3 cases included multiple charges.

Threats to Kill

All of the 5 cases where we know the sentence received a prison term, ranging from 3 years to life, of which 4 were partly suspended. In 4 of the 5 cases, threat to kill was one of multiple charges.

²² One case was excluded from analysis being an outlier with extraordinary circumstance and a life sentence

²³ <https://www.irishtimes.com/news/crime-and-law/rape-sentences-averaging-10-years-after-rise-over-last-decade-1.2656754>

²⁴ Sexual Offences, O'Malley Thomas, Round Hall Ltd, 2013.

Breaches of Orders under the Domestic Violence Act

Out of 11 cases, we only know the verdict in 2, which were guilty. We do not know the verdict in the remaining 9 cases. Both these cases attracted a 6 months sentence, one fully and one partly suspended.

CONCLUSIONS

Bearing in mind the limitations due to the methodology of the Media Sentencing Watch we can draw the following very tentative conclusions:

The vast majority of victims were women (97%) and more than half of the incidents occurred in their home (52%), whether they lived in it with the perpetrator or not. At least 25 of the 65 perpetrators (38%) were former partners at the time of the offence, demonstrating that leaving an abusive relationship does not always end the abuse.

Children were part of the household in 39 cases (60%) and were on the premises when the offence was committed in 21 cases. The emotional impact of witnessing violence against their mother and/or its aftermath should not be underestimated. Children were physically injured in 5 cases.

In the great majority of the cases some injuries were reported, **ranging from bruises to injuries requiring hospitalisation.**

A previous history of domestic violence was noted in 24 cases and some of the women had already sought protection through the civil courts by getting an order under the Domestic Violence Act. Due to the limitations in obtaining accurate data **it is likely that this figure is underestimated.** Indeed, as specialist domestic violence frontline support providers, our own experience is that women frequently experience abuse for prolonged periods before any incident is brought before the criminal courts.

The offences reported by the women included many serious assaults and sexual offences.

The use of weapons, the number of women choked or strangled as well as the number and gravity of the charges shows the severity of domestic violence and the risk that violent perpetrators pose to their partners and children.

Domestic violence related offences range from relatively minor offences to severe offences. In 24 cases multiple offences were charged (37%).

It is vital that when discussing domestic violence crime the discussion and data available should not be limited to breaches of Domestic Violence Orders, but should include all offences committed by abusers.

Women's Aid would have liked to be able to compare sentencing of crimes occurring in a domestic violence context with the same crimes more generally. This has proven not possible because of the lack of accurate sentencing data.

Detailed data on sentencing by offence is quite limited in general. There is no official data on sentencing for domestic violence crime. The data gathered through the media watch suffers from the limitations outlined above in terms of completeness, accuracy and not being a representative sample.

While the Sentencing Media Watch can offer us a limited picture in the absence of any data, official court data is badly needed to understand sentencing in domestic violence cases.

CONSULTATION

As part of the Sentencing Watch project, Women's Aid ran a consultation with women, whose partner was charged with offences against them, in order to hear the voice of the victims/survivors and find out more about their experiences of the Criminal Justice System.



The aim of the consultation with women who had experienced domestic violence was to ascertain what worked well and to identify barriers to their engagement with the criminal justice system. It also aimed to identify improvements and supports that would make the process work more effectively for victims of domestic violence.

METHODOLOGY

Participation in the consultation was sought from women who were already in touch with Women's Aid through our Direct Services or Communications Department. Women who were not in immediate crisis, were in a stable place and at no high risk of re-traumatisation when telling their story were approached.

The women who participated brought their experiences from their encounter with the criminal justice system. They varied from having completed criminal proceedings to women who did not initiate or discontinued criminal proceedings.

Women were given the option of a group consultation, individual interview or email questionnaire.

Out of an initial 30 contacts who were interested, 20 women took part, of which 10 in groups, 4 in individual face to face meetings and 6 by email. In 16 cases criminal proceedings reached sentence and in 4 they did not start or were discontinued.

The consultations were co-ordinated by an external consultant and the Women's Aid head of communications, and group sessions were facilitated by the training department. The Services department were on hand to provide support as needed for the face to face consultations. Women responding by email were encouraged to contact the Women's Aid 24hr National Freephone Helpline if they needed emotional support.

The questions addressed the criminal justice process from reporting to police to criminal trials and the outcomes and the overall impact of criminal proceedings. It was important to identify what worked well and what did not, with a focus on both the woman's sense of safety and justice.

The questions for the women in cases where there were no or discontinued proceedings focused on the **barriers to engagement** with the criminal justice system.

All the women were English speaking and all, except one, were Irish. They had all separated from the abuser.

The report was developed by collating the information provided in the face to face consultations and email questionnaires by theme. In order to maintain anonymity certain details were omitted. All quotes and case studies are by permission of the participants.

LIMITATIONS

The number of participants is relatively small and participants were not selected at random.

The participants are not statistically representative of any particular group. The fact that they were in contact with Women's Aid may mean that they needed support not provided elsewhere.

This report is not intended to be read as a general survey on women's satisfaction with the Criminal Justice System or any of its components. Nonetheless, the outcomes of the consultation resonate with and elaborate on what women experiencing domestic violence tell us on a day to day basis. Therefore, Women's Aid believe that important insights and suggestions were provided by this project.

OFFENCES AGAINST PARTICIPANTS

We did not ask participants about the details of their abusive relationship, but from the consultation it was clear that most participants suffered a long history of abuse at the hands of their partner, which included emotional, physical, financial and in some cases sexual abuse, as well as harassment and stalking.

All of the 20 participants had offences committed against them by a partner or ex-partner.

Offences mentioned in the consultation included:

- Attempted murder.
- Assault (S2) Assault causing harm (S3) causing serious harm (S4).
- Threats to kill.
- Criminal damage.
- Theft.
- Burglary.
- Breach of an order under the Domestic Violence Act.
- Harassment.
- Sexual assault.
- Rape.
- False imprisonment.
- Endangerment.
- Carrying an offensive weapon.
- Resisting arrest.
- Firearms offences.

While in most cases there were numerous incidents of abuse with multiple offences, only a few incidents were reported. Not all offences committed against the women and reported translated into a charge.

All of the participants had contact with An Garda Síochána in relation to at least one incident, though most women had contact in relation to multiple incidents. In most cases contact was initiated by them, in two cases by Child Protection Services. Of the 20 women who participated in the consultation, for four the case did not reach trial as charges were not pressed or were dropped.

Some of the proceedings were not finalised (appeals ongoing) and some participants had started new proceedings against the same perpetrator at the time of the consultation.

We now look at the response of the criminal justice system following the journey the women must take from reporting to sentencing.

A WOMAN'S JOURNEY FROM REPORTING TO SENTENCING

Reporting to An Garda Síochána

The Gardaí response varied between participants and also for the same participant depending on the individual Garda. Some women received an excellent response, others extremely poor. In some cases women received a mixed response. Certain women reported both supportive and non-supportive responses depending on the individual Garda.

It is clear from our discussions there was **no consistent response** and that still too much depends on the individual Garda attitude and understanding of domestic violence. The consultation participants maintained that the Gardaí do not always understand the complexities of domestic violence and that they needed more training.

An Excellent Garda Response

One of the participants received an excellent response from the Gardaí at all stages of the criminal justice process. While she had to deal with a number of Gardaí she reported that *“the Gardaí were extremely supportive and professional in each instance”*.

What the Gardaí did:

- The woman reported offences by her husband to An Garda Síochána after the commencement of the Victim of Crime Act and all victim support measures were implemented by Gardaí very efficiently.
- She always got written acknowledgment of her complaints and was kept up to date with developments on case progression.
- A Garda walked her through her house looking at possible risks and advised her about locks and safety of premises.
- They always responded very quickly when she called them looking for help and if the perpetrator had left the scene before their arrival, they determinedly kept looking for him until they located him.
- The Garda attending the bail hearing was very well prepared, provided excellent and detailed statement, resulting in bail being denied.
- They always let her know where he was, if they found him and had him in custody and this meant she did not have to worry about her safety.
- They provided her with a letter for her Barring Order hearing detailing all the incidents they were called out to, which was very useful.
- The Gardaí looked out for her and checked she was ok on a regular basis.

