



DEFENSE

NATIONAL DEFENSE CENTER
FOR CRIMINALIZED SURVIVORS

DEBUNKING MISCONCEPTIONS ABOUT WORKING WITH CRIMINALIZED SURVIVORS

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BWJP



Involvement in the criminal legal system (CLS) can have negative impacts for all defendants, especially people of color, people in poverty, and others who are marginalized.

Survivors of gender-based violence (GBV) who have been arrested, criminally charged, and/or convicted may experience heightened safety risks, and, in turn, seek support and services from community-based programs. Survivors with a conviction history, as well as those victim-defendants currently facing prosecution, may encounter barriers when seeking healing services because advocacy programs have formal or informal policies and practices in place that are rooted in misconceptions about criminalized survivors and lead to refusal of services. It is also important to remember that systems, such as the CLS, that make determinations of who is a victim are not free from bias and their definition of a victim may differ from a community-based program's definition.

This memo is not intended to be inclusive of all the issues that may arise when a domestic violence program is assessing whether they can provide services to a survivor of intimate partner violence (IPV) or other form of GBV. Instead, it will highlight some of the more common misconceptions that programs have about working with criminalized survivors and how those misunderstandings prevent programs from working with those survivors. Understanding some of these misconceptions will lead to better-informed responses when interacting with survivors of GBV who are formerly or currently involved in the CLS as defendants.

This memo highlights some common examples of the reasons advocacy programs give for why they cannot work with criminalized survivors:



“Our program only provides services to those who are victims.”

Misconception:

Victims who may have used violence or otherwise engaged in criminalized activity are no longer victims.

Assumptions that follow that misconception:

“When there is a criminal case, only someone who is a victim-complainant is eligible for our services.”

“Someone who is facing charges has chosen a criminal lifestyle and is not a victim or someone who we work with.”

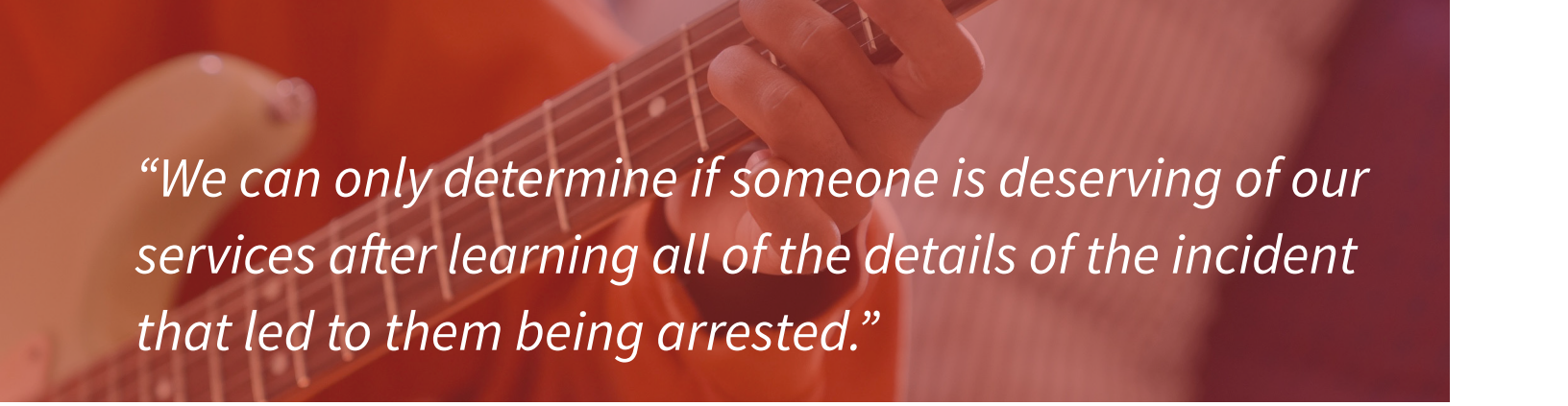
“The CLS always accurately assesses who is the victim and who is the abuser.”

Impacts that these assumptions can have on how criminalized survivors are viewed, assessed, or treated:

Even if advocates believe someone has experienced GBV, they may inaccurately assess the need and eligibility for services because a “real” victim would never engage in illegal activity.

