

THE NATIONAL CLEARINGHOUSE FOR  
THE DEFENSE OF BATTERED WOMEN

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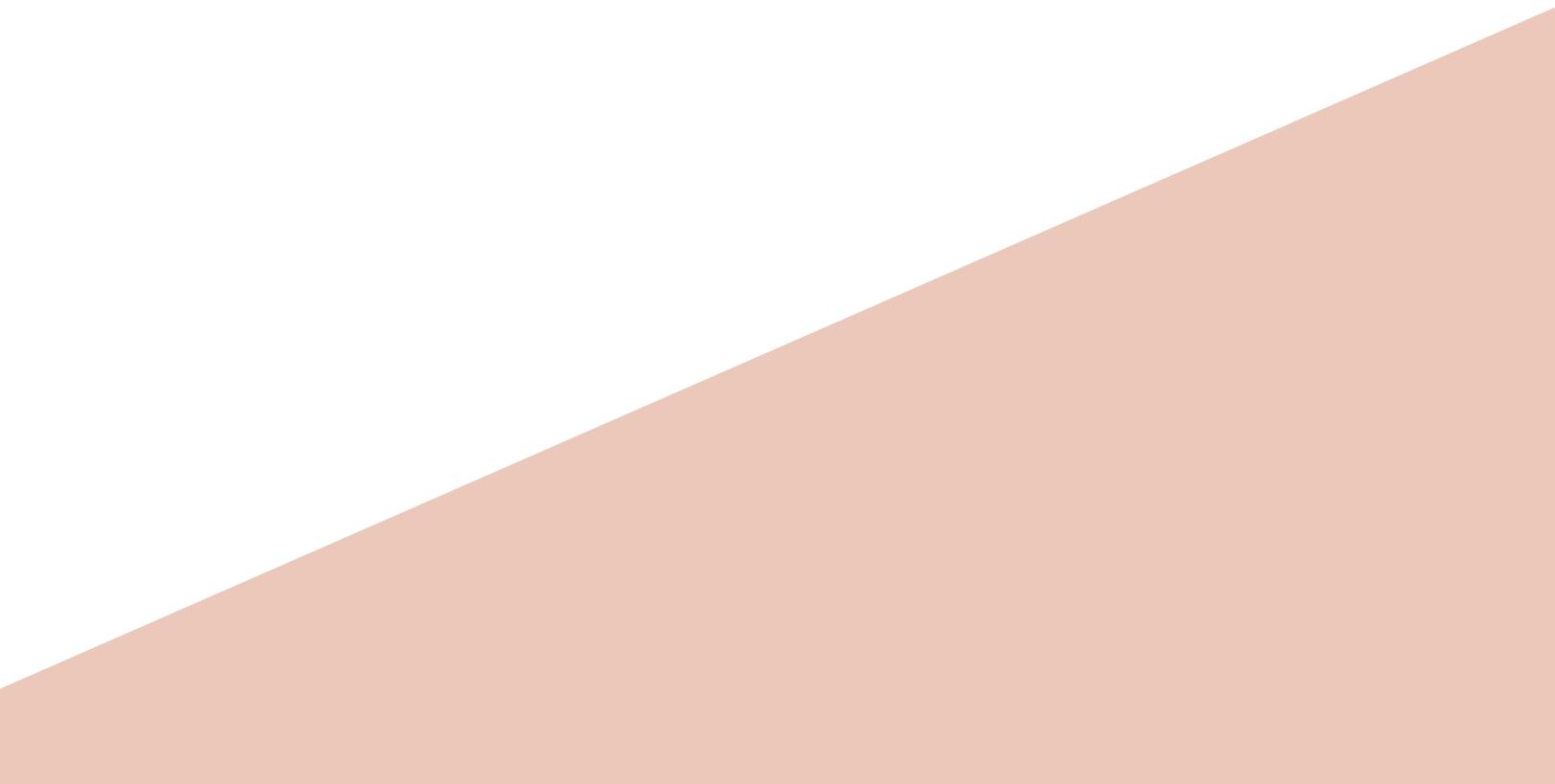
November 2009

# Working With **Battered Women in Jail**

A Manual  
for Community-Based  
Battered Women's Advocates

“If you have come to help me, you are  
wasting your time. But if you have come  
because your liberation is bound up in  
mine, then let us work together.”

- **LILLA WATSON**, AUSTRALIAN ABORIGINAL WOMAN



This manual originally was written many years ago by Cheryl Kreisher, who at the time was an Equal Justice Works fellow (formerly the National Association of Public Interest Law) at the National Clearinghouse for the Defense of Battered Women. Cheryl used her two-year fellowship following her training as a lawyer and social worker to work with incarcerated battered women, many of whom were incarcerated in Philadelphia County jails. Her fellowship was funded, in part, by the generosity of the law firm of Greenberg and Traurig. As of this update (November 2009), Cheryl is a hardworking Public Defender in Philadelphia, a job she has held for many years. The staff of the National Clearinghouse thanks Cheryl for all her excellent work on this manual (many years ago) and in the courtroom since that time.

Over the years, a number of people have worked to update the manual. Many thanks are due to staff and consultants of the National Clearinghouse who helped make this publication possible - particularly Andrea Bible, Ruth Cionca, Melissa Eve Dichter, Jo Kurzmann, Lisa Laura, Sue Osthoff, Chanel Odom, and Wendy Univer.

This work has also been informed and enriched by the experiences of countless individuals. We at the National Clearinghouse for the Defense of Battered Women are grateful to the advocates who have been tirelessly and passionately doing this work for years and who have graciously lent their ideas, reflections, and recommendations over the years.

But the greatest thanks of all goes out to the currently and formerly incarcerated women who have generously shared their experiences so that others may learn from them and so that battered women in jail may begin to heal.

It is our hope that this manual will challenge assumptions, foster critical thinking, and provide a fundamental understanding of the needs of battered women in jail. Our goal is to support an ever-expanding community of people providing effective advocacy to battered women in jail.

We welcome your input and comments. Let us know what was helpful and your suggestions for changes for future editions. We hope to periodically update this manual, as resources allow. Feel free to call us at 1-800-903-0111, ext. 3. We'd love to hear from you.

Thank you for your interest in this manual and for the work that you do.

**- THE STAFF OF THE NATIONAL CLEARINGHOUSE  
FOR THE DEFENSE OF BATTERED WOMEN**

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## Introduction

### **WHY WORK WITH BATTERED WOMEN IN JAIL?**

Women who are battered by their partners are everywhere – and that includes in your local jail. Unfortunately, in many communities, jailed women are quite invisible, even to battered women’s organizations. If you are not already doing so, we want you (and other community-based advocates) to work with jailed women. Since you are reading this manual, we assume you are interested in doing work with jailed battered women, or are already doing so.

Why do we want advocates to do this work? For one reason, the needs of women in jail are usually enormous, and incarcerated women rarely get the assistance they need and deserve, as is true for many other survivors of battering. Additionally, we believe that advocates can be a very important and vital resource for jailed battered women.

Working with jailed women can be complicated and difficult. Since the women have open criminal charges or are serving sentences (and still may have open legal issues), the stakes are high. We hope this manual will encourage and guide you in thinking about ways of being thoughtful and strategic about how you approach your work with jailed battered women.

As is often true with difficult work, advocating on behalf of jailed women also can be extremely rewarding. Many advocates who have worked with jailed women – and have witnessed some of the injustices and daily indignities the women experience – have told us that this work has changed their lives. For many it has helped them think differently about people charged with crimes, the criminal legal system, and prisoners; it has made them challenge some of their long-held attitudes and beliefs (which we address in this manual). Many have said that they have felt compelled to do more to assist jailed women. We hope this is true for you!

We have found that advocates work with battered women in jail for many the same reasons we do this work in our communities:

- To oppose violence in the lives of women
- To promote women’s safety
- To increase justice
- To promote healing from violence

## INTRODUCTION

Battered women in jail are extremely vulnerable, whether they are awaiting trial or have been sentenced. They live in an environment that is focused on keeping the outside community “secure” from them, not on providing them with an environment that is safe and secure.

In fact, many women report that jail replicates their experiences of battering:

- They are isolated
- Their every movement is examined
- Their individual identities are crushed
- They are under the control of others whose primary concern is exerting power and control
- They are blamed for their own victimization
- They are humiliated
- They are not safe

Battered women in jail need help to heal from the experience of battering and from the pain and trauma of incarceration. They deserve justice and they need safety. We believe community-based advocates can be an important part of their journey to find justice and safety.

### INTENDED AUDIENCE

The language and strategies described in this manual are for advocates working in community-based, non-profit organizations. This manual is not designed for systems-based or law enforcement victims’ advocates (such as those employed by a prosecutor’s office or police department), since they have a conflict of interest that generally prevents them from advocating with defendants in criminal cases.

### A NOTE ON LANGUAGE

The National Clearinghouse for the Defense of Battered Women assists individuals charged with or convicted of crimes for whom there is direct legal relevance between their experiences of being battered and their legal defense. The majority of people charged with or convicted of crimes who contact the National Clearinghouse are women who have been battered by a male intimate partner. Thus, for clarity and consistency, we talk about battered women when referring to defendants, and we use male pronouns to describe abusive partners throughout this manual.

We recognize, however, that some women are battered by female partners, and that transgender people (i.e., people whose gender expression does not correspond to traditional gender roles, and/or whose gender identity is different from their birth-assigned sex) and men who have been battered (most commonly men who are abused by a male partner, although sometimes by a female partner) may be charged with crimes, and the National Clearinghouse will assist them as well.

As advocates, we must be aware of, and responsive to, the needs of defendants in same-sex relationships and transgender defendants whose experiences of being

battered are relevant to their charges. A full description of those needs is beyond the scope of this guide, however. If you have further questions, feel free to contact the National Clearinghouse for further information and referrals.

Another note about language concerns the many terms are used to described people who are charged with crimes. People in jail are sometimes called “detainees”, “defendants”, “inmates”, “prisoners”, or “offenders.” That last term is especially problematic: people awaiting trial should be presumed innocent; they have not been convicted of any offense. Many find the term “offender” insulting and not an accurate reflection of their experiences. Many women have acted justifiably to protect themselves and their children; they may feel “offended” by the system that is vigorously prosecuting them, while that same system previously failed to protect them. If you need to use a term or label to describe the women with whom you are working, you may want to talk with the women themselves, other prisoner-rights activists and/or formerly jailed people activists, and/or formerly jailed people about what term they would like you to use.

This guide will primarily use the phrase “women in jail.” This focuses on a description of the person, rather than on a label. At times, the term “incarcerated women” will be used to emphasize the reality of their situation; they are women who have been deprived of their liberty and forced to live in a locked, regimented, controlling environment.

### **WE’D LOVE TO HEAR FROM YOU**

Throughout the manual, we encourage you to contact us and have listed our phone number. We mean it. Sometimes we mention a specific resource you may want to get. If you call us, we can send you the most up-to-date version.

You can also call “just to talk.” We know this work is difficult. If you think it would be helpful to problem-solve with someone from our staff, please call. We will be happy to think with you.

Each jail is different. Many policies and practices change over time. We know we have not thought of or anticipated every situation you may encounter doing this work. We’d love to hear about problems you encounter, as well as your creative solutions to the problems. The more we learn from you, the more updated information we can share with other advocates around the country.

You can reach us at 1-800-903-0111, ext. 3 or 215-351-0010.

“I am a battered woman. I am your mother,  
your daughter, your sister, aunt and friend.  
I am beaten but not broken, condemned  
but not damned, and I will not sway on my  
hopes, goals, plans, and dreams for the  
future.”

**- DEBI ZUVER,**

A BATTERED WOMAN INCARCERATED IN CALIFORNIA

# Battered Women In Jail

## **WHO ARE THE WOMEN IN JAILS?**

Close your eyes and imagine a woman in jail. What do you see? Is she tough? Is she violent? Is she scheming and conniving? Does she look like someone on TV? Or does she look like women in your life — your neighbor, your relative, your friend? Does she look like you? It is important to confront the stereotypes we hold about women in jail.

There is an alarming trend towards increasing numbers of women being arrested and serving time. The number of women in jails in the United States nearly tripled from 1990 to 2007. Federal statistics report that 55% of women incarcerated in jail have experienced physical or sexual abuse as adults or as children; of those who were abused, 68% were harmed by an intimate partner. More in-depth research has revealed, however, that the percent of incarcerated women who have experienced abuse is much higher – up to 90 percent or more. The most reliable picture you can form of women in jail comes from meeting them, in person or through their writing. For additional resources by and about women in jail or prison, contact the National Clearinghouse at 1-800-903-0111 ext. 3.

## **THE NEEDS OF BATTERED WOMEN IN JAIL**

Women in jail have vast, varied, and often overwhelming needs, touching many areas of their lives. As you advocate for battered women in jail, it is important to be aware of the whole range of needs these women have — before, during, and after incarceration.

The comments that follow come from women (not necessarily all of whom identified as having been battered) who completed a survey at Chicago's Cook County Jail or who participated in focus groups held at two Philadelphia County jails.