In her words: *“I have dealt with many Gardas from different stations and every single one has been amazing. I did not have one negative experience. The Garda were incredible, amazing, supportive, very nice. They knew me by name”*

Positive Responses

In general when asked what worked in the Gardaí response, the women mentioned:

- **Fast response** in an emergency.
- Gardaí available, giving the woman their **contact details** and encouraging her to call anytime she needed.
- **Supportive and positive attitude**, Gardaí having a good understanding of the dynamics of domestic violence and of the fear the women may feel.
- **Continuity**: one Garda acting as contact point, managing the case, keeping in touch with the woman and keeping her informed and involved.
- **Referrals** to specialist support services, such Women's Aid.
- Gardaí taking the **safety** of the woman seriously by regularly checking on her, sending patrols around her house and advising on safety measures she could take.
- **Locating** the perpetrator after incidents.
- **Investigating** offences quickly and thoroughly.

"The Garda that was over my case was very supportive and was in contact with me all the time"

*"Detective, brilliant from the first, meant to help.
'we will not stop until we get him locked up' "*
(detective to woman)

In relation to the gender of the Gardaí, for some women it was important to have a female Garda, but for others this did not make a difference, a supportive attitude counted the most.



Mixed Responses

Some women received a mixed or inconsistent response as detailed below:

- Supportive or unsupportive response depending on the **individual Garda** in the same station.
- Positive or negative response depending on the **Garda station** responding to incidents.
- **Negative initial response**, lacking empathy and understanding of the risk involved, **turned into very supportive** relationship over the lifetime of the case, as the investigating Garda gained an insight into the many risks to the woman involved and improved their understanding of the dynamics of domestic violence.
- Supportive initial response but not leading to charges or even referrals to specialist organisations.

“I was surprised at how supportive the Garda I spoke to was. They offered a female Garda and allowed my mother to be present in the room with me as I gave a statement, but no further support was offered. However, they did advise me that I seek out counselling services within my university in order to support the case and to deal with any trauma. My ex-boyfriend and I were both in the same university course and I was advised by the Gardaí to make them aware in case any further incident happened, particularly on campus... I was not made aware of any other services, nor was I made aware of Women’s Aid...As I had no concrete proof of the abuse and harassment that I endured, there was also a lack of evidence to support my case and I felt that the Gardaí took a sort of blasé approach at times, that they weren’t dealing with something particularly serious due to my age. The Garda I initially gave my statement to was lovely and very supportive, but it took a while for any steps to be taken to question my ex-boyfriend or even make him aware which I found very discouraging.” (no court case)

Negative responses

The participants reported the following negative responses:

- Gardaí being **rude** when the women called them or attended the station. This is very off-putting for the women and may prevent them from calling again.
- **Lack of supportive response**, the women are not taken seriously and their fears are dismissed.
- Gardaí **not responding** to an emergency call out quickly, leaving the women in danger. By the time the Gardaí arrives, the perpetrator has left.
- Not trying to **locate** the perpetrator when he is at large.
- Not checking **PULSE** to see previous incidents or not recording incidents on PULSE.
- Not implementing any safety measures or risk assessment.
- Granting station bail after arrest, so the perpetrator returns to the house.

- Difficulties in contacting the Garda assigned to the woman's case.
- Having to deal with a different Garda each time there is a new incident.
- Gardaí providing the woman with **incorrect information** on the legal process.
- Gardaí actively encouraging the woman **to drop** charges.
- Not **informing** the woman of important development in her case, including the whereabouts of the abuser.
- Gardaí **minimise the abuse** or believe the abuser. In one case the Garda intervention led to the woman being arrested even though **she** was the one protected by a Safety order.
- One of the participants felt she was treated less favourably because she is not Irish.
- No information provided on what is admissible to include in the Victim Impact Statement.
- No arrest following breaches of domestic violence order.

“When reporting a breach, the Gardaí said they would ring the abuser and ‘have a chat with him’. It made me feel it was not an important matter for them.” (Woman with 5 years SO and numerous previous assaults).



Some issues were reported in relation to evidence collection, in some cases the scene was not preserved or available evidence was not gathered.

But the systemic issue seems to be that the **criminal justice system is incident based, and this does not reflect the complexity of domestic violence.** The Gardaí are interested in collecting evidence for a particular charge relating to a particular incident where they are still within the time limits to press charges. This is technically correct so that evidence is admissible in court, but for the women it diminishes their experience of abuse.

These are the experiences reported:

- The only evidence gathered is the woman's statement, even when other forms of evidence are available at the scene.
- Lack of interest in taking a statement reflecting **the whole of the abusive experience.** The focus of the Gardaí is on recent incidents only, generally the previous 6 months. Evidence of **previous** offences is not collected, even when available.
- Delays in collecting CCTV evidence, resulting in it not being available after a time.

Offender's Relationship to Gardaí as a Barrier

In 3 cases out of 20 the perpetrator had a strong relationship with the Gardaí and in all these cases this proved to be a major stumbling block for the case to proceed: in one case the perpetrator was himself a Garda, in another case he was an alleged Garda informant, and in the 3rd case he had numerous family members in An Garda Síochána.

This reflects a problem that comes up every year in Women's Aid. While the number of women affected is small, it is important that the issue is tackled as they are very vulnerable.

Bail in the District Court

Only some of the participants commented on their experience in relation to court bail. They reported that:

- The Court is very busy and not victim centered: there is no separate waiting room and the women are waiting for their turn in close proximity to the abuser and his family. Bail cases where the victim is heard take longer and therefore are put at the end of the list, which means the women have to wait for a long time. This has implications for women who are employed or care for small children.
- The state solicitors in the District Court hearing bail have no time to read the file, consult with the woman and prepare properly.
- The fact that the perpetrator can keep applying for bail, and the woman has to attend the hearing to oppose it multiple times, was mentioned as a cause of frustration.

However, when court bail is granted it can provide immediate safety.

"It was great, he did not get bail and was in for 8 weeks"

THE COURT PROCESS

Criminal proceedings against the women's partners or ex-partners were completed in 16 out of 20 cases. The women felt that the court process was very long. They describe it as “long”, “draining”, “drawn out”, “slow”, “emotional”. Some felt they were the ones on trial and not the accused.



What Worked

The women said that what helped them in this process was:

- Well prepared Barrister for the DPP.
- Supportive Gardaí providing **information** on the court process.
- **Referrals** to specialist support including domestic, sexual specialist services and Victim support at court (V-SAC).
- Judges with good **understanding** of the dynamics of domestic violence and its impact on the victim/survivor and her children.
- Women's Aid support services.

What Did Not Work

- **Long** duration of trials.
- Court appearances constantly **adjourned** or not heard. The consequent strain on the women (practical, emotional, financial) was mentioned by many participants.
- The accused is allowed to get repeated adjournments and slow the process down for no real reason and without penalties. For example, he may ask for an adjournment to call a witness, with no real intention of producing one.
- Having to take the stand as a witness a number of times and feeling **she is the one on trial** (rape trial).
- **Lack of information and updates** on the progress of the trial, especially when there are many adjournments.
- New charges being brought in **without her knowledge**, on which she then has to give evidence with no preparation, including charges of a sensitive nature.
- Distressing or extremely frightening evidence of new threats against the woman being read in court without her being warned in advance.
- Having a different judge for each breach/incident.
- Women reported some negative experiences with judges and their understanding of domestic violence and specifically of sexual violence in intimate relationships.
- **Lack of support for the woman as state witness** in the trial (rape trial). Specifically there is no figure to provide emotional support for her role in giving evidence and for the cross-examination. The Gardaí cannot provide this and the victim being a witness cannot discuss it with anybody.

- The role of state witness is also dis-empowering, the woman is **“just a witness”** in her own story.
- The interplay between Family Law Court and Criminal Court is not always clear and is sometimes used against women: in one case evidence from a Safety Order hearing was not allowed in criminal proceedings due to the in camera rule. Whereas, in another the statement she gave for the Barring Order application was subsequently used in the perpetrator’s defence in criminal law proceedings.
- Previous incidents or offences cannot be used as evidence if they are “too old”. Very often this prevents the court from getting a **complete picture** of the overall abuse and this potentially conceals the dangers posed by the perpetrator.

Victim Impact Statement

A Victim Impact Statement (VIS) is an account in the victim’s own words describing the effect that the crime has had on her and is given to the court once the accused has been found guilty and before sentencing.

In relation to the VIS, the participants mentioned two main issues:

- the lack of advice and information on what can or cannot be included.
- the fact that she can only refer to the **particular incident** the conviction is for and to the impact of that incident only.

This cannot possibly give an accurate picture of the impact **of even the incident itself**, as the impact of domestic violence incidents is cumulative and multi-layered: what may seem a not-so- severe incident may take a different meaning in the context of years of abuse and threats.

Moreover, **the overall impact** of possibly years of abuse is not heard in court and the woman feels silenced once again.