Realities of survivors of IPV and the CLS:

- The CLS’s adversarial model perpetuates the idea that people are either a victim or a perpetrator. Within this dichotomy, criminalized survivors are invisible.
- Survivors enter the CLS as defendants for many reasons, often either directly or indirectly related to their history of abuse.
- The criminalization of a survivor’s actions does not negate that they experienced abuse and are deserving of services.



“We can only determine if someone is deserving of our services after learning all of the details of the incident that led to them being arrested.”

Misconception:

Criminalized survivors only receive charges after acting in self-defense or being coerced into illegal activity; if they used force or were not coerced, then it is clear they are a bad actor and not a victim who needs services.

Assumptions that follow that misconception:

“Victims only use force in self-defense.”

“Someone who is charged for illegal activity and was not coerced by their abusive partner is not a victim because they willingly chose to commit a crime.”

Impacts that these assumptions can have on how criminalized survivors are viewed, assessed, or treated:

Advocates may think that those who have used violence that was not in self-defense, or those who engaged in illegal acts without being under duress or coercion, cannot be victims. This stems from a limited understanding of what a survivor can look and act like.

Realities of survivors of IPV and the CLS:

- Survivors are criminalized in relation to their abuse in many ways. It isn't always easy to see the connection between their abuse and their experiences with the CLS.
- Survivors may engage in illegal activity that is not related to their history of abuse.
- The details of what happened during an incident for which someone is charged do not change the reality that they can be a survivor in need of services. A survivor's involvement in the CLS should not automatically “disqualify” them from services.
- Charged and convicted survivors are among the most marginalized; they need support and services from local programs just as much as any other survivor does, if not more.



“We cannot provide services to a survivor who is charged with any domestic violence crime.”

Misconception:

Someone who is charged with a domestic violence crime is an abusive partner.

Assumptions that follow that misconception:

“A survivor who uses violence against their partner and subsequently gets charged with DV is now an abuser.”

“Real victims don’t get DV charges because the police can determine who is a victim and who is an abuser.”

Impacts that these assumptions can have on how criminalized survivors are viewed, assessed, or treated:

Advocates can incorrectly assess a situation when they rely on the CLS to inform them of who is a victim and who is abusive. The CLS does not often account or assess for power and control (or other) dynamics within a relationship, therefore it is not uncommon for survivors to be arrested for DV charges. This can be the result of mandatory arrest policies or law enforcement’s inability to determine the primary aggressor.

Realities of survivors of IPV and the CLS:

- Survivors, even those who use force, do not exert power and control over their partner.
- Survivors get swept into the CLS and charged with DV for a multitude of reasons: for example, when they use force as a protective strategy, a way to escape entrapment, or as a means to resist coercive control.
- It is not uncommon for abusive partners to lie to police to get survivors arrested. Some abusers even injure themselves in order to get their victims arrested.



“We cannot allow someone who was or is charged with a crime into our shelter.”

Misconception:

People with criminal charges are dangerous for staff and other residents, especially children.

Assumptions that follow that misconception:

“If someone has criminal charges, they have no regard for the law, will not abide by rules, and will create a harmful environment.”

“People only get criminal charges if they have committed a criminal offense.”

Impacts that these assumptions can have on how criminalized survivors are viewed, assessed, or treated:

DV shelters may deny a survivor a safe space to be when they are not a risk to anyone. Advocates may not believe the danger that a criminalized survivor is in if they assess someone who has a charge as always being a danger to others.

Realities of survivors of IPV and the CLS:

Criminal charges are not a clear indicator of the risk that a person poses. Oftentimes, those who abuse are able to plead down their charges while criminalized survivors are often held responsible and charged for the actions of others.

- As a result of their marginalization, criminalized survivors are often among the most vulnerable survivors in need of shelter and healing services.
- Rather than posing a danger to others, the risks to criminalized survivors are heightened directly because of their criminalization.
- Criminalized survivors should be assessed like any other survivor and safety protocols should be followed accordingly.
- Criminal charges and records are not always an accurate representation of what someone has done.



“We can provide services to a criminalized survivor unless they have been accused of a charge that involves a violent crime.”

Misconception:

Anti-violence means having zero tolerance for any use of violence, past or present, no matter the circumstances.

Assumptions that follow that misconception:

“Someone accused of violent crimes, particularly against children, is inherently dangerous and will harm others.”

“As an anti-violence organization, it would be inconsistent to provide services to someone who has been charged and convicted of an act of violence.”