Women in jail tell us that they need assistance with the following issues:

### **HOUSING**

"I am homeless. I was beaten by my husband. I was staying under a stairwell."

"Well, I have a child by the man who beat on me and I think he might beat me when he come[s] home - he's in jail now. Also, I don't have nowhere to go."

### **EMPLOYMENT AND ECONOMIC ISSUES**

"I found a job, but was then fired after one day, due to my background."

"[I couldn't get a job because] I had no income, no housing, no address, no start."

### **CONCERNS REGARDING CHILDREN**

"My children are in foster care - I need help with that issue emotionally."

## **BATTERED WOMEN IN JAIL**

“[I’m interested in] parenting classes because I can’t waste time on guilt. So much time has already [been wasted].”

### **EDUCATION**

“[I’m interested in] workshops run by administrators from local higher ed colleges and universities, about financing and career goals.”

“I want to get a one-year certification for drug counseling.”

### **PHYSICAL AND MENTAL HEALTHCARE**

“[I’m interested in] support for Hepatitis C, like some groups.”

“I need to constantly release my emotions. I’m suicidal and I’m bipolar.”

### **DRUG AND ALCOHOL TREATMENT**

“[There need to be] more programs where you can get help when you take drugs. No waiting lists [so] you can get help when you are ready.”

“I want to continue bettering myself and get sober.”

### **SUPPORTIVE COUNSELING**

“[I need] exactly that – support – unconditional space, [where I can be] allowed to talk, vent, cry, laugh, etc. A safe space.”

“If I had had help in abusive relationships, I probably would not even be here.”

The above list is meant to be illustrative, not exhaustive. As is true with all our work with women who are battered, it is important to find out what the woman identifies as her current priority needs and to be cognizant of how her needs (or how they are prioritized) often change over time.

Additionally, the many different needs of women in jail are often interconnected. Battering can lead to homelessness, loss of custody of children, and — in many instances — substance abuse as a coping mechanism. Incarceration complicates all of these problems, and can lead to long-term difficulties after release from jail. For example, imagine trying to find housing, regain custody, or obtain a job with an arrest or conviction on your record.

We cannot single-handedly address all of a woman’s needs. But effective advocacy involves appreciating those needs, viewing a woman holistically, and, ideally, being able to provide a woman with meaningful referrals.

### JAIL VERSUS PRISON

People outside the criminal and legal system may use the terms “jail” and “prison” interchangeably, but there are important differences between jails and prisons.

A jail is generally a short-term detention facility. When a person charged with a crime is held without bail, or when that person is unable to pay the bail that was set, she will be sent to jail until her trial (or until she is able to make bail).

Most jails also incarcerate people who have city or county sentences (as opposed to state or federal sentences). City or county sentences tend to be shorter, generally a year or less, although they may be up to two years in some jails. Women with longer sentences will generally be sent to a state or a federal prison, where the state or federal government imprisons them, rather than the city or county.

Typically, the percentage of women in jail who are awaiting trial will be larger than the percentage of those who have already been sentenced. As a result, the population of a jail is in constant flux. Some women may be out of jail within a day if they are able to post bail; some women will wait a few weeks to be released, for example, if their charges are dismissed at an early stage of the legal process; others can wait as long as two years or more before their cases go to trial.

Jails are usually local, while prisons are often hundreds of miles from a woman’s neighborhood. Incarcerated women may get infrequent visits from friends and family, or none at all. The geographical distance of prisons often make visitation nearly impossible.

It can be enormously difficult for women in prison to adjust to the realities of long-term confinement. Women in jail awaiting trial, however, experience the additional stress and anxiety of not knowing their fate — and, like their sisters in prison, have very little control over that fate.

Jails often place greater restrictions on a woman’s mobility within the facility than do prisons. While prison may offer opportunities to move around outside of one’s cell, jails may require more confinement.

This guide is limited to the considerations of working with battered women in jail. We may refer to the needs of women in prison occasionally, and there is a great deal of overlap, but this piece cannot adequately address all of the issues involved in providing effective advocacy for battered women in prison. Please contact the National Clearinghouse for the Defense of Battered Women for more information about working with battered women in prison.

“It only takes a split second for a battered woman viewed as a ‘victim’ to become an ‘offender.’ ...We need to look beyond the ‘criminal’ aspect and see the woman.”

– **CAROL DODGSON**, COORDINATOR OF THE JUSTICE OUTREACH PROGRAM

## **Before You Begin: Things To Consider**

### **DECIDE HOW TO USE YOUR LIMITED RESOURCES**

In an ideal world, every battered woman in jail would have access to an advocate she could work with individually. Since most of our agencies operate with limited money and time, however, this remains the dream and not the reality in most communities. Therefore, it's important for advocates to decide on criteria for which women with whom they will work.

For example, some agencies and advocates have decided that they can make the greatest impact by working with battered women who have been charged with crimes directly related to their battering. Others have decided that they will provide general information sessions about domestic violence with groups of women in order to reach the greatest number of battered women, regardless of the charges they are facing. Some choose to work with women individually; others in groups. We encourage you to make a thoughtful and conscious decision before you begin working with incarcerated women.

### **THE IMPORTANCE OF EXPLORING ATTITUDES IN ADVOCACY WORK**

#### **BE AWARE OF ATTITUDES**

In general, our society promotes condemnation of prisoners and values "law & order." Our politicians take positions that are "tough on crime." We build more and bigger jails and prisons, and then fill them beyond their capacity, while slashing budgets for social services, health care, and education.

#### **In such a society, it is difficult to ignore messages about people who are charged with crimes:**

"They are dangerous."

"They are responsible for our social problems."

"They deserve harsh punishment."

Even people charged with crimes sometimes believe these messages. For example, the message that only "bad people" get arrested seems to be deeply entrenched. Several battered women defendants with whom we have worked have stressed repeatedly, "I'm not a bad person." The underlying idea is clear: only bad people get arrested; only bad people go to jail. On the other hand, this response by so many women also can be seen as recognition of their own victimization, and their actions as survival strategies (if not out-right self-defense or coercion).

For some of us, the battered woman in our community is a "victim" and worthy of help and compassion. But when battered women end up getting arrested and are in jail, they sometimes are viewed by many in our communities as a "victim-izer"

## BEFORE YOU BEGIN: THINGS TO CONSIDER

or “perpetrator” who might even deserve her fate. Unfortunately, we at the National Clearinghouse have reached out to many battered women’s advocacy programs over the years, looking for them to advocate for a battered woman in jail, only to be told “we don’t work with perpetrators.”

Beliefs such as these can hurt our work as advocates, unless we stop to look at and challenge them.

There are alternate ways to think about women’s incarceration, taking into account the ways in which jails and prisons work to:

- Preserve hierarchies of race, class, gender, sexual orientation, and citizenship
- Disenfranchise individuals
- Disempower communities
- Re-create and reinforce violence against women

It is important for us as advocates to examine our own beliefs about women who are incarcerated. Many unconscious ideas influence how and what we are able to see, and how we interact with others. A critical first step in preparing to work with battered women in jail is to ask:

- What do we feel about women who are in jail (or in prison)?
- Why do we feel that way?

Finally, we believe it is essential that we avoid the trap of thinking in terms of the “good” battered woman versus the “bad” battered woman, or the “good” defendant versus the “bad” defendant. These are artificial distinctions that interfere with our ability to provide quality advocacy to women in need of services.

### KNOW THE CONTEXT THAT SHAPES OUR OWN LIVES

The experiences of our own lives tend to influence how we look at the lives of others. For example, well-intentioned family and friends who have not been battered often tell battered women, “I would never allow a man to place his hands on me. After the first time, he’d be gone.” People who have never experienced abuse often think that they

**Naming the issues in our own lives is important in order to “avoid a relationship of paternalism with women in prison.”**

—Taken from a description of a workshop presented by Julia Sudbury

## BEFORE YOU BEGIN: THINGS TO CONSIDER

know how they would act, with no appreciation of the realities of domestic violence. They speak from their own context, without understanding the context of the survivor of battering. This creates distance between the speaker and the battered woman. It blames the victim, and generally does more harm than good. The same holds true for those of us coming from the “outside,” who have never been incarcerated, visiting women on the “inside” in jails and prisons.

On the other hand, experiences that we have shared can increase our ability to relate to women who live in a very different context.

- If our trust has been violated...
- If we have felt silenced...
- If we have felt unsafe...
- If we have experienced fear or trauma in any form...
- Then we may be able to catch a glimpse of what it can be like for a battered woman in jail.

We don't have to have been battered or incarcerated ourselves in order to advocate effectively for battered women in jail. It is critical that we name our experiences – both our struggles and our privileges – in order to approach this work honestly and effectively.

### EXPLORE OUR REASONS FOR WORKING WITH BATTERED WOMEN IN JAIL

As described earlier, advocates come to this work for any number of reasons:

- To work towards justice in the lives of women
- To respond to the needs of incarcerated battered women as they would to the needs of any battered woman
- To respond to a spiritual calling
- To fight oppression

Women who have experienced incarceration themselves may advocate in order to:

- Share their own experiences
- Serve as role models

**“Above all, the volunteer should not be involved in this work to feel good, to do good or to impart charity, but to assist in bringing justice into the life of the incarcerated woman.”**

—Excerpted from a volunteer training manual prepared by the Justice for Women Working Group

## BEFORE YOU BEGIN: THINGS TO CONSIDER

- Reach out and offer the assistance that had once been offered to them
- Offer the type of assistance they wish they'd had

All of those motives, and others, can provide the fuel to sustain the work of advocacy. It is helpful to explore your motivation — not to judge it, but to gain insight into how those motives may help or hinder you.

We need to be wary of any need or inclination to take on the role of a fixer or a saver. If we operate from those positions, the work becomes more about us, and less about the people with whom we are working. It can be counter-productive and actually dangerous — for us, and for the women in jail. We are not, in fact, trying to fix or save jailed battered woman, but rather working to try to help them meet their needs.

It is also important to remember that many women already are disempowered in multiple ways. The last thing we want to do is to add to that by misusing our own sense of power.

Here are some simple ways to earn and keep the trust of the women you want to help:

- Show up when you say you will.
- Listen as much as, or more than, you talk. Do not dominate conversations. Let the woman have a voice and be sure to listen to her.
- Only make promises you know you can keep, taking into account your personal and organizational limitations as well as limitations imposed by the jail and the legal system.
- Maintain strict confidentiality.

By answering those questions conscientiously, and by proceeding thoughtfully, advocates can have an enormously favorable impact on the outcome of legal proceedings and, ultimately, on the lives of battered woman defendants.

## Defense-Based Advocacy

**The National Clearinghouse for the Defense of Battered Women is a defense-based advocacy organization. As you will read below, we believe that, ideally, advocates would:**

- 1. not talk with a battered women defendant/jailed battered woman without defense counsel's knowledge and consent.**
- 2. not talk with a prosecutor without the full knowledge and explicit permission of the battered woman defendant's defense attorney.**
- 3. not ask about (and would cut off conversations about) the incident for which the woman was arrested; we believe it is way better if advocates have no information about the incident that led to her arrest.**

We do realize that the world in which advocates work is far from ideal. Many advocates have challenged us about our firm stand on these three matters. They have argued that they have tried getting in touch with defense counsel and, despite repeated attempts, were unsuccessful. As a result, women languish in jail without information and support. They say they have been able to get cases dismissed by going directly to the prosecutor. They say they can't advocate for someone without knowing about the incident.

We believe that defendants' right must be defended and protected to the extent possible, and that a person's defense counsel is best positioned to do provide these needed protections. As you will see below, we urge you and your organization to develop relationships with your local defense bar so the next time you are working with a battered woman charged with a crime, you can easily get through to defense counsel. Additionally, we believe there is no need to know about the specifics of the incident in order to decide if you will advocate for an individual woman.

### **WORKING WITH DEFENSE ATTORNEYS**

When you begin working with battered women charged with crimes, you often find yourself aligned with allies you may not have worked with in the past. It's important to let go of old prejudices and to be thoughtful about what you can – and in some case, should – do in order to be careful not to compromise a woman's safety.

Many battered women's advocates have established positive and mutually helpful relationships with the district attorneys who prosecute batterers. Historically, these prosecutors have been "the allies," while defense attorneys who defended batterers were perceived as "the opposition."

## DEFENSE-BASED ADVOCACY

But effective advocacy for battered women charged with crimes often includes forging new alliances. Contacting a battered woman's defense attorney is an essential first step. In addition to making contacts with defense attorneys regarding a specific case, it can be useful to develop ongoing, working relationships with defense attorneys in your area.

You also have the opportunity to help women charged with crimes (and their families) let go of uninformed prejudices about who is a "good lawyer." It's a common misperception that a public defender is a poorly qualified lawyer who should only be used as a last resort by someone who cannot afford to pay for a private attorney. Experience at the National Clearinghouse contradicts this quite strongly. In fact, most often, public defenders have a lot of knowledge and experience about the criminal legal process. They often understand ways that cases that involve battering can be tried successfully. By contrast, many private lawyers have little or no experience in criminal law or in cases of battering. Their practices may consist of wills and estates, divorce law, business contracts, or auto accidents. Private lawyers, even expensive ones, may be very poorly equipped to help a battered woman facing a criminal charge.