For example, one woman told us her statement was not accepted as it was deemed “overboard”. Even in the VIS she could only refer to the specific incident in the trial and not to the whole of living with abuse:

“They gave me no preparation for it – I had no idea what I could and couldn’t say in it, and the Garda who wrote down what I said didn’t even write my actual words. What I read out in court had been so gutted by my ex’s lawyer and so mangled by the Garda that it was like reading out an essay by a 9-year-old called ‘Why I feel sad.’ I had not had any support in understanding the task so I was unable to capture the experience and the impact in a way that the court would have allowed.”

One of the women contrasted their treatment to the latitude given to the **accused character witness references, which can refer to the whole life history of the perpetrator**, while the impact of the whole of the abuse on her life is silenced.

Sentencing

“The most striking thing to me was how aware it made me that I was only a witness to a crime against the state, that the sentencing was a mandate about my value to the State, and that value was determined to be very little.”

The women had experienced a range of long term abusive behaviours, many of which are criminal offences. Only some of the incidents were reported and even less prosecuted. Charges were dropped or downgraded along the way in many cases. In some case there was no conviction. **Even when there was a conviction, for most of the participants the final sentence did not reflect the severity of the abuse the woman had experienced.** Some sentences were suspended totally or the perpetrator released early.

Charges

Charges	No. of Women
Breach of an order	10
Assault causing harm (S3)	5
Threats to kill	3
Assault (S2)	2
Assault causing serious harm (S4)	2
Rape	2
Harrassment	2
Sexual Assault	1
Criminal Damage	1
Endangerment	1

Outcomes

Outcomes	No. of Cases
Convicted (of at least one charge)	12
Not Guilty	2
Not Guilty on Appeal*	2

Sentences

Sentences	No. of Cases
Imprisonment (partially suspended)	7
Imprisonment (fully suspended)	2
Imprisonment (no suspension)	1
Fine instead of imprisonment	1
Community Service (100 hours)	1

*One man who was found not guilty on appeal argued that he could lose his job. He was given a warning by the judge. The other man charged with a breach of a Domestic Violence Order was successful in appealing his conviction because there was no record of the order having been served.

Women's Comments on Sentences

"There were no meaningful consequences and he took that to mean he hadn't done anything particularly wrong"

- Women said they felt the sentences were too lenient to be a proper sanction and effective deterrent.
- The accused may also benefit from being a first time offender, but while this is the case in law, he is not a "first time offender" for the woman, as she would have suffered many years of abuse before reporting.
- In seven cases there was an appeal against the conviction or the sentence. When verdicts were overturned or sentences reduced on appeal, the women felt that the Court's reasoning showed a lack of understanding of the impact of domestic violence on victims, including children. Examples of this included the man being described as a 'good father' or at risk of losing his job.

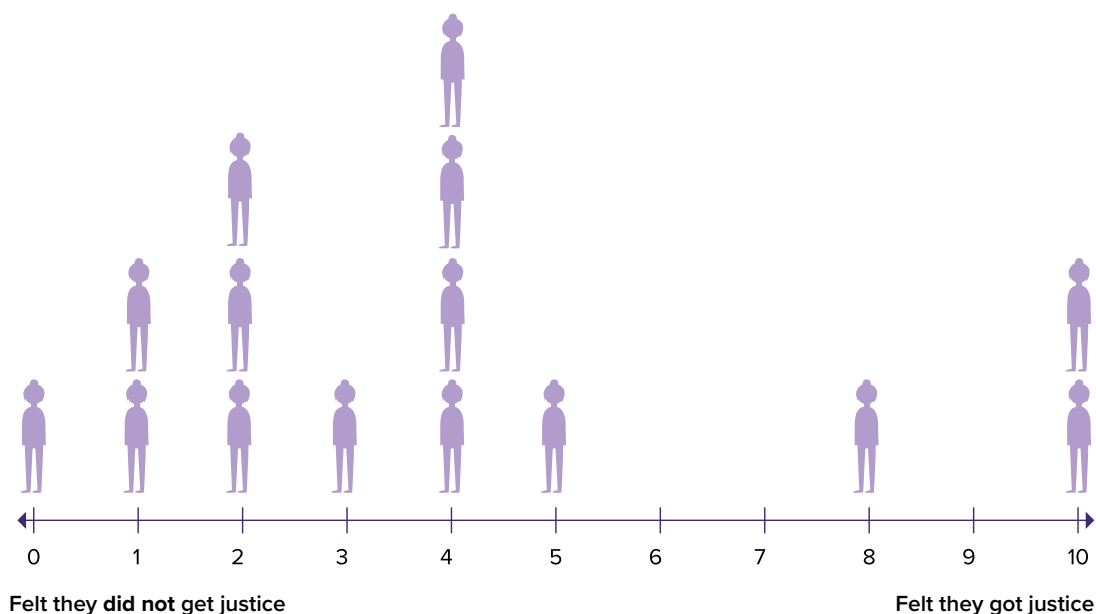
"He was convicted of breaches of a Safety Order, but appealed and put in a strong case he could lose his job. He made a case that I liked to make complaints and that we had been in the Family Court for years. That losing his job could affect maintenance. He was let off in the end, even if there were numerous videos of him stalking and harassing me."

Sense of Justice

Participants were asked to score if they felt they got Justice on a scale from 0 to 10.

Of the 15 that answered this question, 12 women scored five or lower.

Most women felt they did not get justice.



Women engaged with the legal system and trusted that this would have a positive impact on their lives. However, the impact of court proceedings were onerous for women on many levels. For example:

- Some felt that despite the best efforts of the Gardaí, the Court failed to give them justice.
- The process was described as difficult, stressing and draining.
- They felt they had to prove themselves all of the time and felt judged by how they behaved in court (i.e. too emotional, not emotional enough). One woman felt that ‘she could not win’.
- The experience of many of the women in the consultation is that professionals, including judges and S32 reporters, do not understand domestic violence, especially coercive control and can easily be manipulated by the abuser²⁵.
- Those who scored lowest said that the criminal justice system not only failed them but enabled the perpetrator’s behaviour.
- Those who scored high felt that the Court had heard them and treated them fairly and, importantly, felt the abuse was properly sanctioned.

“Going through the court was as traumatic as the abuse if not worse. It was like a kick in the teeth”.

“I lost all faith in the justice system.”

Would They Do it Again?

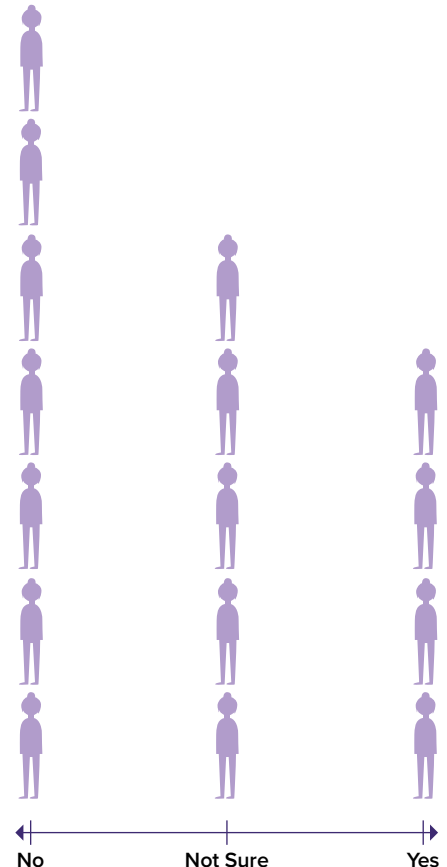
When asked if they would go through the criminal justice system again the majority of women (12 of 16) said no or were not sure. This was regardless of the outcome.

Only four women said they would.

There is no correlation between a woman feeling that she would go through the court system again with her feeling a greater sense of justice. Some women who were unhappy with the outcome of their case would still go through the court and vice versa.

“I could not go through it again now that I know what it is like I would not do it”

“Hard as it is, you can sleep at night because he is locked up.”