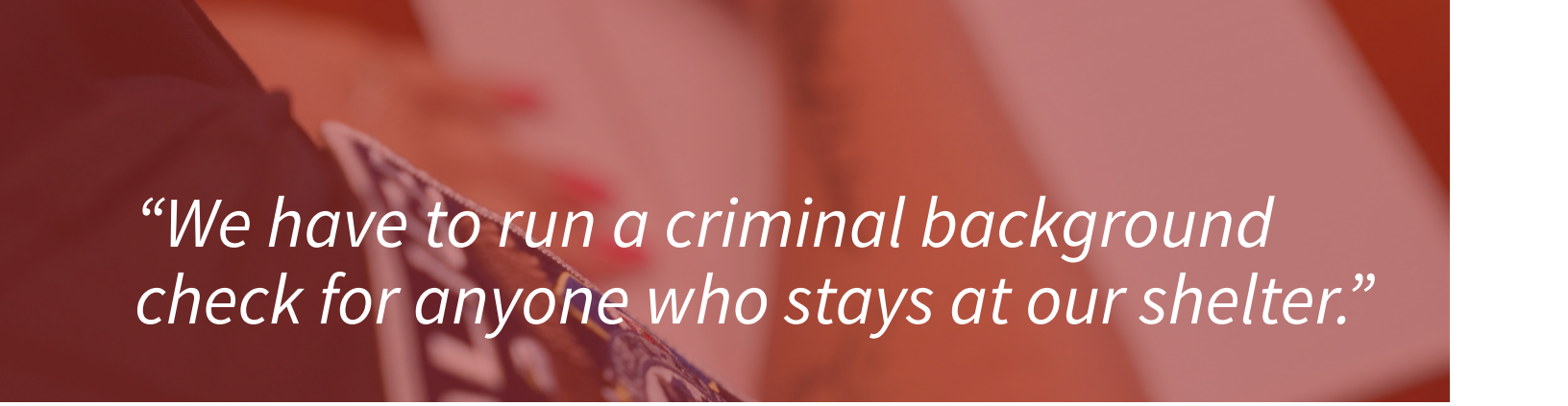
“We understand that survivors sometimes get charged with crimes, but we don’t condone the use of violence.”

Impacts that these assumptions can have on how criminalized survivors are viewed, assessed, or treated:

Advocates and others find it very hard to imagine that the CLS would charge a survivor with a violent crime and assess them as abusive if that was not the reality of the situation. Misunderstanding the use of force and dynamics of DV can create compounding harm on the survivor and can cause an inappropriate denial of services.

Realities of survivors of IPV and the CLS:

- Survivors take a lot of responsibility for their own protective use of violence, which is used to survive abuse, while batterers often take little to no responsibility for their violence, which is used to control their partner.
- The CLS and others often misunderstand a survivor’s use of violence vs. a batterer’s use of violence in intimate relationships, as a result, survivors are likely to be arrested and charged with crimes and face compounded risks.
- Survivors who are the most marginalized and have access to the fewest resources are the survivors most likely to be criminalized and harshly punished. For example, Black and queer women are more likely to be stereotyped and labeled as aggressors than white heterosexual women.



“We have to run a criminal background check for anyone who stays at our shelter.”

Misconception:

Criminal records reflect the reality of someone’s life and current situation: if they have a long criminal history, they are not a victim, they are someone who chooses to live a dishonest and/or violent life.

Assumptions that follow that misconception:

“People with criminal records are criminals, and criminals are not victims.”

“I can understand having a small infraction, like a traffic violation, but someone who has a longer list of convictions, like shoplifting and writing bad checks, is someone who is just living a dishonest life and is lying about abuse to try to game the system.”