One preliminary strategy that some advocacy programs use to strengthen their relationships with defense attorneys is to set up a meeting with an allied or sympathetic and concerned public defender or other defense attorney(s) (especially if the community does not have a public defender system). The goal is to learn more about the criminal legal process from a defendant's perspective. Public defenders may have a basic flow chart prepared already that shows the steps from arrest through the final disposition of the case. If not, they may be willing to briefly run through this with you, or to review a chart that you prepare for women in jail.

Subsequently, you and/or your agency's executive director might want to set up a more general meeting with the chief public defender. In this case, the goal would be to let the public defender's office know that your program recognizes that many battered women are being charged with crimes in your community, that your organization hopes to be an ally to the defender's office in their representation of clients who have been battered, and that you are invested in developing a good working relationship with their office.

This process of meeting with public defenders lets you introduce your agency to the public defenders, demonstrates your commitment to working with battered women defendants, and lets them know what you can do to assist some of their clients. Public defenders may not be aware of community-based advocacy program or may be accustomed to viewing your program as their "opposition." By contacting public defenders and acknowledging their expertise, your interest and willingness to work with jailed women, and your need for information to more ably assist battered women defendants, you can help defenders appreciate who you are and what you do as advocates.

## 3

**BASIC GUIDELINES****(ESPECIALLY IF THE WORLD WERE IDEAL...)**

1. You would always talk with the defense attorney before contacting a battered woman facing criminal charges and/or in jail.
2. You would not talk with the woman about the incident for which she is charged.
3. You would not contact the prosecutor without the knowledge and explicit permission of defense counsel.

As a result, defense attorneys may be more willing to see your program as a resource in the future. This is a distinct benefit for you and for the battered women defendants with whom you work. In addition, you can begin to educate defense attorneys about the myths and misconceptions about battering. Defense lawyers, prosecutors, judges, and juries often lack a basic understanding about the dynamics of battering. Information about the realities of battering and its effects can only help defense attorneys present a stronger defense for battered women charged with crimes.

**TALK WITH DEFENSE ATTORNEY BEFORE MEETING WITH A DEFENDANT**

It is important to meet with (or talk to) the woman's defense attorney ***before going to see a jailed battered woman (or a battered women defendant out on bail)*** to discuss confidentiality, to clarify your role, and to assure the attorney that you will avoid talking about any facts of the case. The defense attorney may also be able to help facilitate getting you clearance to enter the jail, perhaps even as a member of the defense team (this can be helpful in preserving the defendant's confidentiality).

What do you do if you don't know who a woman's attorney is, or if she has not been assigned one yet? Defendants who cannot afford an attorney will be appointed one by the court, and they are often – but not always – assigned by the time of the arraignment (the arraignment is the woman's first appearance before a judge, where charges are read and the defendant pleads guilty or not guilty).

You can try calling the public defender's office, if one exists in your area, to see if they represent the woman with whom you want to work. For public defender's offices in larger jurisdictions, defendants might not be assigned to a particular attorney right away, but at least the office should know if the office is representing her, and you can ask to speak to someone about your interest in seeing her at the jail.

If there's no public defender's office, then call the court clerk to ask if the defendant has been appointed an attorney, and if so, ask for that person's contact information. If you cannot get the attorney's contact information, ask the court clerk when the next court appearance is scheduled and in which courtroom. If possible, attend the hearing, since it would be a good opportunity to introduce yourself to the defense attorney in person. Also, information about court hearings, charges, and attorneys may be available on the internet in certain jurisdictions.

## DEFENSE-BASED ADVOCACY

### **BUT HOW CAN I ADVOCATE IF I DON'T KNOW WHAT SHE DID?**

Sometimes advocates struggle to understand how to advocate for a woman charged with a crime when we at the National Clearinghouse suggest that advocates avoid discussing the incident for which she was arrested. If that includes you, then we invite you to ask yourself: Is there anything a woman could have done during the incident for which she was arrested that would preclude me from advocating for her (assuming you determine through your usual screening/intake method that she is a victim of battering)?

Many women come to our programs who choose not to share parts of their lives with us; yet we are willing to advocate for them (once we've determined they are a victim of battering and/or sexual assault, or whatever your program guidelines require). Sometimes, we may be aware that a woman is choosing not to share information with us, but often we have no idea. But we do not need to know every detail of her life in order to determine she is battered and could benefit from our services.

At a minimum, when we advocate for women charged with crimes, we must make sure we do not do anything that jeopardizes her criminal case. At the National Clearinghouse, we are fond of urging advocates to remember that “whatever you say can and will be used against you” is true for those with open criminal cases. As a result, we urge advocates to avoid talking about the incident.

We believe that if your program formally chooses not to talk about the incident, it helps protect the defendant and your program. If everyone in your community knows you do not talk about the incident, it will:

- probably increase the likelihood that defense counsel will allow you to see the defendant.
- probably decrease the likelihood that the prosecutor will try to subpoena your records.

If the woman herself wants to talk about the incident, you can let her know why you feel it is in her interest for you not to hear about it. You can urge her to talk with her attorney. You can support her and talk about the feelings that come up about the incident (i.e., tremendous loss, fear, disbelief, etc.). Just avoid talking about the facts.

### **SHOULD I CONTACT THE PROSECUTOR?**

Sometimes, advocates may wish to use an existing relationship with a prosecutor to assist a battered woman defendant. This may seem like a logical strategy, because such relationships have served battered women in the past, or seem likely to be helpful in your current situation. When you're working with battered women facing charges, however, there are many reasons to be cautious.

As we mentioned above, in an ideal world, the basic rule to follow is:

- Do not talk to a prosecutor without the full knowledge and agreement of a woman's defense attorney.

There may be reasons you are unaware of that make it risky to go directly to the prosecutor with information about the case. For example:

- Maybe the defendant has not given a statement to the police.
- Maybe the defense attorney has decided not to present the history of abuse at that stage in the case because it could be used against the defendant as a motive for what occurred.

The bottom line is that the decision to share information with the prosecutor is the defense attorney's to make, in collaboration with the defendant. It may be that the defense attorney will welcome your offer to talk to the prosecutor, perhaps in collaboration with defense counsel.

In reality, we recognize that a lot of advocates have found that going directly to the prosecutor can be a successful strategy for the women with whom they work. In some situations, charges are avoided or cases are dismissed.

Yet even in cases where bypassing the defense and going right to the prosecution "works" in that particular situation, it's helpful to ask: for whom does it work? Perhaps it works for one or two individual battered women, especially the ones with whom it is easier to advocate (i.e., white women with no prior criminal record who previously sought advocacy services).

What about the women for whom the strategy doesn't work – or the ones for whom your program might not choose to go to the prosecutor immediately (i.e., poor women, immigrant women, women of color, women with prior records, transgender women, women who use drugs or alcohol, women whose cases have "bad facts")? What messages do you send to the prosecutor about such women when you do not rush to advocate on their behalf? Does the prosecutor then see them as "unworthy," and therefore guilty?

*If you have any doubts about whether or not to approach a prosecutor without the knowledge and consent of the defense attorney, please contact the National Clearinghouse for the Defense of Battered Women (toll-free: 1-800-903-0111, ext. 3); we can help you think through this complex situation.*

## DEFENSE-BASED ADVOCACY

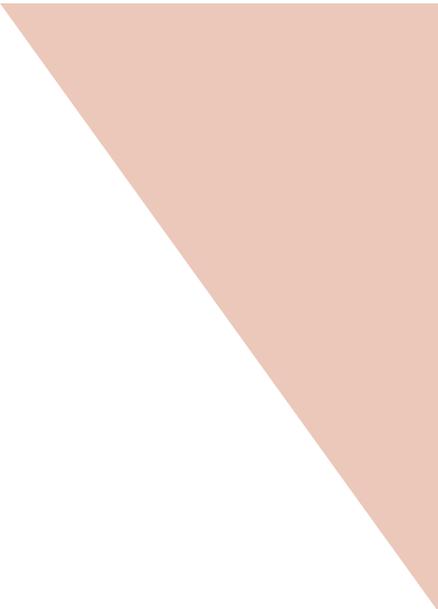
### TOUCHSTONE QUESTIONS FOR ADVOCACY

There are fundamental questions each advocate should ask herself when making any decision involving work with a defendant:

**“How could this strategy I am considering be used against this woman? Other women?”**

**“Is there anyway it could backfire?”**

**“In attempting to help, could I in fact be doing greater harm?”**



## Confidentiality

As advocates, we are likely to be very familiar with the importance of confidentiality; it is critical in gaining and maintaining the trust of the women who turn to us for assistance, and in promoting their self-determination and safety. When we work with women who are facing criminal charges, however, confidentiality takes on even more significance; it is vital in protecting a defendant's rights.

There is a risk involved any time a defendant talks (or writes) about the facts of her case with anyone other than her lawyer. That risk increases dramatically for women who have not yet given a statement to the police.

### **WHAT DOES THE LAW SAY ABOUT CONFIDENTIALITY FOR ADVOCATES?**

In some states, there are statutes that treat communications between a battered woman and her advocate as confidential, and therefore not subject to disclosure in court. However:

**There are various definitions of who may be considered a “battered women’s advocate” and what types of communications may be protected (written, oral, one-on-one, group).**

**In many cases, those statutes are part of the civil code, and may not apply in the context of a criminal trial.**

**In some states, there are no statutory protections at all.**

**Even in those states with statutory provisions, advocate’s records have been subpoenaed.**

Obviously, you do not want to do anything to jeopardize a woman’s case. You do not want to be in a position to be subpoenaed and forced to testify or to turn over your records. This also means that it is critical to be very thoughtful about what, if any, notes you make in your work with battered women defendants.

Subpoenas are generally issued by prosecutors in an attempt to force an advocate to provide testimony that could be used against the battered woman defendant. If you are faced with a subpoena, there may be ways to fight it — feel free to call the Battered Women’s Justice Project (1-800-903-0111, ext. 1. ) or your state domestic violence coalition for assistance.

*It is absolutely vital that your agency has clearly established policies in place before any subpoena is issued that requires you to testify or produce records. For assistance with developing such policies, contact the Battered Women’s Justice Project at 1-800-903-0111, ext. 1.*

## CONFIDENTIALTY

### HOW CAN YOU BEST PROTECT THE WOMEN YOU WORK WITH, AND YOURSELF?

Talk with — and if possible meet with — a woman’s defense attorney before you begin offering her individual advocacy services.

### WORKING WITH INDIVIDUALS

As previously mentioned, in an ideal world, you would speak with the defense attorney of each battered woman who is a defendant before you speak with her. There are two main goals for this conversation:

- to discuss issues relating to confidentiality (i.e., Are your conversations protected by law or not? If not, are there things that can be done, such as “hiring” the advocate as a part of the defense team to create some protections?), and
- to clarify your role as an advocate.

In the real world, you may end up making difficult decisions about your ability to consult the defense attorney before connecting with the defendant. Much will depend on whether the defendant is involved in a fast-moving or slow-moving case, and what the risks are to the woman. In quick-moving misdemeanor cases, there may be a logic for dealing immediately and directly with the incarcerated woman.

For example, in some communities, defendants are allowed to accept plea bargains before they ever speak with a defense attorney. In this situation, an advocate can sometimes help a woman find a defense attorney who is knowledgeable about the consequences of accepting a plea bargain in a situation with ongoing battering. The advocate may also help the defendant with safety planning, arranging care for her children, and addressing other immediate concerns while she waits to consult with a defense attorney.

In felony cases, the risks are much higher for breeches of confidentiality. There’s also a greater likelihood of the case going to trial and a higher risk of an advocate being subpoenaed by the prosecution (that is, forced to testify in court).

A helpful guideline is to *always talk with defense attorneys representing battered women facing felony charges before talking to the defendant.*

### WORKING WITH GROUPS

In some states, even if confidentiality between advocates and survivors of domestic violence is protected by statute, there is no protection when a third party is present (except for an official interpreter). As a result, *support groups are not considered by the law to be confidential communication, even though we might have organizational policies designed to protect group members’ confidentiality.* Since groups are not confidential settings, it’s very risky to have a defendant who is awaiting trial participate in a support group. We suggest that you reserve support groups for battered women who are in jail while serving out their sentences.

To serve the needs of women awaiting trial, it's preferable to offer individual advocacy or group "information" sessions (not support groups). For example, one experienced advocate offers a series of group sessions on parenting issues for women in jail. These cover everything from how to talk to your kids on the telephone, to how to work with an abusive partner who has custody to make sure you get to see your children for regular visits.

**OTHER STRATEGIES TO BEST PROTECT YOURSELF AND YOUR CLIENTS**

**1. Avoid discussing the facts of the incident for which the woman was charged.**

Again, this is especially critical if a woman has not yet given a statement to the police. You do not want to create a record of the women's version of the events where no such record exists. Women may be completely forthright about the facts of the incident, but if the story they tell in court differs even the slightest from the story they told previously ("I was wearing a red shirt"; "My shirt was pink ") the prosecution will exploit that difference to create doubts about the woman's credibility.