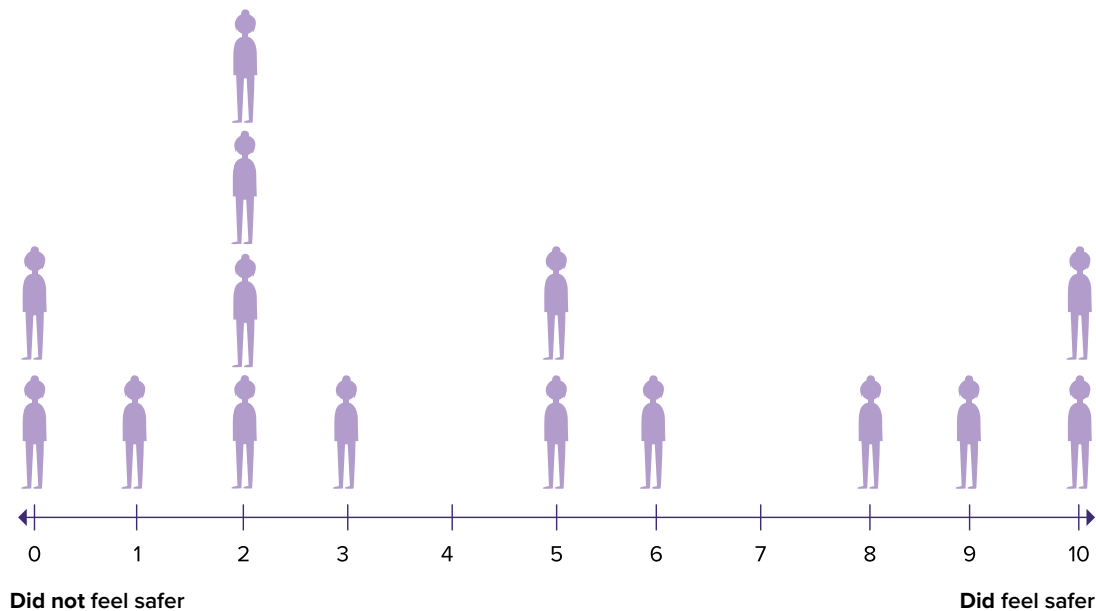


²⁵ The Family Law Court can order Section 32 reports to be carried out on any question affecting the welfare of the child and to ensure the views of the child are heard in the course the proceedings affecting them.

Sense of Safety

One of the outcomes of the criminal justice process should be that the victims of domestic violence are safer. However, during our consultation, the majority of women said they did not feel safer. 10 out of the 15 women who answered scored five or below.

Participants were asked to score if they felt safer as a result of the criminal proceedings on a scale from 0 to 10.



Reporting domestic violence and the instigation of criminal proceedings can increase the risk of violence and abuse for women. It is very important that this risk is assessed and managed.

Why women felt safer

- Having an order under the Domestic Violence Act. However, the women emphasised that this is only as good as its enforcement, which was variable.
- Gardaí taking a proactive role (checking on her, sending patrol cars around, advising her about safety of her home).
- Perpetrator not granted bail or bail including condition of no contact.
- Referral to specialist organisations, including the Women's Aid High Risk Support Project.
- Probation supervising the perpetrator.
- When the perpetrator was sentenced to prison or was on remand. This time was useful for the women to build themselves and the children up again. However, there was also a concern about what happens when he is released.
- Woman being re-housed away from the perpetrator or accessing refuge.

*"The Barring Order is great. It gives you peace of mind. The house is calm now, it is good for the children, sense of security...He initially pushed the limits of the Barring Order **but when it was enforced well, it really worked.**"*

“I feel safe for the moment because he is in jail, but what when he comes out?...the next time he is going to kill me”

Why women felt unsafe

For many women however no particular safety measures were advised or implemented.

- Partner did not spend much time in prison because the sentence was so lenient.
- Women continued to be threatened by the perpetrator **while he was in prison**. Explicit threats were made to the woman directly or via a third party.
- Woman being told to simply stay away from her ex-boyfriend even though they attended the same college course.
- Domestic Violence Orders not being acted on.
- Breaches of Orders not being taken seriously by the Gardaí.
- Woman having to sit beside abusers in the waiting area in court.
- The offender not being monitored upon release.

“He should be supervised when released instead of us having to curtail our lives”

Victim’s Safety in Court

Participants mentioned that even in Court they were intimidated by the perpetrator. Having to be so physically close to somebody who had recently attacked and terrorised them was very difficult.

Participants were asked if any measures were taken to improve their safety in court. In a few cases the following good practice measures were taken:

- Gardaí took her to Family/victims room, away from him and his family.
- Women’s Aid Support worker was there with her.
- She was escorted in by Gardaí.
- Hearing held partly in camera with the court vacated at certain moments.

However in many cases no special measures were taken, resulting in the women feeling scared and/or embarrassed if they had to give sensitive evidence in front of the full Court.

“At trial he was right there next to me huffing and puffing” (rape trial)

“No (special measures taken during trial), there were other people in court waiting on their case, I felt very embarrassed, I felt I was on trial and never want to go through it again”

Victim of Crime Act Measures

We asked women if the Victims of Crime Act 2017 was in force when they reported the offence to the Gardaí and when it went to trial, and if so, whether certain measures of the Act were implemented. Six women reported the abuse to Gardaí after the Act was commenced while seven cases went to trial after this point.

Measures in the Act	Yes	No
The woman was provided with information on support services on her first contact with the Gardaí.	3	3
The woman was provided with a written acknowledgment of her complaint to the Gardaí.	1	5
The woman was kept informed of significant developments during the investigation of the case such as arrest, charge, bail, remand and any other court dates.	5	1
An individual assessment was carried out to ascertain the need for protection measures.	4	2
Special measures were implemented during the trial such as excluding the public from the court, limiting questions in relation to her private life or using video-link or screens during evidence.	1*	6

*Excluding the public from the court.

Measures detailed in points 1 to 4 were also provided for some women before the Act was commenced.

The Courts Service has commenced the collection of statistical information on these measures and will provide a report for a complete statistical year in their Annual Report 2019.

Post Trial Experience

Being involved in the criminal justice process for what was generally a lengthy period of time had a significant impact on the participants and their children, regardless of the outcome of the trial.

Impact on the Women's Health and Well-Being

As impacts of the Criminal Justice process and of the abuse before and during it, the women mentioned:

- Post-traumatic stress.
- Still being in fear of her abuser.
- Inability to work full time.
- Miscarriage.
- Stigma.
- Being seen as vindictive.
- Financial and work implications.
- Losing self-esteem and sense of value.
- Being isolated from family and friends because of threats and behaviour of the perpetrator.
- Their children being impacted by the mother going through the court process.
- For one of the participants, one of the consequence was losing her immigration status and having to leave the country.

Support Offered by the Criminal Justice System After the Trial

- 15 women said they received no support in the immediate and longer term aftermath.
- One woman did receive support from the Office of the DPP who explained clearly the possibility of an appeal and the process.

It is clear that women felt that there was no support from the Criminal Justice System at this stage. While support may be available from other services, it does not seem that there are any systematic linkages to make sure the women are not “abandoned” at the end of proceedings.

“The Criminal Justice System is very stressful, standing up in court is very nerve wracking”

“I was at an all-time low after three years and no one really understood what I was going through.”

*“The time spent in custody was used to help him rebuild his life, I got no support after my assault or surgery, no one tried to intervene to make sure that myself and my children were ok ... There was no effort to rehabilitate me after years of abuse. **I felt abandoned by the system.** The process was very frustrating as I felt the assault had been played down because it was considered a domestic.”*

Cases Which Never Went Before the Criminal Court

For **four** of the consultation participants, charges were either not pressed or were dropped. Therefore, their abuser never went before the Criminal Court. While there were no criminal proceedings, women told us that offences were committed against them including:

- Assault.
- Assault causing harm.
- Assault on children.
- Breaches of Domestic Violence Orders
- Threats to kill.
- Sexual assault.
- Harassment.

Reports were made to Gardaí in all four cases, and in each case, statements were taken. However, charges were pressed in only one case.

Factors Considered When Deciding Not to Continue with Criminal Proceedings

There are a number of considerations influencing women when deciding whether to report to the Gardaí, to make a statement or to withdraw it. The Gardaí initial response is critical. However, a good response is not sufficient. The woman must also believe that the criminal justice proceedings will ultimately make a difference.

The impact of going through the Criminal Justice System must be weighed against the odds that there will be a fair outcome and that her safety and that of any children would be increased, or at the very least not placed in further jeopardy.

Factors considered were:

- The length of the proceedings, often at a time (separation) when she wants to move on.
- The impact of starting criminal proceedings when negotiations on concurrent family law proceedings are taking place.
- Pressure and intimidation from the perpetrator and/or his family.
- The perpetrator's ability to manipulate professionals (he seems credible).
- The pitfalls of a trial versus the probability of conviction and the probability of a lenient, non-custodial sentence.
- The effect of proceedings / conviction/ prison on the perpetrator: will it make his abuse worse?
- The availability or lack of support for herself and for the children.
- Media reports of "pathetic sentences".
- Most importantly, what is best for the children.
- Woman felt the timeframe to make a decision was too short.