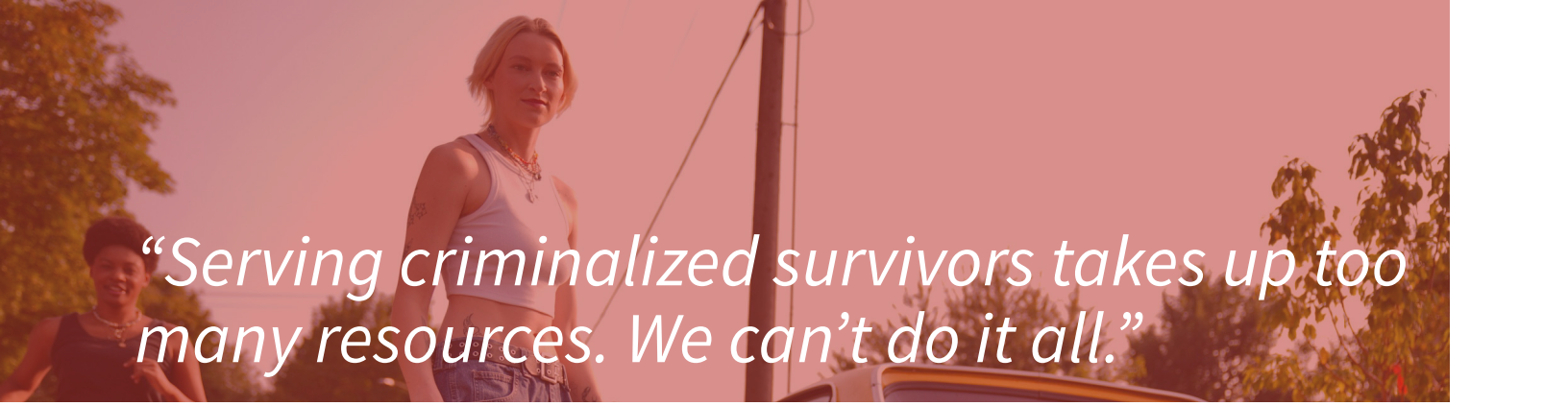
“Lots of people have records, but anyone who has a history of violent convictions, like assault or robbery, is not a victim.”

Impacts that these assumptions can have on how criminalized survivors are viewed, assessed, or treated:

Some advocates may think that someone who has a criminal background chooses to live a “criminal life” and doesn’t deserve services. They may think that someone who has prior convictions has little to no credibility and shouldn’t be trusted. They may view criminal charges as facts because of their trust that the police and/or the CLS always get it right.

Realities of survivors of IPV and the CLS:

- The stereotypes of, and language used about, people with convictions are dehumanizing and stigmatizing. The assumption that people with conviction histories are untrustworthy makes them more vulnerable to abuse and makes it more difficult for them to reach out for support out of fear that they will not be believed.
- Criminal records only show a snapshot of someone’s history with the CLS. They do not, however, contextualize how someone became involved in the CLS, which for many survivors is related to their experiences of abuse.
- Many, if not most, people with long criminal records have experienced some form of abuse at some point in their lives, if not, throughout their lives.



“Serving criminalized survivors takes up too many resources. We can’t do it all.”

Misconception:

Criminalized survivors are a “special population” and serving them is cost prohibitive.

Assumptions that follow that misconception:

“Criminalized survivors are less deserving of support and resources because they have committed a crime.”

“Criminalized survivors needs are completely different from the needs of other survivors, and we just can’t handle opening our doors to them.”

Impacts that these assumptions can have on how criminalized survivors are viewed, assessed, or treated:

If advocacy programs don’t see criminalized survivors as among the survivors they serve, then they may be excluding those who are most marginalized and vulnerable to multiple forms of abuse and exploitation. Because being abused is a risk factor for involvement in the CLS, programs can benefit all survivors of IPV by recognizing that their resources can also be applied to criminalized survivors.

Realities of survivors of IPV and the CLS:

- Many survivors become involved with the CLS either as a victim-complainant or victim-defendant, even if not identified as such. All survivors need and deserve the support of their local advocates.
- Incorporating an understanding of defense-based advocacy into the work that advocates already do is a significant way that programs can support criminalized survivors without expending additional resources.
- Criminalized survivors need many of the same services as other survivors, such as safety planning, court accompaniment, and counseling.



“We will not provide services because it’s not clear to us that working with criminalized survivors is permitted by our funders.”

Misconception:

Funding does not allow advocacy programs to work with anyone with criminal charges.

Assumptions that follow that misconception:

“We wish that we could serve criminalized survivors, but our understanding is that we are not allowed to provide advocacy services to anyone who has charges.”

“Funders don’t let us provide services that may assist defendants since that would be supporting those who batter and engage in criminal activity.”

Impacts that these assumptions can have on how criminalized survivors are viewed, assessed, or treated:

When DV programs have misinformation that their funding does not allow them to work with criminalized survivors, they may be denying services to survivors who are eligible for them. Survivors who are in great need of support may experience negative impacts from being turned away, such as feeling unwelcome, not believed, and undeserving of services.