**2. It is absolutely critical to preface all the work we do by telling incarcerated women that we do not want to discuss any facts related to their case.**

You may need to remind women of this several times. Some women may desperately want to talk, and may start to talk about the particulars of their case in a one-on-one session, an informational session, a conversation in the halls, on the phone, or by letter.

Remember that jail officials are entitled to read both incoming and outgoing mail (unless it is clearly marked "LEGAL MAIL" and addressed to an attorney). Jail officials may also record phone conversations.

**3. Try to find a private place to meet with defendants.**

Even though overcrowding in jails is commonplace, and space is often at a premium, do what you can to find a private place to meet with women. Keep in mind that others may overhear your conversations with a woman in jail. Sadly, some women may try to use information they overhear to improve their own legal situation, at the expense of someone else.

## Other Important Legal Issues

### **IMMIGRATION STATUS**

Incarceration and convictions can have severe consequences for a woman's immigration status, including deportation and threats of physical harm by the batterer's family living in the country of origin. If a battered woman defendant is an immigrant, she and her defense attorney should consult with an immigration attorney who is knowledgeable about the impact of criminal convictions on a defendant's immigration status. Please contact the National Clearinghouse for the Defense of Battered Women at 1-800-903-0111 ext. 3 for referrals to attorneys with expertise on the immigration consequences of criminal charges and convictions.

### **SHOULD ADVOCATES TESTIFY FOR THE DEFENSE?**

You may be asked by a defendant and/or her attorney to testify for the defense. Sometimes, you will be asked to testify as a fact witness, and other times you may be asked to testify as an expert witness in a case.

When advocates are asked to testify as a fact witness, the purpose often is to verify that the defendant sought or received services from an advocacy program, to verify injuries that the advocate observed directly, or to otherwise confirm that the defendant is a "battered woman."

While such testimony may have potential benefits, it also carries several risks for the defendant, for other battered women charged with crimes, and/or for your agency. The defense attorney and the defendant may or may not be aware of the various potential risks of testifying.

For example, by testifying as a witness in one case but not others, you may contribute to the defendant appearing "exceptional" to the judge or prosecutor, who may then infer that other defendants are less deserving of support. Further, testifying about a case could create a "chilling effect" on other battered women if they see an advocate testifying in one particular case without understanding that you are testifying with the consent of the defendant and her attorney.

Finally, and perhaps most seriously, an advocate may make statements that are unintentionally detrimental to the defendant. If you have met with the defendant individually and she disclosed any details about her case, for example, then testifying about the services your organization provided may open the door to you being questioned by the prosecutor about other details. Also, testifying may open your agency's records up to scrutiny, which could have negative implications for the defendant or other battered women.

## OTHER IMPORTANT LEGAL ISSUES

You may want to ask the defendant and her attorney whether the information that the defense is attempting to verify or present could be brought in through other sources. Also, carefully weigh whether the information really adds to the woman's defense. At the very least, it may be advisable for someone from your organization who has not had direct contact with the defendant to testify, if collectively you decide that someone from your agency will testify, in order to limit the possibility of unintentionally disclosing information that could be detrimental to the case.

In other cases, the defense attorney may ask you to testify as an expert witness. Even though advocates have a great deal of knowledge about battering, it is usually in a battered woman defendant's best interest to hire an independent expert on battering and its effects. Such an expert usually will interview the defendant, thoroughly review the record, and perhaps administer forensic tests and/or conduct interviews with other people who are familiar with the defendant. These experts are well versed in the current research on battering and its effects. The judge qualifies such experts as "scientific experts" with specialized knowledge. The role of such an expert is very different from that of an advocate, and there are often very good reasons for maintaining separate roles for experts and advocates.

Given these complexities, if you are asked to testify as a witness for the defense, feel free to contact the National Clearinghouse for the Defense of Battered Women at 1-800-903-0111 ext. 3 to discuss this issue further.

## Jail-Based Advocacy

Later sections in this guide discuss approaches for different types of advocacy work (such as individual, group, or systems advocacy). When you're clear about the kind of work you want to do, the next hurdle involves determining who needs your help and contacting the jail to request permission to work there. This may involve several steps, including calling the jail, following-up, following proper procedures, and learning and following the rules and regulations of the jail.

### **STRATEGIES FOR IDENTIFYING INCARCERATED BATTERED WOMEN**

How does an advocate identify and reach out to women who need services? You might hear about a case through news reports, or find that a woman has been arrested who you've already been working to assist. You may get a call from someone close to the defendant (i.e., a friend, family member, attorney, or other advocacy program) who asks whether you can meet with the woman in jail.

Another approach to identifying battered women charged with crimes is to start going regularly to meet with women in jail to do information sessions, or to start a regular advocacy project at the jail.

Once you have determined that you want to meet with a battered woman (or battered women) incarcerated at the jail, how do you figure out whom to call at the jail, or where to start?

### **CONNECT WITH OTHER AGENCIES THAT GO INTO THE JAIL**

It might be helpful to start by asking around at other community-based agencies (such as H.I.V. prevention programs or substance abuse treatment programs). Find someone in your community who is already going into the jail on a regular basis. Ask these contacts about their experiences of working with people at the jail, and ask who can help you with permissions and clearances. They might be able to help pave the way for you — or not. Be sure to ask other agency staff about their relationship with the jail administrators. In some cases, it may be helpful to be associated in the jail administrators' minds with another community-based program; in other cases, an association may not help you.

### **CALL THE JAIL**

If you don't know of other programs that are going into the jail and don't know how else to start, you can figure out whom to call by going to the government listings in your local phone book or on the internet. Search under "Jail" or "Courts" or "Sheriff's Department" in your jurisdiction.

You may want to start by asking to speak with:

- Director of Inmate Services
- Director of Volunteer Services
- Director of Programs
- A social work supervisor

These positions may or may not exist depending on the size of the jail in your community.

Explain the services you wish to provide and ask what you need to do to receive authorization. It may make sense to begin by being very general about the services you wish to provide (i.e., “providing support to women who have experienced domestic violence”), rather than being unnecessarily specific (i.e., “I want to provide information and support to battered women charged with crimes and their defense attorneys to help ensure that every battered woman defendant in our community has a fair trial”).

Each jail operates differently. Some have a top-down approach, and you may be told that you need to speak (or write) directly to the Warden. Other jails may require you to work your way up through several layers of administration.

If you call one of the people listed above and explain what you are interested in doing, the person you speak with may be able to help you understand how to go about getting permission. Jails are bureaucracies, so be persistent. It can take several rounds of phone calls before you speak to someone who can help you.

### FOLLOW-UP

You will generally need to follow-up your early phone conversations with:

- A written request,
- An in-person meeting,
- Or both.

Meeting with the jail staff can be very helpful. They can provide important information about existing services and about gaps they see in the services they are able to provide. You may find that the more the staff at the jail “buy-in” to your services, the easier it will be for you to provide quality advocacy.

It may be helpful to meet with two sets of people:

- Jail administrators (such as the Sheriff or Warden), and
- Staff with whom you will be having more regular contact (such as the Social Work Supervisor or Director of Support Services).

For example, you may rely on social workers at the jail to refer women to you.

## JAIL-BASED ADVOCACY

The better they understand what you offer, the more likely they are to make appropriate referrals.

A meeting may also help you gain a clearer understanding of the needs and responsibilities of the staff at the jail. For example, if you learn that social workers have caseloads of 100 women, you will have a better sense of what they can and cannot do.

### FOLLOW THE PROPER PROCEDURES

#### *Your personal background*

You may need to supply fingerprints and personal information so that the jail can conduct a criminal background check on you. If you were previously incarcerated, be up front with that information. Some jails welcome volunteers who were formerly in prison or jail, because they recognize that they are often especially well informed and impassioned advocates. The jail may require that a certain period of time has passed since your last arrest or incarceration, however. Other jails may have stricter policies that permanently prohibit formerly incarcerated people from volunteering.

#### *Contracts: pluses and minuses*

Some jail administrators might recognize the benefits of having an advocate come in to work regularly with battered women in custody, and they may offer to contract with your organization for regular services (such as a support group or regular information session).

If you are considering working under contract with the jail, read the contents of any contract carefully (as you would with any contract). Ask questions about any provisions that have not been fully explained. You may want to ask a lawyer to help you understand everything in the contract before you sign it.

You might also want to consider the implications of such a contract on your advocacy strategies. If you are a contract employee:

- How does that affect your confidentiality?
- How will it affect the way that women who are incarcerated at the jail see you and interact with you?
- Will you be prohibited from engaging in any of the advocacy strategies that you would ordinarily use?

Such a contract may still be in the best interest of your organization and the women with whom you work, but it's important to consider the potential impact on your work and the women you want to help before you make a decision.

### *Orientation/training*

You may get into the jail by joining their volunteer program. In that case, you will probably need to attend an orientation or volunteer training. Some institutions require training only when you first begin to provide services; others require you to attend a yearly training session.

### LEARN AND FOLLOW THE RULES AND REGULATIONS

You will be bound by the jail's rules and regulations, so be sure to obtain a copy of them in writing. Ask for verbal (or written) clarification any time questions arise. Be sure that you receive answers to the following questions:

#### *What materials can you bring into the jail?*

Are printed handouts acceptable? Does their content need to be approved in advance? Who gives this approval and how long does it take? What about books? Most jails will not allow advocates to give books directly to individual women, but they may allow book donations to their libraries. Are hardcover books acceptable, or must the books be paperback?

#### *What materials does the jail consider "contraband" (forbidden)?*

Obviously, illegal drugs and weapons of any type are forbidden, but other items that jails prohibit may be far less obvious. For example, it's possible that you may not be allowed to bring in:

- Chewing gum (it could be used to jam a lock)
- Paper clips, binder clips, rubber bands, or staples
- Pens that do not have a clear barrel (i.e., that are not "see-through")
- Prescription drugs or over-the-counter medication of any sort, even if it's for your own use

Can you bring in cell phones or pagers? What about umbrellas? Are handbags, wallets, and money allowed? What about coats and jackets? If such items are prohibited, will lockers be provided or must you leave them at home or in your car?

#### *What materials can you take out of the jail?*

Are you allowed to leave with any correspondence from women that you will mail or deliver to someone else? Are you allowed to take out any papers for them (legal or other)? Are you allowed to take notes of your conversations with women in jail? (Please refer to the section on *Confidentiality* for a discussion of some of the possible legal issues related to note-taking.)

## **JAIL-BASED ADVOCACY**

*Is there a dress code?*

Are sleeveless shirts permitted? Must women wear a bra? If so, is it ok if it has underwire? Are there any regulations about jewelry?

*Are there any restrictions about what times you can go to the jail, when you must leave, or how long you can stay?*

Are there any recommendations on when not to come (e.g. during the correctional officers' shift change, during meals, or during "count," when prisoners' movements are restricted while staff makes sure everyone is accounted for)? What about holidays or weekends?

*Are there any restrictions concerning your contact with women in jail?*

Is there a private space in which you can meet with women (see more about the importance of private meeting space in Confidentiality)? Can you meet with women who are quarantined (which is often true for new arrivals) or in segregation? Are you permitted to enter women's cells? Can you meet with juveniles, if they're at the same facility as adult women? Can the women you work with call you from jail (assuming they have access to a phone), or can they only work with you in person? Can you touch the women? If you are used to hugging women, you should be sure to know the jail rules before hugging a woman there. We would not want the woman to be punished because an advocate violated the rules.

No matter how thorough you are at the beginning, questions are likely to come up throughout the course of your work. The answers may be unexpected or even contradictory to your ideas of advocacy. Asking questions and clearing things ahead of time may be helpful. It can help to have the name and number for a contact person at the jail who will answer your questions or get answers for you.

At the same time, keep in mind that institutions such as jails that are organized to exert and maintain control over others often enforce rules in seemingly arbitrary ways. You may find that different staff have different information – or make different decisions – about what is permissible or possible for "outsiders" to do.

*What are the institution's policies regarding responding to women who are feeling suicidal?*

Hopefully you never will be in a position where you are talking with a battered woman in jail who is feeling suicidal. If it were to happen, however, it would be helpful to know ahead of time the extent of your obligations to report this to jail staff, as well as to have training in assessing and responding to someone who is feeling suicidal. Ask to review institutional policies on responding to suicidality, and know your own agency policies before meeting with women.

Also, if possible, try to get information about what the jail's policies mean in practice. For example, when the jail learns that a woman is feeling suicidal, does she then have access to a psychiatrist or other mental health professional? Will she receive follow-up care and support from a mental health professional? Will she be stripped of all clothing and put into 5-point restraints on suicide watch? Will she be transported to the county hospital? Will she receive a disciplinary write-up?

Knowing this information before you are in a position to decide whether a situation rises to the level of mandatory disclosure to jail staff may help guide your conversation with the woman.

Be sure to follow the regulations of the jail (to the extent that the regulations are clear to you). Failure to do so can result in a cancellation of your authorization to enter, and it can make access more difficult for advocates in the future. It certainly won't help battered women in jail if this happens.

### WORKING WITH JAIL STAFF

In order to advocate effectively, it can be critical to develop good working relationships with staff at the jails. This involves keeping communication open. Of course, do not disclose confidential information about the women in jail. What you learn from the women with whom you work in jail should not be shared with staff (unless you believe that a woman is a clear danger to herself or others).