Other Factors included:

- Available evidence to corroborate the victim's statement was not collected by Gardaí including photos of physical injuries and damage to the woman's house.
- Woman deleted evidence of harassment from her phone before reporting to Gardaí.
- In some instances, it was felt that social workers intervening in cases where children were assaulted minimised the scale and impact of abuse on the children in their reports. The women felt this was because the social workers failed to understand the dynamics of domestic abuse and had been manipulated by the abuser. As a result, the reports did not provide the necessary evidence for criminal charges to be prosecuted and the cases were dropped.
- The perpetrators were able to use these reports to support their requests for unsupervised access to children in the Family Law Court, which were granted.

"I could not see how it would stop his behaviour and not make it worse"

"Everytime I took action there was a backlash. There was only so much I could take."

Case study

The woman's partner assaulted her in front of the children, leading to serious injuries. Gardaí encouraged her to prosecute. Days after the assault he checked himself into rehab, there was pressure from his family to drop the criminal case as he was now getting help and it "would not be in the interest of the children". His behavior was excused because of depression and alcohol issues, even if the abuse had been going on for many years.

The children also put pressure on her not to put Dad in jail.

It would have been his first offence before the court, as she had not reported him before, so she felt that it would at most be a suspended sentence or a short one. A period in prison would only make him more resentful and angry. They were in the process of separating and she did not want to jeopardise what had been agreed.

She knew he would have access to the children, as he had not harmed the children physically and she wanted to make sure that any interaction between him and the children would be as positive as possible for them. Visiting him in jail or after a jail period would not have been good for them.

After weighting these factors, she made a considered decision not to go ahead because of possible repercussions for her and her children.

"I would have prosecuted if I had had no children, but the best way to protect the children was not to. If it was the Gardaí prosecuting it would be fine, it would not be on me, deciding to prosecute should be the Garda's responsibility, not mine. It should be the state prosecuting, not mummy prosecuting daddy. If the decision is not on the woman then the perpetrator cannot manipulate or control it. It would change the way the crime is seen as well"



CONCLUSIONS

1. Fragmentation of the Criminal Justice System

*“he did not do one day for **all he did**” (6 months suspended sentence)*

The consultation clearly identified the current limitations of an incident based system making it difficult to provide justice to victims of domestic violence.

These limitations were inherent at all stages of the process, from evidence collection, victim impact statements to sentencing.

According to the consultation participants:

- The Gardaí only wanted to hear about what happened on and since the day of the incident, not what went on before.
- Evidence of incidents older than 6 months were not taken into account, even when available.
- In Court her ongoing fear of the abuser was minimised as a long period had passed between the incident and the hearing.
- In the Victim Impact Statement the victims can only comment on the particular incident the conviction is for and to the impact of that incident only.

However, the women do not experience domestic violence in a fragmented way.

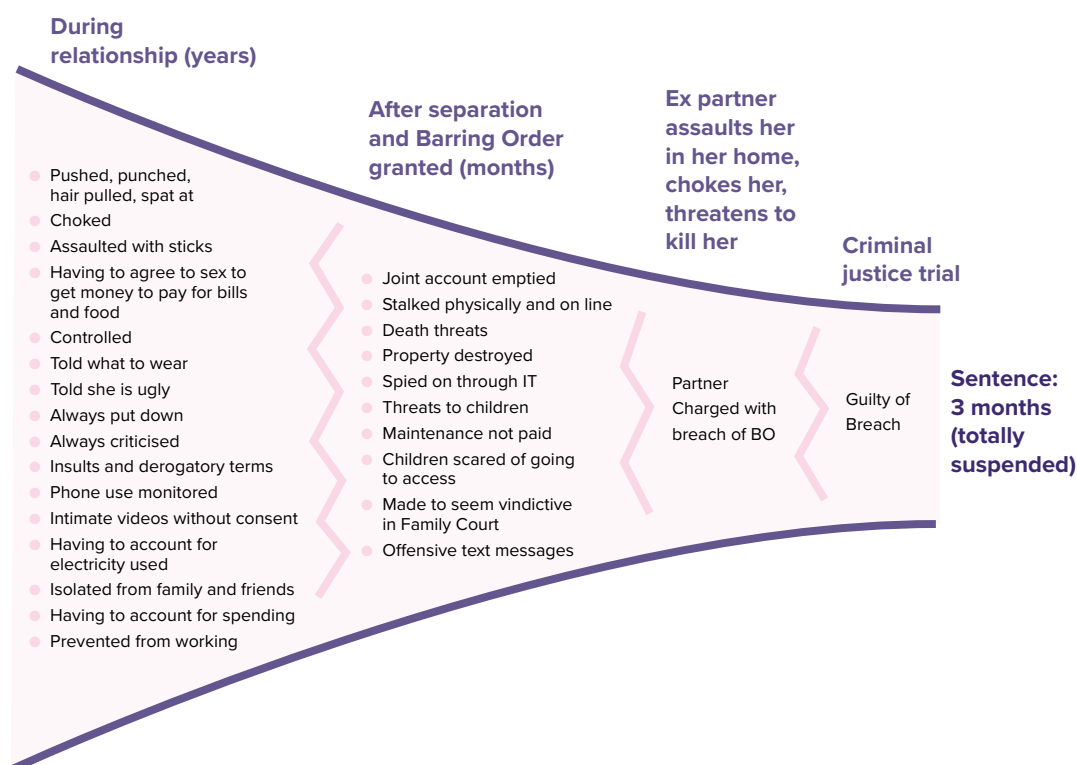
For them domestic violence is a “whole of life” experience of abuse, including criminal and non-criminal behaviours, which generally has been going on for years and has affected all of their lives: their relationship, their parenting, their social life, their career, their financial situation, housing situation, their self-confidence and sense of self.

Many of the women in the consultation had a Barring or a Safety Order. This was often granted during or after separation and indicates that there was significant previous abuse. When women reported to the Gardaí, for the most part, they had lived with abuse for a long time.

In the criminal justice system years of abuse are reduced down to one or few charges for recent and in some (but not all) cases relatively minor incidents. **The continuous domestic abuse is fragmented, reduced and circumscribed at each stage. The impact of the cumulative abuse on the woman is lost to the Court.**

In the meantime the woman is in the Family Court to negotiate separation and Access in a very hostile environment. Abuse may continue through subtle, sometimes non-criminal but frightening behaviors and implicit threats. After months the trial ends in a lenient or suspended sentence.

How the Incident Based Criminal Justice System Fails Women Experiencing Domestic Violence²⁶



2. Access to Children

While we did not ask any questions in relation to children's matters such as custody and access, the issue of access to children as a means to continue the abuse was strongly highlighted in all the group consultations and in three out of four of the individual face to face interviews.

The following issues were highlighted:

- After separation, access and maintenance are frequently used by the perpetrator to continue abusing the woman and the children and to keep control over them. Women reported that the abusers use access to abuse the children emotionally or physically, to send threats to the mother through them, to force ongoing contact with her. They do not adhere to agreements (whether formal or informal), for example do not collect or return the children on time or keep them overnight when they are not supposed to.
- In many cases, women detailed manipulation of the children by the perpetrators in order to excuse their violent behaviour and to blame the mother for the separation or for the perpetrator being arrested or convicted. **This damaging behaviour is not sanctioned at all.**
- Women reported having to send terrified children to Access when the children do not want to go and hide before visits. There is little flexibility, and even when the child is sick, they have to go. One of the women was threatened with arrest if she did not facilitate access, another was scared of the reaction of the abuser if she did not make the children go. On the other hand, abusive fathers can choose whether to turn up or not.