Realities of survivors of IPV and the CLS:

- Many funders who were once more restrictive in their funding have since expanded their understanding of IPV and how victims become criminalized. They now allow, and even encourage, programs to serve criminalized survivors.



“We only have relationships with police and the district attorneys; we do not work with defendants or defense attorneys.”

Misconception:

It is a conflict of interest for advocacy programs to support criminal defendants because they work closely with the police prosecutor’s office.

Assumptions that follow that misconception:

“Local police and prosecutors will oppose and not understand why we would support a survivor facing criminal charges.”

“Compromising our strong relationships with the prosecutor’s office isn’t worth the potential risk to our clients who have cases as victim-complainants.”

Impacts that these assumptions can have on how criminalized survivors are viewed, assessed, or treated:

When advocates look to the CLS to determine who they can serve, they may create a perceived conflict of interest that could lead to the denial of essential services to those who they have a mission to serve. This contributes to the invisibility of victim-defendants who may be facing high safety risks and are in dire need of support.

Realities of survivors of IPV and the CLS:

- An overreliance on the CLS to ascertain who is a victim of IPV results in the criminalization of many survivors and leaves them even more vulnerable to abuse.
- When survivors are involved in the CLS, they can be either a victim-witness or victim-defendant, or both (if there are multiple cases). In any scenario, all survivors deserve access to advocacy and services that contribute to increased safety and options.
- Advocates with established relationships with the police and prosecutors may be well-positioned to advocate for criminalized survivors and create systems change as they are more likely to be trusted and listened to on these issues.



“Even if we wanted to, we work with survivors who are complainants in the CLS; we aren’t the right resource for defendants.”

Misconception:

Advocates have no experience working with criminalized survivors and it seems too hard and complicated to do that work.

Assumptions that follow that misconception:

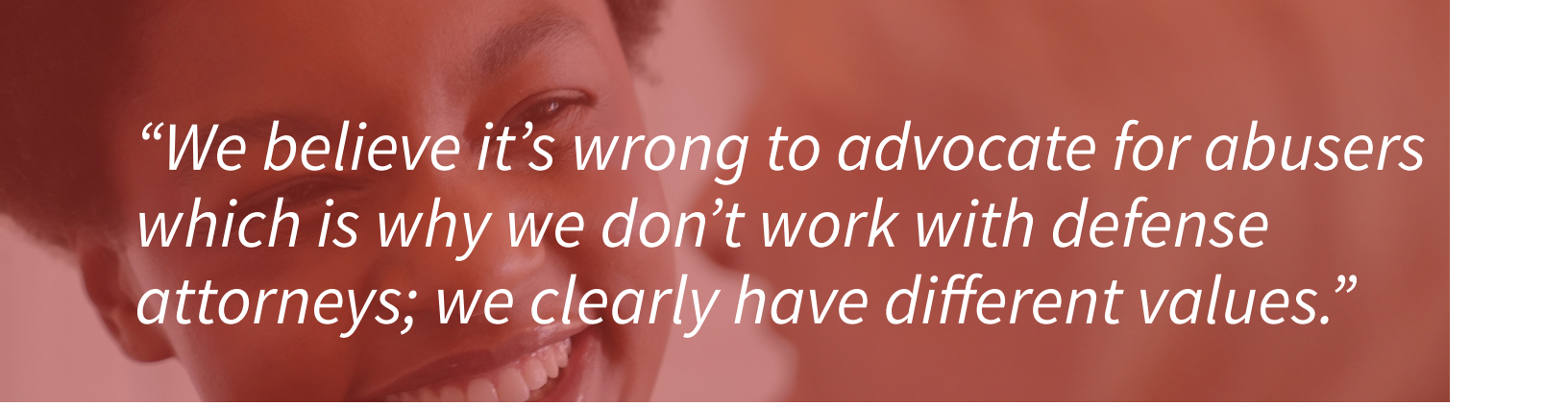
“We don’t know how to support criminalized survivors because all of our clients who are involved in the CLS are victim-complainants; the defendants we see in court are the abusive partners to the victims we serve.”

Impacts that these assumptions can have on how criminalized survivors are viewed, assessed, or treated:

Only offering services to survivors who are victim-witnesses contributes to a court culture that often treats community-based advocates as an extension of the prosecutor’s office. Advocates may appear to be working for the prosecutor, rather than standing as an independent entity working on behalf of all survivors.