Be sure to consult institutional and local policies, and with your agency and the defense attorney, regarding any reporting mandates you must follow that are exceptions to confidentiality (i.e., see above discussion regarding responding to women who are feeling suicidal).

Do let the jail staff know about:

- Any changes in your schedule
- Any proposed changes in the type of service you will be offering
- Any problems that are affecting your work

In addition to maintaining open and respectful communication with jail staff, however, it also is important to assess our attitudes and assumptions about the people who work in jails. Just as we may have biases about women who are incarcerated in jails, we often have biases about the people who work there. Is the social worker "good" but the correctional officer (CO) "bad"?

Anyone who has had uncomfortable or unjust dealings with law enforcement officers (either personally or through friends, family, and/or their community) can easily make assumptions about jail staff. These assumptions may or may not be correct regarding individual staff.

## **JAIL-BASED ADVOCACY**

Experienced advocates advise that you need to be “savvy” as you start work in a jail. “Correctional officers can be your best allies,” says one seasoned advocate. For example, the COs sometimes provide emotional support to women between group sessions. And a large percentage of COs may have, themselves, experienced domestic violence.

Even when individual correctional officers are helpful, supportive, or “good,” however, they still are agents of state control. Often, the conditions of incarceration (including actions by COs and other jail staff) re-create the dynamics of battering. Obviously, living in this environment and dealing with the staff – even the “good” ones – can be incredibly difficult for survivors of battering. (See section, *Why Work with Battered Women in Jail?*)

Instead of making assumptions, observe carefully and make decisions about people on a case-by-case basis.

### **MENTAL PREPARATION**

One experienced advocate cautions, “What’s consistent [at a jail or prison] is inconsistency.” This puts the burden on you to be flexible and patient. Try to build in extra time. Arrive early, and be prepared to stay late.

Remember that “security” is the primary concern of the jail. On any given day, you may need to wait a long time before gaining access to the jail — even if you’re scheduled to be there. A unit may be on lock-down (i.e., all women confined to their cells); there may be a change in shift for the corrections officers; policies or personnel may have changed; or the person at the front desk may simply be having a bad day and decide to take it out on you by not letting you enter quickly. It may help you to keep in mind that the restriction and monitoring of your movements — and the sense of being rigidly controlled by others — is something that women in jail must live with all day, everyday.

## Overcoming Barriers

### **BARRIERS TO ACCESSING THE JAIL**

Sometimes jails are very welcoming to outsiders. Volunteer coordinators and social workers are well aware of the unmet needs of women in jail. They may be excited about the services you will provide. If the staff is convinced that your work is valuable, they may do more than simply provide information on how to proceed; they may champion your cause and speed your request.

Sometimes jails support advocacy efforts for their own practical purposes. For example, as one official at a New York jail explained, jail staff may believe that the more programming that's available, the less fighting will occur. This official and her staff not only authorize local agencies to work in the jail, but also support their requests for grants to fund their work.

You also may run into resistance. You may need to provide extra details about who you are and what you have to offer. You may also need to be flexible, adjusting what you offer to fit the needs and limitations of the jail.

Sometimes a jail's initial resistance relates to protecting the staff's "turf" – jail staff are often unionized or work under contract. It may be difficult to gain access to working with women in jail if your work is seen as an overlap of services already provided. It is highly likely that what you offer is not exactly the same as what is being offered by the jail, however. You may simply need to re-name or redefine the work that you do, to emphasize the difference.

The services you propose may also be perceived as a risk to security. Jails may be uncomfortable with certain language. Again, be creative and flexible.

### **BARRIERS TO ACCESSING RESOURCES**

Many advocates who currently work in community-based programs have expressed an interest in working with battered women in jail. Those programs are often over-worked and under-resourced, however.

And, as we have stated, this work can be complicated and difficult. Are others in your community already doing work in your jail? Are people in your state doing prisoner rights' work? If so, you might want to contact them. They may have already figured out who are the key people at the jail who are likely to be most helpful to you and can give you more information about what to expect. We suspect they will be happy to hear from you and to learn about new allies in this work.

Different types of programs require varying degrees of resources. An on-going, weekly support group in a jail involves a commitment of staff time and possibly of agency

## **OVERCOMING BARRIERS**

money. However, for an advocate to visit women in jail on an occasional, as-needed basis may require far less.

Many projects do not start out with funding to cover the costs of the work. Sustained jail-based advocacy, or expansion of existing programs, depends on adequate funding, however. It may be possible to secure that money through traditional funding sources for anti-domestic violence programs. It may also be possible to obtain a grant from a foundation that supports criminal justice work.

Some traditional funding sources that support battered women's agencies also prohibit their grantees from working with incarcerated women. This usually stems from the misconception that battered women in jail are violence "perpetrators." Perhaps this problem will eventually be resolved by challenging the misconceptions of the funders. If this is a barrier that you are encountering in your program, feel free to contact the National Clearinghouse at 1-800-903-0111 ext. 3 to see if the staff can help you strategize about addressing this issue in your community.

Agencies have responded to funding limitations in creative ways. It may be possible to assign jail-based advocacy work to individuals who are either partially or fully funded through an unrestricted source.

### **BARRIERS TO GAINING AGENCY SUPPORT**

Some advocates have found that their agencies initially hesitated to support advocacy work for battered women in jail. Aside from funding concerns, that hesitation may be related to fear of endangering relationships with prosecutors. Or, it may be related to an agency policy that focuses on providing services to "victims" or "survivors" of violence, and refuses services to "perpetrators" of violence.

Many advocates who feared the reaction of prosecutors have found that their relationships did not suffer when they advocated on behalf of battered women charged with a crime. District Attorneys may simply need clarification about your role. It can be stated this way: You advocate on behalf of survivors of domestic violence, some of whom are complainants or "witnesses," and some of whom are defendants. Your allegiance is to battered women (or "victims of ongoing battering").

It may also help to contact other advocates who have been doing this work to find out how they dealt with their concerns about relationships with prosecutors. Feel free to contact the National Clearinghouse for the Defense of Battered Women; we would be happy to put you in touch with other advocates doing this work.

In terms of your own agency's policies that seem to prohibit advocacy on behalf of battered women in jail, your interest in incarcerated women may present the perfect opportunity to review those policies.

- Why were they initiated?
- What is their goal and purpose?
- Are battered women who acted to protect themselves, or their children, really the people that “anti-perpetrator” policies were intended to exclude?
- Is there a way to re-think or revise those policies?
- If the mission of your agency is to provide services to battered women, shouldn’t services to incarcerated battered women fall within the scope of the mission?

Individual agencies need to resolve these questions for themselves. But the very process of engaging in dialogue about such issues may help an agency develop a clearer sense of its purpose, its limitations, and its vision.

### STRATEGIES FOR EMOTIONAL SELF-CARE

Working in a correctional facility is difficult emotionally. As Irene Kinkins, a social worker with decades of experience working with women in jail, commented: “Being behind bars does something to your soul.”

The stresses of working with battered women in jail are often even greater than community-based advocacy. The layers of injustice can sometimes feel overwhelming, including:

- Racism (most jails in this country detain a shockingly disproportionate number of people of color)
- Systemic failures that lead to battered women being arrested
- Terrible conditions of confinement (e.g., medical neglect; no air conditioning in hot climates; emotional, physical, and/or sexual abuse by jail staff)

Advocates may also experience feelings of guilt about being able to leave at the end of the day.

Therefore, as an advocate, you need to be prepared for the emotional impact of this work. It is vital that you have ways to share your frustrations with others, and generally take care of yourself.

### SELF-CARE STRATEGIES FOR ADVOCATES

- Avoid scheduling other appointments on the days of jail visits if you can.
- When possible, process your experiences with a supervisor or colleague to get the support that you need.
- Seek out peer support: find other advocates doing this work in your state or throughout the country (call your state coalition against domestic violence or the National Clearinghouse for information and connections).
- Find creative outlets for your feelings (i.e., keep a journal, exercise, meditate, dance, paint or make music – whatever helps reduce stress for you; if you keep a journal, be sure not to use real names of women you’re working with).

## OVERCOMING BARRIERS

- Participate in activism: connect with prisoner rights organizations in your area; get involved in efforts to hold the systems that deal with incarcerated women accountable, or join efforts to improve jail and prison conditions.
- Make time with your friends and family a priority, especially after jail visits.
- Write reflection pieces for the National Clearinghouse or your agency's news letter so other advocates can read and learn from your experiences.
- Celebrate victories: take women out to lunch when they are released or their cases are over; have an end-of-the-year party for all of the women you've worked with who have gotten out.
- Use your usual self-care techniques, which may include eating well, exercising, meditating, getting a massage, or taking a long, hot bath.

### SELF-CARE STRATEGIES FOR INCARCERATED WOMEN

The same environment that can be draining for advocates is the environment that incarcerated women live in constantly. And that presents another challenge: How do you provide empowerment-based advocacy to battered women in an environment that is dedicated to disempowerment?

This calls for thoughtful planning and resourcefulness on your part. You must start by understanding that much of what you offer — or what works — in a community setting will not carry over directly into jail. Your work must change to match the reality of incarcerated life.

Creativity is called for, whether you're working to empower battered women in the community (who face the batterer's attempts at control) or incarcerated battered women (who also face the institution's attempts at control).

Ordinarily, a woman receiving services from an anti-domestic violence advocacy agency will be encouraged to form her own network of support. Strategies she might use include contacting her counselor, calling a hotline, or reaching out to other members of a support group.

Life in jail may make these options difficult, if not impossible. A woman's access to a phone is likely to be limited. She may need to submit the names and numbers of the people she wishes to call for approval by jail authorities. There is often a limit on the number of people a woman can have on her phone list. Adding the number for an agency or a hotline may be a lengthy process, and it might mean displacing a friend or family member.

Some jails require women to make collect calls only, and not all agencies or hotlines will accept such calls (if your agency does not, we encourage you to rethink your policy). Or jails may require women to pay for calls, and their resources may be very limited.

Since reaching people outside of jail may be difficult, the alternative is to find support inside the jail. While it is often hard to trust people in jail, some advocates suggest

that women form a buddy system. Each woman identifies one person she trusts, and who agrees to act as a source of support. While this system is not perfect (for instance, a woman is not free to go from cell to cell to seek out her buddy in the middle of the night, even if she feels the need to talk, and the transitory nature of jails mean that someone's buddy may only be in jail for a short period of time), it might be helpful.

Advocates often encourage women they are working with to find ways to take care of themselves on a regular basis. Many of those suggestions (such as taking long luxurious baths, enjoying a free concert, or calling a long-lost friend) are not options for battered women in jail. Jail policies, and confidentiality concerns, may limit a woman's ability to keep a journal. Your role as a champion of women's self-nurturance does not change, but your specific suggestions will have to.

For incarcerated women, you might suggest some other options:

- Write poetry, short stories, or an autobiography of yourself as a child (instead of a journaling about the present and what led up to being in jail).
- Start whatever exercise program is available at the jail (if any).
- Learn meditation or relaxation techniques.
- Try guided imagery that takes you to a peaceful, safe place in your mind.
- As you end individual or group meetings with battered women in jail, it might be helpful to encourage the women themselves to identify one or two things they will do to take care of themselves after the meeting. You might want to acknowledge that hard feelings may have been opened up during the discussion that they might want or need to contain.

In many cases, women will easily identify some of the self-care strategies they already have developed to help them cope. If you are meeting one-on-one with a woman and she cannot think of anything, take some time to brainstorming with her. Chances are, she eventually will identify something she can do to bring herself some comfort.

“The most help you can provide to a prisoner is to assist them in building on their own strengths.”

– **Gayle Horii**, formerly incarcerated Canadian woman

## Advocacy Fundamentals With Battered Women In Jail

Many readers have been doing effective advocacy work with battered women for years. This section highlights the special considerations for advocacy in a jail setting or on behalf of incarcerated women.

### **DEFINE YOUR ROLE CLEARLY**

Be clear at all times about what services you can offer, and what services you cannot. Confusion about your role will only create frustration and interfere with an effective working relationship.

### **BE UPFRONT AND REALISTIC**

Let women know, in advance, what to expect. It is often quite difficult to reach women by phone to advise them of a change in plan. Keeping one's word is also critical. It conveys respect and helps create a trusting relationship.

Make no promises to a woman in jail unless you are certain that you will be able to keep them (it is vital to familiarize yourself with jail policies; see *Jail-Based Advocacy*). Recognize that external forces may slow down your work. While you may normally be able to get necessary information for someone in a day or two, trying to get accurate and reliable information for a woman in jail often takes much longer. As Gayle Horii, a formerly incarcerated woman, cautions, "Give yourself a reasonable amount of time to obtain results, and communicate the length of time required in a clear manner."