²⁶ Composite example not representing a particular woman

- These mothers or other family members are often attacked verbally and/or physically during hand over or abused in access related communications.
- The women reported that criminal behavior is not taken into account in the Family Law Court even when there is a conviction and a sentence, nor are orders under the Domestic Violence Act. Domestic violence is considered a “separate issue” with the result that access is granted in cases where it puts the children and the mother at risk and exposes them to further abuse.
- Women reported how abusive men were granted access to the children, generally unsupervised. The women’s fears about the physical safety and the psychological well-being of the children were not heard.
- **The safety of the women was generally not considered at all in access proceedings.**

Case Studies

- Extremely dangerous and violent ex-partner applied for access. She was told he has a right to it, **as he had assaulted her and not the child**. Because the baby does not know him the woman feels she will have no option but to stay with the baby during access, even if this is dangerous.
- Man applied for access while under investigation for serious sexual offences against the mother. As there was no conviction because the trial was still ongoing, the judge did not deny access, which was granted. She wanted supervised access, but was told she would have to find the supervisor herself, so her family had to supervise it, knowing full well what he had done to her. She feels he should not have had access while under investigation for such crimes.
- Young child was injured during access. Hospital evidence and child disclosure of abuse were dismissed by Tusla. The father emotionally abuses the child and sends threats to the mother through the child. A Safety Order is in place. The child is terrified of going on access. Paradoxically, the mother has to force the child to go as she has been threatened with arrest otherwise.
- The father made false allegations against her about the children, which were acted on very quickly. The children were questioned very professionally and the report was in her favour, but it was a devastating ordeal for them. However, she was not listened to when expressing her concerns about the children, even if there was an order under the Domestic Violence Act against him and a sentence.
- Child psychologist wrote a helpful report, stating the child should not be forced to go to access as he was traumatised. This was provided to Tusla who ignored it. Violent partner asked for and got access as the Family Law Court said he was not violent “towards the child”, regardless of assault on her, threats and stalking.
- Unsupervised access granted by the Family Law court even when a Section 47²⁷ report found that there was a serious risk to children.

²⁷ Under the Family Law Act, 1995, Section 47 the court may appoint a person to determine what the best interest of the child or children are in family law proceedings

3. The Family Court Process when Determining Access

The women reported a number of issues with the process in the Family Law Court:

- Proceedings are protracted and stressful.
- Women feel they are “character assassinated”, with abusive fathers claiming the mothers are revengeful or mentally unstable. The myth of the vindictive mother making false allegations is often used by abusive fathers and believed by the Courts, without serious efforts being made to ascertain the real risk to children, even in the face of evidence of abuse.
- Lack of Free Legal Aid for child related matters.
- S32 reporters are not adequately trained, do not understand domestic violence and its impact on children, can be easily manipulated by the perpetrator, and make inappropriate and unrealistic suggestions in the report which are then taken up by the court. For example, one woman was forced to go to couple counselling with her abuser.
- Emotional abuse of children, especially for those who have witnessed abuse against their mother, is poorly understood.
- The wishes of children on whether they want access or not are not taken into consideration.

“Access should be the child’s right, not the parent’s. At the moment it is the father’s right. The child must go, even if they do not want to, but the father can simply not turn up. There should be a limit to how many times a father can not turn up after which access should be taken away”



4. Interplay of Criminal and Family Courts

Another theme that continually came to light during the consultation was the sheer amount of legal proceedings that the women may be involved with in different courts, and the interplay between the criminal and the family courts.

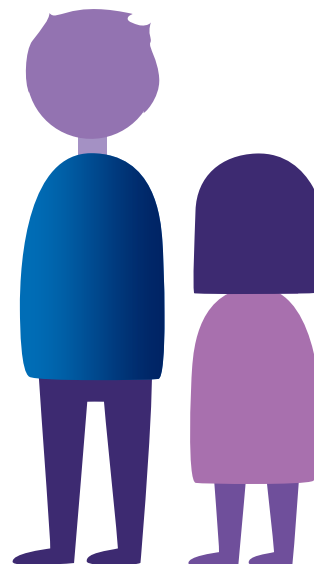
Women were often involved in a number of different legal proceedings, some of which included:

- being a witness in criminal court in relation to one or more trials.
- appeals on previous verdict or sentence.
- victim impact statements.
- bail hearings.
- applications for orders under the Domestic Violence Act.
- defending against cross orders under the Domestic Violence Act.
- separation and divorce.
- child access.
- maintenance.

It is difficult emotionally, practically and financially to juggle all of these proceedings especially if there is no support available.

The interplay between the Criminal and the Family Law court is very complex and it can be used against the women. The women reported:

- In two cases poor social workers reports into criminal allegations of assault on children, exonerated the perpetrator. These children were not believed and the allegations were **not proven**. These reports were then used in the Family Law Court against the women by the fathers, who portrayed the women as vindictive and making **false** allegations, and helped the abuser obtain access to the children.
- Convictions for violent offences in the Criminal Court are not deemed relevant in the Family Law Court, unless they relate to the particular child for whom Access is being applied for. Violence towards other children, the mother, or other family members is not considered.
- Evidence heard in camera in the Family Law Court cannot be used in the Criminal Court, even when relevant. Attempting to bring it in can mean being charged with breach of the In Camera rule.
- In one case a statement given for a domestic violence order application in the Family Law Court was used in the perpetrator's defence in criminal law proceedings.
- The length of criminal proceedings frequently put children at risk, as highlighted in the case study below.



Case study

Mother has lifetime Barring Order against her ex-partner.

A S47 report was done to assess his capacity to care for the children and it found that he was mentally unstable and dangerous. Nonetheless, the report advised that unsupervised access should continue and that the report should be revisited in a stated period or if there was another crisis.

This crisis happened in the form of an assault when he was collecting the children from access. He was charged with S3 Assault, however the Section 47 report has not been revisited as this can only be mandated if he is found guilty. It will take a couple of years for the charge to go to a hearing in the Circuit Criminal Court.

In the meantime unsupervised Access continue and with it his emotional manipulation of the children.

5. Other Family Court Issues

The focus of the consultation was on criminal justice proceedings. However the following additional issues relating to Domestic Violence Orders were worthy of noting.

Renewal of orders

It is difficult to have order renewed if there are no **recent** offences, even when the perpetrator has been in jail and that is the reason why he could not re-offend. This may leave women unprotected at a particularly vulnerable time, when the perpetrator is released from custody.

Incorrect information about the time frame for renewal of orders was given by the Court staff to one of the participants, making it very hard for her to have continuity of protection.

Serving of orders

Orders are sometimes difficult to serve.

Sometimes the serving is not recorded, even when the perpetrator was in court at the time when the order was granted. This can be and has been used by the perpetrator to contest breaches. In Women's Aid experience this scenario is not uncommon.



THE PARTICIPANTS' WISHES FOR A BETTER SYSTEM

"I felt like services who are supposed to protect victims pass the buck a lot. The Gardaí are often frustrated by the judges being lenient and it causes a reluctance to arrest and charge. The DPP are happy to accept pleas on lesser charges so they can get a conviction, even when strong evidence is available. I have a huge issue with the evidence not being heard as it gives a full picture to the judge and I believe that's important. Everyone wants to cross the Ts and dot the Is and move onto the next case. There is little or no emphasis on helping the victim, just getting a result in court. The sentence didn't reflect the seriousness of the assault. On his release I attended Dolphin House and asked for a safety order, the clerical officer was struggling to find a way to let me see the judge as there hadn't been a recent incident because he had been in custody. I believe the system needs major reform."

Wishes

Women were asked for their wishes and suggestions to improve a system that clearly does not work well for them. They are listed below²⁸:

An Garda Síochána

- Experienced, informed and trained Gardaí.
- Female Gardaí (though some women did not care about the gender of the Gardaí as long as the attitude is supportive and the response is appropriate).
- Gardaí should be more proactive and not rely solely on the woman: charging, arresting and prosecution should be their decision and responsibility not the victim's.
- Review the manner in which Gardaí inform a woman of threats made against her without her knowledge and how they support her following such a disclosure. Ideally, there would be a specialised service to provide support.
- A specialised Garda line for domestic violence calls, with trained Gardaí who listen and understand.

²⁸ This is a list of the wishes and recommendations as mentioned by the participants in the various group and individual sessions, it is not a list of agreed recommendations by all participants nor taken as recommendations by Women's Aid.

Courts

- Meaningful sentences, appropriate to the crime committed.
- Mandatory sentences and guidelines.
- Electronic monitoring of offenders (when released from custody).
- Legally trained support person to help victim understand what is happening and psychological support with giving evidence and cross-examination.
- Name and shame: some women felt that abusers should be named to warn other women against them.
- Women to be given information on partner's previous convictions, upon request, so they are informed of any violent past when they get involved with him.

Children

- Multidisciplinary team for determining separation and access in Court.
- Training on child safety is paramount. There should be trained professionals to talk to the child when there are allegations of abuse.
- Protection for children: access should be revoked and/or supervised if there is emotional abuse.
- The child should be heard on whether s/he feels safe going on Access. Structures and resources should be available to hear the child's view.
- Training for schools so they can support children living with domestic violence.
- Specialised counselling for children should be made available to overcome the impact of living with domestic violence.

Support

- Victims need to be treated with respect and dignity, there is a lot of shame and silence in relation to domestic violence.
- Domestic violence leave at work and formal policy by employers to support victims.
- All frontline public servants should be trained on how best to respond to disclosures of domestic violence and how best to support victims.
- Victims should not feel judged nor feel that support is conditional on how they behave and deal with the abuse they are suffering.