Realities of survivors of IPV and the CLS:

- Criminalized survivors may feel even more isolated believing that they are not eligible for or are turned away from accessing healing services.
- Victims facing charges may be experiencing additional risks and are in need of safety planning with someone who understands the dynamics of IPV and the CLS.
- Advocates who are well-versed in court procedure can provide invaluable assistance to a survivor who is experiencing the CLS as a defendant.
- Advocates may already be supporting criminalized survivors and not know it if the survivor has chosen not to disclose that information to their advocate.



“We believe it’s wrong to advocate for abusers which is why we don’t work with defense attorneys; we clearly have different values.”

Misconception:

Defense attorneys only represent abusers and don’t have anything in common with advocates who work with victims.

Assumptions that follow that misconception:

“Defense attorneys always represent clients who are abusive, and we don’t feel comfortable approaching them or know what to say since our beliefs are so different, so we don’t have relationships with them.”

Impacts that these assumptions can have on how criminalized survivors are viewed, assessed, or treated:

Advocates may be denying deserving victims of essential services if – because of frayed relationships with defense attorneys – they only offer services to survivors who are victim-witnesses. Defense attorneys and advocates alike may have misperceptions of each other’s roles. Defense attorneys may not realize that community-based advocates are not formally or financially associated with the police or prosecution, or they may assume that because their client was arrested they are ineligible for community-based advocacy services.

Realities of survivors of IPV and the CLS:

- Defendant-survivors may be in dire need of support services and in great need for advocates to work collaboratively with their defense attorneys and vice versa.
- Defense attorneys may not be aware that victims facing charges may be experiencing additional risks and are often in need of safety planning with someone who understands the dynamics of IPV and the CLS, as community-based advocates do.
- It will serve all survivors, not just criminalized survivors, for advocates and defense attorneys to recognize that they have a lot in common and can work together.



“When someone seeking services becomes hostile with us and also has criminal charges, we assess them as the aggressor, particularly if their partner who is also seeking services is calm.”

Misconception:

Survivors do not present as angry, and anyone who does must be the abusive partner.

Assumptions that follow that misconception:

“If someone acts angry and aggressive and they have criminal charges, we know they are the abusive partner since a true victim wouldn’t act that way with us.”

“Even though we know this person was a survivor, they have become hostile and abusive with us, so we won’t serve them.”

Impacts that these assumptions can have on how criminalized survivors are viewed, assessed, or treated:

An advocacy program may dismiss a criminalized survivor’s assertion that they are a victim when compared to their partner, particularly if they express anger and present as volatile while their partner is calm. The program may mischaracterize a victim as an abuser and deny the defendant critical services and supports while deciding to work with the abusive partner instead.

Realities of survivors of IPV and the CLS:

- Survivors experience a wide range of emotions. Anger is a common and normal response to being in an abusive situation.
- Many survivors express fear through anger and hostility.
- Many abusers remain calm while their victim is reactive in an attempt to control the situation and influence how others view them.
- Anger can be an important way for survivors to reclaim their personal power, help them to emotionally disconnect, and move them to take action (e.g. eventually leaving).
- The view that victims do not express anger plays into the false notion of the “perfect victim” who is only and always fearful, passive, and helpless.



“We will not work with survivors who are accused of harming their children.”

Misconception:

True victims would never harm their children.

Assumptions that follow that misconception:

“A survivor who is a parent would never choose to harm their child. We do not support causing harm or staying in an abusive household as a way of protecting children, and any “real” victim would feel the same.”

“If a survivor harmed their child or ‘allowed’ someone to harm them, they are also an abuser.”

Impacts that these assumptions can have on how criminalized survivors are viewed, assessed, or treated:

Advocates and advocacy programs may be denying services to protective parents by not recognizing the complicated ways that survivors, especially mothers, protect their children. Judgments based on a misunderstanding of protective strategies can leave parents without the supports that they deserve.

Realities of survivors of IPV and the CLS:

- Survivors evaluate the danger they are in and know that leaving may be lethal. They know that risk extends to their children and may stay to minimize harm.
- Survivors who assess that their children are in danger may participate in “disciplining” and “punishing” them in an attempt to avoid the harm that their abuser may otherwise inflict.
- Male abusers often abuse women as mothers. That is, they target their identity as a mother and their ability to protect their children; they use the children to exercise power and control over the mother. When advocates and the CLS punish mothers for a perceived “failure to protect” their children, they reinforce the abuser’s abuse of them as mothers.

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