### **BE CONSISTENT AND DEPENDABLE**

Inconsistency conveys the message that women in jail are not important, that they are not worthy of your time. A woman in jail often has few visitors. Family members are often busy with the task of caring for children or earning a living; transportation to jail may also be a burden. Some women may not want their children to see them in jail, and caregivers may have a difficult time arranging for childcare during a visit. Attorneys seldom visit as frequently as their clients would like. Thus, a woman in jail may eagerly await a visit from an advocate. It is critical for advocates to keep their commitments. We do not want to raise expectations, only to let women down. This is unfair and disrespectful to women who are likely to have encountered unfairness and disrespect at every turn in the criminal legal system.

### **MAINTAIN A STRENGTHS-BASED PERSPECTIVE**

Women in jail often have multiple needs, but they also have multiple strengths. One role of an advocate is to help women identify and utilize their own strengths.

According to Gayle Horii, many times a woman who is incarcerated, "simply does not understand that she does have strengths and therefore can make choices [that are]

## ADVOCACY FUNDAMENTALS WITH BATTERED WOMEN IN JAIL

positive to her existence.” In all likelihood, everyone else — the judge, the prosecutor, even the defense attorney — will focus on a woman’s challenges and shortcomings. She will be painfully aware of those. Reminding a woman of her assets can be very empowering. For example, you might notice that a woman in jail is:

- A fast learner
- A good teacher
- Patient
- Good at making new friends
- Blessed with strong religious faith that helps her in hard times
- Good at maintaining bonds with a supportive family
- A skilled communicator
- Intelligent
- Insightful

### AVOID GIVING ADVICE

Advocates can play a vitally important role by giving women options and information — about resources, the criminal legal process, or the status of their case. But giving advice can be condescending and potentially harmful. Women may simply ignore the advocate’s advice, particularly if the advocate has never been incarcerated. Or, desperate for guidance and suggestions, women in jail may choose to follow the advocate’s advice, which can prove even more dangerous in many circumstances.

For example, a woman in jail while waiting for a trial may be offered a plea bargain. The defendant is in the best position to decide whether or not to accept that plea, in close consultation with her attorney. No matter how well intended an advocate’s advice about a plea bargain may be, legally, it may do the defendant more harm than good. As an advocate, you do not have access to all of the information that may be legally relevant to a defendant’s decision about whether to take a plea, and in most states, advocates are prohibited under the law from giving legal advice.

Yet, without giving advice or discussing details of the case, there are still ways that advocates can help women make good decisions. In the situation of a plea bargain, you can help a woman identify questions to ask her attorney that will help her make an informed decision about her options. The National Clearinghouse for the Defense of Battered Women has a handout with questions for women to consider when offered a plea. That may be a good starting place.

Just allowing women the space to talk through her thoughts may be the most productive approach to advocacy. Often, women will realize that they already know their own answers. Sometimes the best thing we can offer is our ears – no comments, no directives, no recommendations. By listening respectfully, we may serve as sounding boards, allowing women to reason out their own solutions.

## **ADVOCACY FUNDAMENTALS WITH BATTERED WOMEN IN JAIL**

### **UNDERSTAND “MANIPULATION”: A LEARNED BEHAVIOR AND SURVIVAL SKILL**

Some jail staff or corrections officers express a preference for working with men rather than women because, they say, women have too many “issues” and are “sneaky and manipulative.” It is critical to view those “manipulative” behaviors in context.

Jail provides few opportunities for women to assert themselves in healthy ways. In environments that are oppressive, women learn survival strategies and coping mechanisms. In a system that strips women of their names, their identities, and their power to make choices, women have learned alternate methods for getting their needs met. Some women learned those behaviors prior to coming to jail.

Understanding inappropriate behavior is different from encouraging it. If a woman is pushing you to do something that the jail does not permit — perhaps to make a phone call you are not authorized to make, or to lend her money — simply explain why you are not able to offer the particular form of help she has requested. In all of our work as advocates, it is important to set clear boundaries and to maintain those boundaries consistently.

### **MAINTAIN YOUR OWN BOUNDARIES**

We may relate to, and perhaps identify with, women on a personal level, but it is helpful to remember our role when working with women in jail. Some of us may choose to disclose our own histories of battering and/or of incarceration. Some of us may also initiate an advocacy relationship with a woman in jail that continues once she returns to the community. Advocates sometimes serve as bridge-builders, connecting women to critical services they will be able to access once they leave jail. We can, and should, care and express concern, but we are not there to develop personal friendships.

It is important to maintain the personal/professional boundary. Clear boundaries protect incarcerated women, who often are at their most vulnerable. They also protect advocates, who may feel so overwhelmed by a woman’s needs that they continually try to do more. Finally, boundaries protect the integrity of advocacy programs.

### **RESPECT THE BOUNDARIES OF WOMEN IN JAIL**

Jails are governed through hierarchies of power and chains of command. People in positions of authority demand respect, but are not obligated to respond respectfully. This makes it even more important for advocates to treat incarcerated battered women with respect.

In general, an advocate should not pressure a woman to disclose any information she is not comfortable disclosing. Such pressure is not therapeutic in any context. But in jail, it may also jeopardize a woman’s case if she has an open legal case and unresolved charges (see *Confidentiality*).

### **TREAT WOMEN IN JAIL LIKE THE RESPONSIBLE ADULTS THEY ARE**

Advocates sometimes feel overwhelmed by the needs of incarcerated battered women. That may lead you to have a desire to protect the women you work with — perhaps

## **ADVOCACY FUNDAMENTALS WITH BATTERED WOMEN IN JAIL**

by holding out false hope or portraying a situation as better than it really is. It is important to resist that impulse. Battered women in jail are vulnerable in many ways. They need support and encouragement, but they also need accurate information to allow them to make informed choices — even when that information is difficult for them to hear. Sharing accurate information is respectful and helps women make their own decisions about their lives.

### **MAINTAIN PRIVACY**

It is critical that you have a private place to meet with a battered woman in jail. Due to conditions of overcrowding, space can be at a premium in jails, so you may need to be flexible and creative. Some options may include:

- The offices of various staff people while they are at lunch
- A tiny room generally used for storage
- An empty classroom
- A private visiting room or a small office

The physical surroundings are not necessarily terribly important. What is vital is that you have privacy, so that the conversation you have with a battered woman cannot be overheard.

## Special Considerations

### **SAME-SEX BATTERING AS PART OF A RELATIONSHIP IN JAIL**

Women may form intimate relationships with other women in jail, even if they don't necessarily identify as "lesbian", "bisexual", or "queer." As an advocate, you may learn about a woman who is being battered by another woman in the jail with whom she is in an intimate relationship. Same-sex battering in jail raises complicated advocacy issues, for a variety of reasons.

Because women in jail do not have control over the basic elements of their daily lives — such as when and where they sleep or how they spend their time — it is particularly difficult for them to seek safety when another woman in custody is abusing them. If the jail is a small facility, the only option for "getting away" from the batterer may involve asking to be placed in "protective custody" (this ends up meaning segregation or solitary confinement — not a pleasant alternative).

If the jail is larger, a woman who is being abused might be able to ask for transfer to another unit, if her abusive partner/batterer lives in her housing area. But taking this step is not so simple, since where she lives is not in her control. Moving requires asking a correctional officer for permission. Such a request might be denied unless the woman gives a valid reason (and even in that case, it may still be denied).

If the battered woman discloses to the correctional office that she's in danger, she may be at risk of retaliation by her partner. This is especially true if she identifies her abusive partner, which she will most likely be required to do.

The abused woman may be at risk for disciplinary action by the guards or other jail staff if intimate relationships between women imprisoned at the jail are prohibited (as is the case with nearly all correctional facilities). Although it may seem hard to imagine, sometimes jail staff either ignore abuse or, worse, punish women who are being battered because they are engaging in "prohibited conduct" (just by being in a relationship).

## SPECIAL CONSIDERATIONS

**If someone discloses to you, as an advocate, that another woman at the facility is abusing her, there are several things you can do (in addition to your usual validation of the woman and her experiences):**

- Explore whether there are any other women in her housing unit whom she trusts. While she may experience homophobia from some women inside the jail, others may be key allies in her efforts to stay safer or reduce the harm directed at her. Depending on the rules of the facility and how much free time or autonomy the women have during the course of the day, the abused woman might be able to talk with potential allies and engage in a modified version of the kind of safety planning that women regularly do outside of jail. Maybe she can ask one or two of the women she trusts most to help make sure that she's never alone with her abusive partner.
- If a woman shares a cell with an abusive partner, maybe she can arrange for another woman to request a room change with her. That allows her to move to another cell without looking like she's the one asking to move.
- Because the context of the jail creates the somewhat unique situation of having battered women, their partners, and witnesses to the abuse living in very close proximity, there may be an opportunity to engage witnesses or bystanders as potential allies in increasing the survivor's safety. Consider exploring with the woman the potential risks and benefits of inviting other incarcerated women to intervene when they witness acts of violence or abuse, or otherwise support the abusive partner in stopping her abuse. At the same time, keep in mind that bystanders come with a range of experiences and attitudes about battering, and (like people outside of jail) may respond in ways that further blame, shame, or isolate the victim.
- In some situations of same-sex battering in jail, guards or other jail staff (such as social workers) will be a helpful resource. In some cases, they are aware of what is happening and may have good relationships with the abused woman, which makes them helpful allies in enacting safety plans. Even the most sympathetic staff, however, may feel limited by institutional rules and institutional homophobia that prevents acknowledging relationships between women in custody.

As with any other battered woman, you can be creative and work in partnership with the woman to help her identify the best strategies to help her feel safer, given the limitations of her environment.

As an advocate, you may want to strategize with sympathetic jail staff about how you might be enlisted to help create change within the institution. Or contact the National Clearinghouse for the Defense of Battered Women at 1-800-903-0111 ext. 3 to strategize further.

### **WHEN STAFF ARE ABUSIVE**

Incarcerated women's safety can also be compromised by correctional officers (COs) themselves, or other jail staff. There are many examples of COs abusing the power that they have over women in custody, through emotional, physical, and sexual abuse. The power and control that dominates the jail environment is inherently abusive; far too many people exploit that power even further. Guards and other staff may sexually assault or harass women in jail; they may coerce them into performing sexual favors in exchange for "privileges"; or they may treat women in emotionally degrading ways.

Advocates need to be creative when safety planning with women who are being abused by guards or other jail staff. Do not underestimate the risk of retaliation by the abuser against a woman who comes forward about the abuse. In many cases, other staff or authorities will act to protect the abuser, rather than the woman who has been abused; they may even increase abusive and controlling tactics to ensure silence about the situation.

As an advocate, you might be able to use your role as an outsider to promote accountability for such blatant abuses of power by correctional officers or other staff. Of course, any actions you take must be done at the request of the survivor, since acting without her permission could have serious consequences for her safety. It is also possible that identifying abusive staff and taking steps to hold the abuser accountable could limit or end your access to the jail. You and your agency must weigh the risk of such consequences against the risks to women when no one speaks out about abuse.

If a woman you are working with discloses that she is being sexually abused by a correctional officer or other jail staff, you may want to contact An End to Silence: the National Institute of Corrections & Washington College of Law Project on Addressing Prison Rape (<http://www.wcl.american.edu/nic>) for additional information. They also have a handbook specifically for individuals in jail or prison on addressing sexual misconduct by custodial staff is available at:

<http://www.spr.org/pdf/smithhandbook.pdf>.

“This is just a place they toss us and forget about us. County time is the worst kind of time. No one helps us with where we’re gonna go when we get out. All they say to us is ‘you’ll be back.’ They call this ‘corrections’...this doesn’t correct anything. How we supposed to learn anything if no one teaches or helps.”

– **Anonymous interviewee**

## Individual Advocacy

### EMOTIONAL NEEDS

A battered woman in jail, especially one awaiting trial, has enormous emotional and practical needs.

She may be frightened — of her batterer, of his family, of the criminal legal system, of the corrections officers, of other people in jail. If the batterer is dead, she may be grieving; no matter how horrific the abuse, many women report still having strong feelings for their batterers.

She is likely to feel other painful losses: the loss of her children, the loss of her freedom, and the loss of her connections to the outside world. Furthermore, she is likely to be anxious, not knowing whether those losses are temporary or permanent. She may be confused about what will happen in court, particularly if she has never been arrested before. She may be depressed, overwhelmed by her situation, and feeling hopeless.

It is helpful for advocates to be prepared to respond to those emotional needs. We also need to respond to a battered woman's practical needs for:

- Accurate and timely information, including information about her right to an attorney if she cannot afford one
- Contact with her attorney
- Help with non-legal issues such as who can care for her children or elderly parents while she is in jail
- Ideas about and strategies for how to stay safer — both while in jail and upon release

In addition, it can be helpful for advocates to share with defense attorneys about the unique safety concerns of battered defendants. Many defense attorneys are unaware of the danger facing their clients while the case is pending. Strategies that defense attorneys rely on with other defendants (e.g., prolonging the case many times with the hope that it will “just go away,” or accepting a plea with conditions of mandatory treatment) can actually increase the risk that batterers will use their partners' pending case to control them. For more details about this, contact the National Clearinghouse at 1-800-903-0111 ext. 3.