CONCLUSIONS AND RECOMMENDATIONS

Domestic violence is present in the criminal justice system and the offences committed in intimate relationships are wide ranging and severe. Children are often present in the relationship and impacted by the abuse but their needs fall through the gaps between the criminal and family law systems.



CONCLUSIONS

The consultation highlights significant issues when women access the criminal justice system to seek justice and protection from domestic violence. For many participants, criminal proceedings while being long and stressful, did not tend to increase their overall safety. Many felt that the perpetrator was not adequately sanctioned for the crime and to deter future abusive behaviour.

This project strongly suggests that the justice system does not fit with domestic violence crimes and needs to be tailored to respond to the complexity of domestic violence. Women's Aid ongoing contacts with women experiencing domestic violence confirms this.

The justice system is too fragmented to adequately respond to victims of domestic violence: breaking up years of abuse into separate incidents hides the continuous and cumulative nature of domestic violence, helps minimise the abuse and thus works in favour of the abuser.

The separation of the criminal and family court and the lack of communication between the two hinders the safety of women and children. A recent statement by the UN and other international experts reiterates the importance of taking domestic violence into account in custody and access determinations, which is also required under many international instruments, including the Istanbul Convention²⁹.

We need to reconfigure the system and change priorities so that regard for the safety of women and children is front and centre.

Women's Aid cannot provide ready-made solutions. There needs to be an audit of the current criminal and family law system and a national conversation on how to change it to make it responsive to the needs of survivors of domestic violence and on the resources needed to support this change.

To do this effectively we need better data and research on innovative solutions.

New victim focused solutions need to move towards a legal and procedural "defragmentation" of the court processes when dealing with domestic violence. The option of having one court to oversee all criminal and family law matters in the context of domestic violence, as in other jurisdictions, should be explored. At the very least, there should be efficient communication between the criminal and family courts.

Courts proceedings should be shorter and better managed to avoid repeated adjournments.

The idea of an overarching offence bringing together different and repeated incidents should also be explored as well as utilising the indictable offence potential of the new crime of coercive control.

To be able to reform the system we need much better quantitative data from the courts, qualitative data, which could be provided by an Oireachtas Justice Committee consultation with survivors and services, and research on best practice in other jurisdictions, such as Domestic Violence Courts and Independent Domestic Violence Advocates.

In the meantime better support for victims before, during and after court proceedings should be implemented. The Dolphin House Family Law Court Support and Referral Service could

²⁹ "Intimate partner violence against women is an essential factor in the determination of child custody, say women's rights experts," Platform of undersigned United Nations and regional independent mechanisms on violence against women and women's rights, <https://www.coe.int/en/web/istanbul-convention/-/intimate-partner-violence-against-women-is-an-essential-factor-in-the-determination-of-child-custody-say-women-s-rights-experts>, 17th June 2019, (accessed 15.9.19).

be replicated in other family law courts. Court support in criminal courts should be properly funded and expanded nationally.

Another key issue that needs to be addressed is the difficulty the Courts face in refusing bail for summary offences. Many of the offences committed in the context of domestic violence are summary offences with a maximum sentence of less than 5 years. This means that even if the perpetrator is assessed as high risk and Gardaí oppose bail, the Court cannot refuse bail under the Bail Act on the basis that the accused is likely to commit a further similar offence because the Bail Act is limited to offences carrying a sentence of 5 years or more. This can have a very negative impact on women's safety, as leaving an abuser and/or taking action against him increases the risk of further violence and retaliation. This could be addressed by amending legislation to extend the Bail Act to all offences involving domestic violence, including summary offences.

RECOMMENDATIONS

Systems Change

1. That the Oireachtas Justice Committee carries out an inquiry into domestic violence and the response of the criminal justice system to hear directly about the experiences of victims.
2. That necessary steps are taken as a matter of urgency by An Garda Síochána, the Courts Service and the Central Statistics Office to efficiently collect and publish relevant data, as advised by the European Institute for Gender Equality³⁰.
3. That research on existing best practice in other jurisdictions is carried out by the Law Reform Commission.
4. That further research on the criminal justice system and domestic violence is carried out, including statistical data on prosecution and sentencing and qualitative data on victims' experiences with a view to imposing more appropriate sanctions.

Safety and Support

5. Funding to organisations such as Women's Aid providing support in the family court should be increased to extend specialist domestic violence support to criminal courts. Organisations providing support to victims in the criminal courts such as V-SAC should be adequately funded and trained on the specifics of domestic violence.
6. Court support should be offered to all victims of domestic violence in both the family and criminal courts. Existing schemes in family law courts such as the Dolphin House Family Law Court Support and Referral Service need to be extended nationally and properly funded.
7. Consideration should be given to amend legislation to extend the Bail Act to all offences involving domestic violence, including summary offences.
8. An Garda Síochána and Courts staff should ensure that all victims of domestic violence are referred to specialist services as required by the Victims of Crime and the Domestic Violence Acts.³¹

³⁰ Recommendations to improve data collection on intimate partner violence by the police and justice sectors: Ireland, EIGE, November 2018, available at <https://eige.europa.eu/publications/recommendations-improve-data-collection-intimate-partner-violence-police-and-justice-sectors-ireland> (accessed 12.9.19).

³¹ Criminal Justice (Victims of Crime) Act 2017, S7(1)(a) Domestic Violence Act 2018, S28

9. Implementation of a mechanism to ensure that at the end of the Criminal Justice proceedings and regardless of outcomes, all women are offered links with post-trial support.
10. Implementation of measures to monitor offenders when released from custody. As a minimum, Safety Orders should be available to victims without having to prove recent incidents. A form of restraining order issued by the criminal justice system, as in other jurisdictions, should be explored.
11. The victim support measures required by the Victims of Crime Act (2017) and the Domestic Violence Act (2018) should be fully implemented and monitored.
12. The Courts Service should review their procedure to ensure that when orders are granted against a defendant present in court the order is immediately served and that this is always recorded appropriately.
13. National guidelines on sentencing in domestic violence cases should be developed and implemented.
14. All criminal justice system stakeholders should receive training on domestic violence. This should include coercive control, post-separation abuse, risk assessment and impact on children.

Family Law and Children³²

15. Development and implementation of national guidelines for the Family Law Court so that access should not be granted to a perpetrator of domestic violence, unless and until the Court is wholly satisfied that the child would be safe from abuse while in the custody of, or unsupervised access with, such parent. This needs to include safety from emotional abuse caused by exposure to domestic violence.
16. Training should be provided for Social workers and S32 assessors on the impact of domestic abuse on children and how to support the non-abusive parent.
17. Linkages should be developed between the Family and Criminal law courts so that information on domestic violence related criminal offences are communicated promptly to Family Law Courts determining access and custody matters.

Data

18. Implementation, without further delay, of the **gold standard** on data collection as outlined in the Second National Strategy for the Prevention of Domestic, Sexual and Gender Based Violence³³. This should allow for the publication of Statistics on offences committed in a domestic violence context by type of offence.
19. Collection of data on prosecution and sentencing of the new offence of coercive control.
20. Collection of data on use of aggravating circumstances as introduced by S40 of the Domestic Violence Act 2018.

³² Detailed recommendations on Family law are included in Women's Aid submission on Family Court reform here: <https://www.womensaid.ie/download/pdf/20190409233709.pdf>

³³ The Second National Strategy for Preventing Domestic, Sexual and Gender Based Violence 2016-2021, Department of Justice, <http://www.cosc.ie/en/COSC/Second%20National%20Strategy.pdf/Files/Second%20National%20Strategy.pdf> (accessed 12.9.19).

ABOUT WOMEN'S AID

Women's Aid is the leading national organisation that has been working in Ireland to stop domestic violence against women and children since 1974. We work to make women and children safe from domestic violence by offering support to women and their families and friends, providing hope to those affected by abuse and working for justice and social change.

24hr National Freephone Helpline — 1800 341 900

Our 24hr National Freephone Helpline provides a listening ear, emotional support and practical information to women experiencing abuse from their current or former male partners. It responds to 44 calls per day, on average. It is the only free, national, domestic violence helpline with specialised trained staff, fully accredited and quality assured by The Helplines Partnership. It has a Telephone Interpretation Service facility covering 170 languages for callers needing support in their own language. We also provide a text service for deaf and hard of hearing women. The Helpline is a gateway into our Dublin based face to face and court support services and to other local independent support services and refuges around the country.

One to One Support

The Women's Aid One to One Support Service provides in depth information and support to women experiencing domestic violence in locations across Dublin city and county. This ongoing face to face support can include Safety Planning with the woman and we can offer the woman a wide range of advocacy and referral support to external organisations and agencies such as Refuges, Housing, Social Welfare, Immigration, Gardaí, Family and Criminal Courts, Social Services and Health agencies. A snapshot of our advocacy and referral work includes accompanying women to the local Gardaí to make statements; assisting women to make Legal Aid applications; supporting a woman to regularise her immigration status because of domestic abuse; advocating to Housing Authorities for women who are no longer safe in their homes or supporting a woman to access local refuges. It also includes accompaniment to family and criminal courts.

Court Accompaniment

The Women's Aid Court Accompaniment Service provides support for women availing of legal options regarding abuse by a current or former husband or partner. Women's Aid Support Workers have expert knowledge and understanding of the family law system and of the legal options open to women living with domestic violence. We provide emotional support, both before, during and after the court proceedings; support women as they face their abusive partners, clarify legal terminology, safety planning and explore further options. We support women with the following applications and hearings in the context of domestic abuse: Domestic Violence Orders, Access, Maintenance, Divorce and Separation.



Dolphin House Support and Referral Drop In Service

Based in the Dolphin House Family Law Court, the Support and Referral Service is a free and confidential drop in service for women who are experiencing domestic violence. This can include emotional, physical, sexual or financial abuse. The service provides support and information on legal options, safety planning and links women in with domestic violence services for ongoing support. Women's Aid runs this service in partnership with Inchicore Outreach Centre.

High Risk Support Project

The High Risk Support Project provides a multiagency response to women at high risk of ongoing abuse and homicide from their ex-partners. Women's Aid partners with An Garda Síochána and local domestic abuse services to deliver a co-ordinated rapid response system for women and families, which is generously supported by the Vodafone Foundation and the Commission for the Support for Victims of Crime.

Women's Aid Law Clinic

Our confidential and free legal information and assistance clinic supports women experiencing domestic violence who are representing themselves in domestic violence and family law proceedings. The clinic is staffed by volunteer lawyers from McCann Fitzgerald whose services are provided free of charge.

Specialised Training

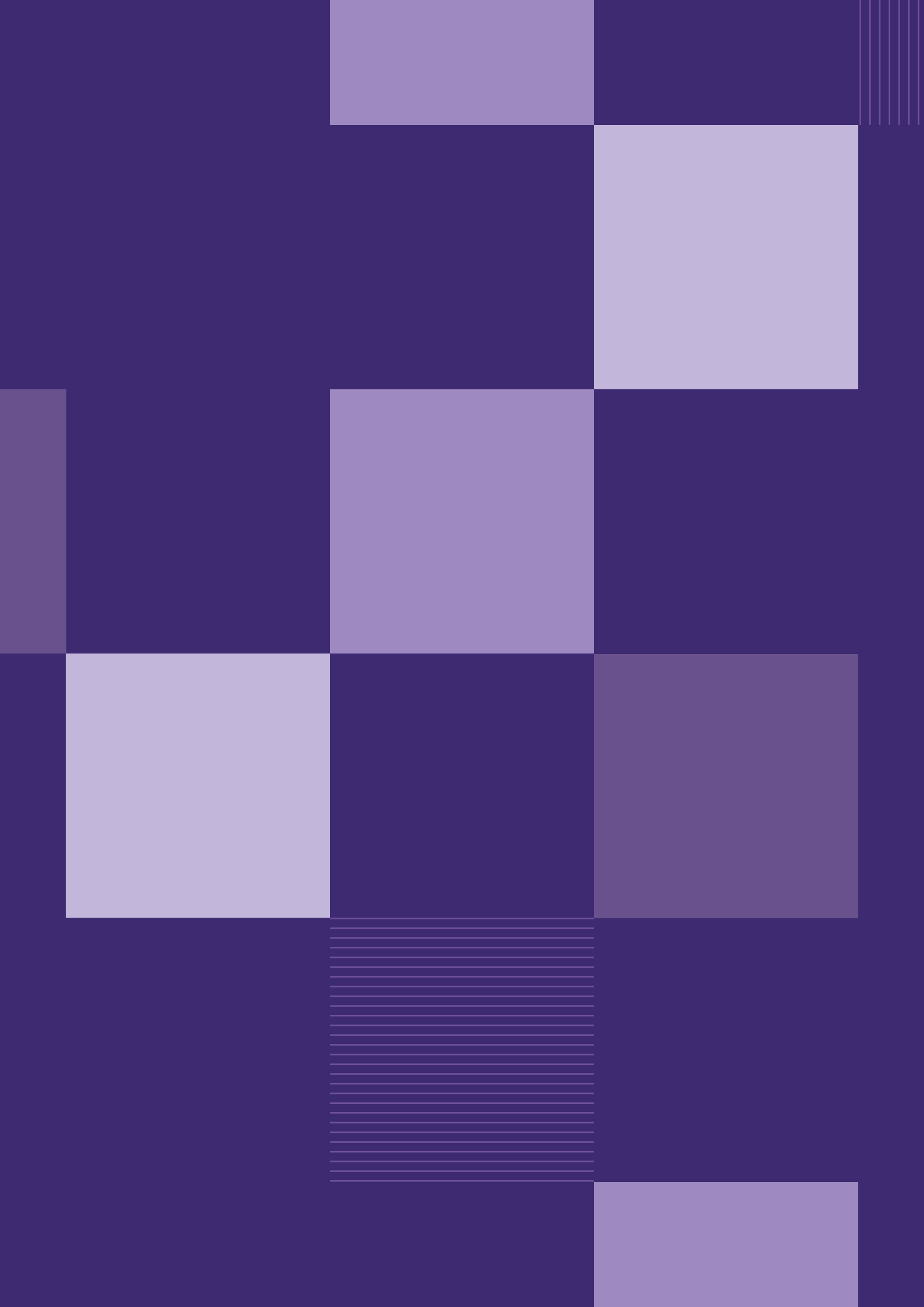
Women's Aid is a Centre of Excellence for Training and Development of professional and organisational responses to women and children experiencing domestic violence. We provide support to local and national organisations throughout Ireland, both statutory and non-statutory, to promote best practice responses to women and children experiencing domestic violence. All Women's Aid training is informed and guided by over 40 years of experience of direct work supporting women and by international models of best practice.

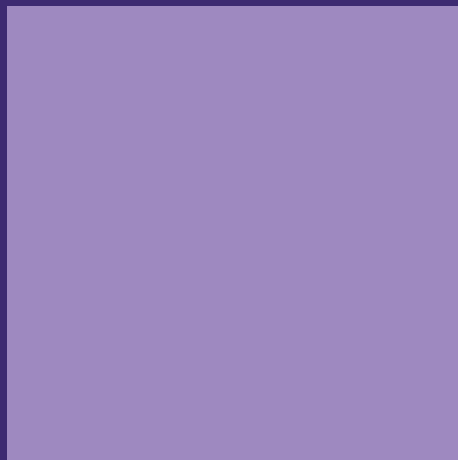
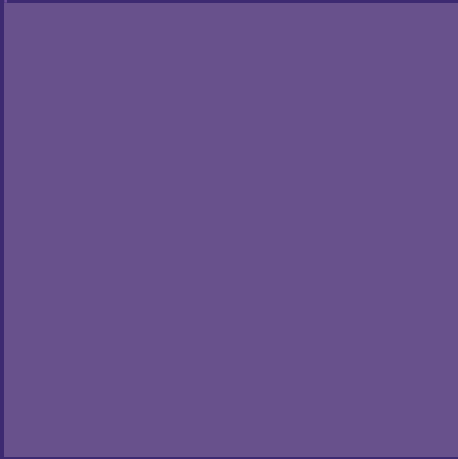
Public Awareness and Campaigns

Women's Aid leads the way in raising awareness and providing information on domestic violence to women experiencing abuse, their families and friends, their communities and wider society. Our annual public awareness campaigns and communications activity are a vital way to highlight the prevalence, nature and impact of domestic violence, dating abuse and Femicide. We also engage with the media to promote the 24hr National Helpline and our other support services. The Women's Voices testimony project encourages and facilitates survivors of domestic violence to tell their stories in a safe way to create better awareness and change for women in similar situations.

Influencing Government and Policy

Women's Aid provides solutions based recommendations on improving legal responses, systems and protections for women and children experiencing abuse and we bring the concerns of women experiencing abuse to a number of national and local forums. We make submissions and meet with Government ministers, policy makers and members of the Oireachtas to discuss a range of issues and collaborate with other agencies and organisations to bring about political and social change.







WOMEN'S AID

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