### WHY WOMEN WANT TO DISCUSS THEIR CASES

It's easy to understand an incarcerated battered woman's desperate need to talk about their experiences. In general, jails tend to be frightening environments where it is difficult to trust anyone. The fear may be even worse for women who have never been incarcerated before. Often, women in jail are eager to talk to an advocate. They

## INDIVIDUAL ADVOCACY

appreciate the particular support advocates provide, and they are grateful to have the ear of someone caring who will take the time to listen to their story.

This is not to suggest that there are no caring people working in the jails. On the contrary, many social workers and counselors who work at the jail may be quite concerned about the well being of women in custody. Professionals who can offer support often juggle enormous caseloads, however, and may not be readily available. Other jail staff and individual correctional officers may be sympathetic towards defendants, but their role is to focus on providing jail security, not support. Furthermore, many women in jail understandably find it difficult to trust anyone employed by a correctional facility.

Sometimes, a woman may want to talk to you about what happened, and to anyone else who will listen, because she is so outraged at the injustice of her situation. She may recognize what seems like a bitter irony — the very system that failed to protect her from her batterer's violence is spending lots of resources prosecuting her for protecting herself. Feelings of anger, frustration, and betrayal in this context make complete sense.

Talking about the feelings associated with being arrested and incarcerated can be therapeutic. But talking about the actual incident that led to the arrest can be dangerous from a legal perspective. As advocates, it is important to validate a woman's feelings, while steering clear of the facts of the incident. We need to remind defendants that it is not advisable to discuss the facts with anyone other than their attorneys.

You may also come across women who are so mistrustful that they cannot talk to anyone about their case or their feelings — including you.

### DISCUSSIONS TO ENCOURAGE

These cautions are not intended to discourage advocacy work. On the contrary, an effective advocate can be enormously beneficial for a woman's emotional well-being. Competent advocacy can also play a critical role in mounting a successful legal defense. Women often discuss details of the abuse with an advocate that they were reluctant to share with their attorneys. It is precisely the history of abuse that advocates should try to talk about with battered women defendants.

Not all instances of battering may be legally relevant, but a woman's defense attorney is in the best position to make that determination. The defense attorney can only make good decisions by having as much information about the history of battering as possible. Of course, it is not the role of an advocate to report the confidences of a battered woman defendant to the defense attorney, even with a signed consent form. But we can facilitate communication by encouraging women to share their history of abuse with their attorneys.

### TALK ABOUT A WOMAN'S HISTORY OF ABUSE WITHOUT ENDANGERING HER CASE

For battered women in jail, talking about their history of abuse is beneficial for the same reasons that this is helpful for any battered woman. Exploring the abuse history with a trained advocate can:

- Allow women to vent their feelings
- Help women better understand the abuse they have experienced
- Help women recognize that they were not responsible for causing the abuse
- Validate a woman's full range of emotions
- Help women understand the coercive dynamics underlying abuse
- Help women recognize the signs of a batterer, in jail or in future relationships outside of jail.

Also, an exploration of a woman's history of abuse (both recent and in the past) may yield information that is legally relevant to her defense. A battered woman may have told no one about the abuse — not the police who arrested her, not the detectives who interrogated her, not her defense attorney. This happens for all the same reasons that women outside of jail do not reveal their stories, as well as other reasons.

A battered woman who is facing criminal charges may not know how to begin talking about the abuse. The police and detectives who questioned her are likely to focus their attention very narrowly on the incident that led to the arrest, without inquiring about any events that led to that incident. The defense attorney may be interested in learning about the abuse, but might not know the right questions to ask.

A battered woman also may not be able to remember all the incidents of abuse she has survived. Or there might be behaviors that occurred so frequently, the woman no longer views them as abusive; they've simply become "normal" in her life. A battered woman may not label certain acts to be "abusive" that other people would identify as such, because they seem trivial next to the more obviously vicious behaviors she's lived with. For instance, women are sometimes slow to bring up verbal, emotional, or economic abuse or control. Some women also may be reluctant to talk about the most severe abuse, particularly sexual abuse, because to do so is painful, or because they feel shame, embarrassment, or guilt.

Without discussing the specifics of a case, you can help a woman recall and relate a more fully developed and accurate picture of the abuse she has experienced throughout the abusive relationship in question. With your help, she may remember:

- People who witnessed prior incidents of abuse, who might serve as defense witnesses
- Trips to the hospital or calls to the police that may help provide documentation of the battering
- Other people who expressed a fear of her batterer.

## INDIVIDUAL ADVOCACY

As in all your discussions with women in jail, do your best to steer the conversation away from the actual incident that led to the woman's arrest. In the interest of confidentiality, a battered woman defendant should only talk about the facts of her case with her defense attorney (see *Confidentiality*).

### MANAGING LACK OF PRIVACY FOR INCARCERATED WOMEN

If you visit women in jail, the likelihood that other women know you were there to visit a particular woman is high. They will probably know – or be able to find out – that you are from a battered woman's program. If you plan to do a group, who you are and what you plan to do will probably be quite public.

As an advocate, you may want to address this probable lack of privacy directly with the women you serve. You may want to alert the women that other people in the jail (incarcerated women and staff) probably will assume that they have experienced some type of abuse. Help the women take care of themselves around this issue (i.e., think about how they'll respond if someone tries to talk to them about this, or uses it against them). You also might want to strategize with the women how to handle questions by others about their experiences of abuse, or what they discuss with you during your meetings.

### USE OF JOURNAL WRITING

In community settings, many advocates recommend that battered women keep journals or write a life history. While those tools can be of great value therapeutically, putting things in writing may be legally risky for incarcerated women. It is best to consult with the individual woman's defense attorney about written histories. Many attorneys themselves will request life histories, but others discourage their clients from committing anything to writing.

### OFFER EMOTIONAL SUPPORT AND LET WOMEN KNOW THAT THEY ARE NOT ALONE

Isolating a woman from family, friends, work, and other sources of support is a very powerful technique used frequently by batterers. Battered women in jail often come from situations where they were isolated, and arrive at an institution that increases that isolation. It can be critically important for battered women to sense that — while they are physically removed from their communities — they have not been forgotten.

Incarcerated women also often express the feeling that they have already been judged, long before the trial begins. As is true with other defendants, many of them feel as if they are regarded as "guilty until proven innocent." Further, the woman may be judging herself and feeling guilt-ridden. No matter how morally and/or legally justifiable her actions may have been, she may still feel guilty because she regrets the outcome, especially when it resulted with a death. Just as many women blame themselves for the battering, so too they may blame themselves for protecting themselves from the battering. While understandable, this thinking may make it difficult for women to want to talk about the abuse she experienced, even though it is information that may be important and relevant in the development of her legal defense or defense theory.

When advocates reach out to a battered woman in jail and offer support, it can go a very long way towards helping her realize that she is not alone, she has not been forgotten, and she is worth fighting for. Additionally, they may help make it more possible for the woman to talk with her attorney about her experiences.

### **NEED TO UNDERSTAND THE CRIMINAL LEGAL SYSTEM AND PROCESS**

Both advocates and their clients will benefit from a clear understanding of the basic criminal legal process from the perspective of defendants, at every stage from arrest through sentencing. When we educate ourselves about the path a defendant must travel, we can help women make sense of a web of intricate, and not always logical, procedures. Defendants can be empowered through knowledge, just as much as they can be empowered through counseling.

You may already be familiar with the legal procedures in your area, or for the jail you serve. If you are not comfortable with the process, however, learning about it also creates the opportunity to meet and start to know members of the defense bar (public defenders and private defense lawyers). See the above discussion under the Defense-Based Advocacy section.

### **MISDEMEANOR VERSUS FELONY**

Misdemeanor cases are less likely than felony cases to go to trial; they're more often resolved through a plea or diversion, depending on the community. Women arrested for misdemeanor charges are less likely than women arrested for felony charges to be held in custody for long periods of time (although some women arrested for misdemeanors end up spending a long time in jail). Misdemeanor cases are generally processed more quickly through the criminal legal system than are felony cases. When working with someone charged with a misdemeanor, there may be less time for an advocate to make contact with a woman before she is released from jail or to contact the defense attorney and to develop a relationship and/or connection with him or her.

This manual focuses on advocacy with women facing felony charges because the National Clearinghouse has more expertise with women facing felony charges than with women facing misdemeanor charges (because misdemeanor cases are often resolved relatively quickly, they infrequently come to the attention of our office). This does not mean, however, that advocacy with women charged with misdemeanor cases is not important – in fact, we believe it is essential, given that so many battered women end up in the system with a misdemeanor charge. To the extent possible, we have tried to include information relevant to those of you advocating for women facing misdemeanor charges as well. In general, the goals of advocacy in cases involving a misdemeanor are the same as the goals in felony cases.

Throughout this manual, you will see that it is our hope – if we lived in an ideal world – that advocates only speak with a woman charged with a crime and/or with the prosecutor after they contact the defense attorney and have explicit permission from the defense attorney to do so.

## INDIVIDUAL ADVOCACY

We realize that the world is far from ideal and that, even when working with women charged with felonies, it is often difficult to make contact with the defense attorney. Since misdemeanor cases move quickly, we know that you may face some difficult decisions about contacting the woman before she has an attorney or before you have been able to speak with her attorney. This decision must take into account any possible risks to the woman (please see additional information on this topic in the section, *Defense-Based Advocacy*).

The National Clearinghouse would love to hear from you about your strategies of working with women facing misdemeanor charges. Please write to us or call us toll-free: 1-800-903-0111, ext. 3.

### LINKS BETWEEN CRIMINAL CHARGES AND BATTERING

For some women, there is a direct and immediate connection between the battering and the criminal charge; for others, the connection is more indirect and more removed in time.

Battered women are arrested due to a variety of circumstances. Many are arrested after defending themselves and/or their children from abusive partners (they may be charged with assault or homicide). Other women are coerced into committing illegal acts by a batterer (such as economic or drug crimes, homicide of others), or charged with a crime as a result of “failing to protect” their children from the abuser’s violence (or failing to get medial intervention). Others are charged with parental kidnapping or custodial interference after fleeing to protect themselves and/or their children. In all of these situations, the history of battering may have legal relevance to the women’s defense or defense theory. Also, in recent years, we at the National Clearinghouse have seen an increasing number of batterers making false accusations against their partners and getting them arrested. In these situations, they are often using the criminal legal system as yet another tool to gain control.

For other women, the connection between the battering they experienced and the charges they face may be less legally relevant. For example, some women use drugs and alcohol as a means of coping with battering. They may be arrested on drug charges, or for other crimes related to supporting their addiction. In these situations, the courts are unlikely to consider the history of abuse at the trial stage.

At the National Clearinghouse, we work on cases in which there is a direct relationship between the history of abuse and the charge because in our work with defense teams, we can help them better understand the legal relevance of the history of abuse.

For some advocates, their individual legal advocacy also focuses on the needs of women who have been charged with crimes directly related to their battering. When providing direct services and general advocacy for battered women charged with crimes, however, this distinction between battered women whose abuse is directly or indirectly related to the criminal charge is irrelevant. We believe that all battered women in jail need and deserve support, just as all battered women everywhere need

and deserve support. It is our hope that you will do what you can to assist all the jailed women who are or have been battered.

When we step away from advocacy and think about the legal system, there are situations where the relationship between battering and the charge against a woman may be very important, because the history of battering can make a difference in the legal outcome of the woman's case.

### INDIRECT CONNECTION — POSSIBLY IMPORTANT AT SENTENCING

When the battering is (or seems to be) only indirectly related to the charge, the history of battering generally will not have much relevance during the guilt / innocence phase of a trial. If a woman is found guilty, evidence of the abuse may be useful as a "mitigating factor" at sentencing (i.e., something that the judge takes into account when considering an appropriate sentence).

Even when there is an indirect connection between the charge and the history of battering, an advocate can be an important resource in helping support a battered woman while she is in custody and in connecting her to resources upon her release.

### DIRECT CONNECTION — POSSIBLY RELEVANT THROUGHOUT THE CASE

As discussed above, when there is a direct connection between the battering and the charge, evidence of battering may be legally relevant at all phases of the legal proceedings. For a woman who is charged with a crime because she acted to protect herself (or others) from a batterer's violence, self-defense may be a central part of her legal defense. The history of abuse is directly relevant to the elements of that defense (for example, it could help explain why she had a reasonable fear of imminent death or serious bodily harm).

Likewise, if a batterer forced a woman to commit an illegal act, "duress" may play a critical role in her defense. In that case, the history of abuse may be directly relevant to establishing the key elements of a "duress defense" (coercion by the use, or threatened use, of unlawful force by another).

When battering is directly connected to the charges, the most effective defense can only be raised if the defense attorney is aware of the battering and its relation to the incident. Several factors can interfere with this:

- Battered women sometimes hesitate to talk about their experiences of battering with anyone.
- Batterers often enforce a code of silence about the abusive relationship.
- Battered women may minimize the frequency and the extent of the abuse they experience.
- A battered woman may not realize what information about the battering her attorney needs to know.
- Attorneys may not know the right questions to ask about the battering.

## INDIVIDUAL ADVOCACY

Advocates can play a critical role in helping a battered woman relate vital information about her history of abuse to the defense attorney. More details will be described below in the Individual Advocacy section.

### TALKING WITH DEFENDANTS ABOUT THE CRIMINAL LEGAL SYSTEM AND PROCESS

#### EXPLAIN THE CRIMINAL LEGAL PROCESS

Many battered women charged with crimes have never been arrested before. Even those who have previously been arrested may be uncertain about the various stages of the criminal legal process.

Some jails will inform women about what to expect from detention, and what will be expected of them. Women may receive a detailed handbook of the rules and regulations of the jail as soon as they arrive. Jails generally do not tell women anything about what to expect in court, however. Too often, neither does anyone else.

Women in jail want to know when they will go to court, and what to expect when they get there. It is helpful for them to have a clear sense of the big picture. Advocates can ease these concerns tremendously by explaining what the following terms mean: (Note: terminology may differ in different jurisdictions, and the process will likely vary between misdemeanors and felonies)

- Arraignment
- Preliminary hearing (or grand jury)
- Pre-trial conference
- Trial
- Pre-sentence investigation
- Sentencing hearing

Advocates can make a big difference, simply by explaining the layout of the courtroom and the names and roles of each participant. Many women may not realize that the State (or the Commonwealth), the District Attorney (or the City or County Attorney), the Prosecutor, and the Government Attorney are all different names often used to describe the same person. A woman may also think that the prosecutor is her attorney, especially if, in the past, the prosecutor appeared to have been representing her interests in actions against her abusive partner.

Women also need to know the goal and purpose of each proceeding. Therefore, advocates can prepare by learning the following information, specific to the jurisdiction of the women they're helping:

- What are the names of different hearings in the process?
- How does the process vary between misdemeanor and felony charges?
- What is the goal and purpose of each hearing?
- For which hearings will the defendant be brought to court from the jail, and for which hearings will her attorney simply represent her interests?

Advocates can be enormously helpful by talking a woman through what she should expect at any given proceeding, including small details. So much of the legal process is complicated to understand and out of the woman's control. Basic information can go a long way towards helping a woman feel better prepared, and better able to deal with what she will face in court. By simply explaining the legal process in your jurisdiction, you generally are not giving legal advice (which advocates are prohibited from offering).

At the "preliminary hearing" stage, for example, the prosecutor generally must prove to the court that there is likelihood that a crime was committed, and that the defendant is the person who committed it. The burden of this proof is quite low; the prosecutor only needs to present minimal evidence.

Normally, the defendant will not testify at the preliminary hearing stage. She usually has much to lose and little to gain by doing so. No matter how honestly a defendant testifies, the district attorney will later pick apart that testimony to exploit even the tiniest inconsistencies. If this is not thoroughly explained to a defendant, she may feel very frustrated, scared, or confused after her preliminary hearing; she may believe that she was denied the chance to tell her side of the story. She may specifically feel frustrated and angry with her attorney, whom she may believe was not doing enough to fight for her in court (especially if her batterer testified and did not tell the truth). This may lead the defendant to not trust her attorney or not fully confide in her attorney.

That lack of trust can have serious consequences for a battered woman defendant. If she does not have enough trust to tell her attorney about her history of abuse, her attorney may not be able to present the strongest defense possible.

Therefore, without giving any legal advice, advocates can help women understand the process they're going through, ease fears and frustrations, and promote trust between a defendant and her attorney.

It may make sense to check in with the woman's defense attorney before explaining to the defendant what will happen at various stages in the legal process, in order to ensure that you have the most accurate information about the process.

Or, alternatively, you and the defendant might try to arrange a meeting together with her defense attorney before significant court hearings to answer questions and make sure everyone is on the same page. Keep in mind, however, that most criminal defense attorneys – especially public defenders – are juggling very heavy caseloads. If they do not have time to meet with you and the defendant before each hearing, it does not necessarily mean that they are not good attorneys, or that they do not care about their client's well being.

### HELP DEFENDANTS ASK THEIR ATTORNEYS GOOD LEGAL QUESTIONS

A woman is likely to have many specific questions and concerns at critical points in the legal process. She may want counsel on whether or not she should, for example, accept a plea bargain, waive her right to a jury trial, or testify at her own trial.

## INDIVIDUAL ADVOCACY

A defendant needs to make those decisions on her own, in close consultation with her attorney. But an advocate can help the battered women defendant frame her questions to her attorney, so she is more fully informed about the possible consequences of any given decision. The National Clearinghouse for the Defense of Battered Women has prepared a brief guide to some of the considerations involved in accepting a plea bargain; this guide is available upon request by calling us at 1-800-903-0111, ext. 3.

### ENCOURAGE VALUABLE COMMUNICATION WITH DEFENSE ATTORNEYS

It is entirely possible that many aspects of a woman's history of abuse will not be admissible in court. The judge makes the ultimate decisions on this. But the person best equipped to assess whether some or all of a woman's history of abuse may be admitted is her defense attorney.

While it is not your role to relay information that a battered woman disclosed to you in confidence, it is your role to encourage a woman to communicate important information directly with her attorney. You may also be able to offer the defense attorney insights about what questions to ask, to bring out a full picture of the abuse. You may be able to help a woman. You can serve as a bridge, encouraging communication between battered women and their attorneys.

It is critical that defense attorneys become aware of as many details of the abuse as possible. Fortified with those details, the attorney will be better able to assess whether all, or some, of that evidence will be relevant to a battered woman's legal defense. It is also helpful for attorneys to have a complete history of the abuse as soon as possible. In that way, any discussions or negotiations between the defense attorney and the prosecutor can take into account the full context of the alleged crime.

Feel free to encourage the defense attorney to call the National Clearinghouse. You can facilitate another important connection for any woman accused of a crime related to her battering: you can call the National Clearinghouse for the Defense of Battered Women (1-800-903-0111, ext. 3) with contact information for the defense attorney. And you can encourage the defense attorney to contact the National Clearinghouse. The National Clearinghouse offers case-specific technical assistance to defense attorneys; we can pass along relevant materials from our library, share strategies that have been effective for other attorneys working on similar cases, and provide referrals for expert witnesses on battering and its effects.

A final note about defense attorneys: in many instances, defendants in general, including battered women charged with crimes, would like more time with their defense attorneys in order to have their questions answered and to gain assurance that their attorney is working diligently on their case. In an ideal world, defense attorneys would be in regular contact with their clients and would be able to answer all of their questions. Unfortunately, in most jurisdictions, defense attorneys are representing too many clients to be able to give each person the individualized attention that they deserve. Nevertheless, that doesn't mean that a woman's defense attorney is not doing a good job or considering her best interests, even if they are not in regular contact.

**“I would have never thought that it was true, but it’s much safer for me here than on the outside. In addition to ‘three hots and a cot’, I have protection from him. He tried to get to me, but since he can’t call, and I can refuse visits, and they search visitors, I am as safe from him here as I have ever been. I’m not saying it’s a good place to be, but for women like me, it’s better than living without guards.”**

– Crystal, a battered woman in jail on an arson charge

As an advocate, sometimes you may feel like you are in a difficult position – on one hand, you may understand and validate a woman’s concerns about the quality of legal representation she is receiving, especially if her defense attorney is not in regular communication with her or doesn’t seem to be giving her case the attention it requires. On the other hand, you may recognize that you really don’t have sufficient information to evaluate how well her defense attorney is representing her interests. In most cases, you do not have access to all of the information necessary to make this determination. Further, the attorney may be doing an excellent job of putting together the case – talking to witnesses, reviewing records, retaining experts, and preparing the case for trial – without taking the time to fill the defendant in on each step in developing the case.

If you want someone to talk to regarding these complexities of your role as an advocate, please feel free to contact the National Clearinghouse for additional information and support.

### **SAFETY NEEDS**

Advocates know how critical the safety planning process can be for battered women. For battered women in jail, there are particular safety considerations that must be addressed. We’ll look at four areas:

- Safety from the batterer
- Safety from the batterer’s family
- General safety in jail
- Addressing the safety implications of indirect consequences of arrests and convictions

### **SAFETY FROM THE BATTERER**

If a woman’s abusive partner is still alive, he may be threatening a woman even while she is in jail. He may try to visit her, write her letters, or send messages to her via her family and friends. Batterers have even been known to attempt to phone a woman in jail by contacting her social worker and pretending to be someone else.

When battered women are charged with assaulting their abusive partners, the criminal charge can give the batterer a powerful tool — it can give him ways to manipulate the woman who resisted his violence. He may offer to drop the charges against her, if she will do whatever he wants her to do. Of course, the charges (usually) are not his to drop.

## INDIVIDUAL ADVOCACY

While the batterer may have initially been the “complainant” (the person asking for legal action), in most cases it is the state that is actually prosecuting the woman. The abusive partner does not get to decide whether to drop the charges.

But a woman may not realize this, and may be vulnerable to such manipulation.

From a practical standpoint, however, the batterer actually may have a lot of power in a criminal case. While the prosecution may not choose to drop the charges against a woman, if no “victim” or “complaining witness” is available, the court is likely to dismiss the charges. So, there is some truth to what the abusive partner proposes. If he does not appear in court to testify against a woman, she is likely to be freed. Therefore, the batterer may offer his silence in court in exchange for continued control over her life – and batterers have been known to make such promises, but not fulfill them. For example, batterers can:

- Say they won’t appear in court, but then they do and testify against the defendant.
- Promise to tell the truth in court, but then lie when on the stand.
- Say they’ll let a woman have her children back if she takes a plea bargain, but then go forward with a custody case against her once she pleads guilty and is released.

Likewise, if a woman’s abusive partner is also her co-defendant, he may attempt to pressure the woman into supporting his defense, even if it means compromising her own welfare. He may do this by being menacing and creating fear for her physical safety or the safety of her family. Or, he may manipulate her by trying to win her loyalty, through promises of love and devotion.

### SAFETY FROM THE BATTERER’S FAMILY

If a batterer is not alive, his family may threaten the battered woman defendant. They may actively seek to get in touch with her. They may threaten her in court. There have been times when a judge has acquitted a battered woman or has given her what the batterer’s family feels is a minimal sentence; unhappy with the verdict, family members may vow to take justice into their own hands. Or the batterer’s family may pose a threat to a battered woman by going through her children — either by threatening them with physical harm, or by fighting for custody and preventing a woman from having contact with her children.

If a woman you are working with is concerned about – or facing – retaliation from her abusive partner’s family, it’s helpful to engage in the same kind of safety planning process with her that you would if she was anticipating possible harm from an abusive partner. You can identify the ways that she feels at risk and strategize with her about what protective measures might help her to feel safer, weighing the potential outcomes, risks, and benefits of various options. In some cases, it may be useful to inform various criminal legal system players (including law enforcement officers,

bailiffs, or the prosecutor) about the woman's concerns. Chances are that they have encountered similar situations before.

At the same time, it's important not to assume that the abusive partner's family is necessarily angry at the woman, or will do something to harm her if she is released. In many cases, family members of women's abusive partners are well aware of the harmful behaviors their loved one engaged in, and may even be a source of support to a battered woman defendant.

### GENERAL SAFETY IN JAIL

A battered woman in jail may realistically be concerned for her safety while she is incarcerated. She may fear correction officers, jail staff, or other women in prison. Jails are violent environments in general. Control used by correction officers and jail staff can mirror control used by batterers; it can be psychological as well as sexual.

Also, incarcerated women sometimes abuse each other. While it is beyond the scope of this manual to explore why and how this happens, advocates working in jails or prisons have a responsibility to be aware of jail violence. We need to understand that it may be a very real concern of women in jail (see *Special Considerations: Same-Sex Battering as Part of a Relationship in Jail*).

There is also the matter of a woman's legal safety. Women in jail are vulnerable in many ways. If they are not careful about what they talk about and to whom, they may find that conversations they assumed were private will be used against them in court. The same also applies to letter writing. Letters sent to, or received from, a woman's batterer (or others) may also be used against her in court (see Confidentiality for a more complete discussion of this issue).

As advocates, we can play a vital role in helping a woman engage in a multi-faceted safety planning process that takes into account her risks and resources while she is in jail, in court, and upon release. Awareness, information about her options, and an effective plan can play an important role in helping a woman gain a sense of greater safety.

### ADDRESSING THE SAFETY IMPLICATIONS OF INDIRECT CONSEQUENCES OF ARRESTS AND CONVICTIONS

In addition to the possibility of being incarcerated and facing criminal charges, an arrest or conviction has ever-growing consequences that extend far beyond an individual's involvement in the criminal legal system as a defendant.

Having been charged or convicted of a crime can affect a battered woman's employment options, access to public benefits, immigration status, housing options, child custody determinations, access to higher education, voting rights, other civil rights, and eligibility for social services. There also may be court fees and fines, fees for mandatory intervention programs, and in some jurisdictions, people on parole or probation must pay to cover the costs of state supervision.

## **INDIVIDUAL ADVOCACY**

Unfortunately, many (although not all) of these consequences have direct implications for battered women's safety by decreasing their options and resources and/or giving their abusive partner more leverage with which to control them. Many battered women who have been charged with crimes report that they will never call the police again, even if their partner is seriously harming them.

While it is beyond the scope of this manual to explore remedies for each of the possible consequences of an arrest or conviction for a battered woman, it is important to be familiar with the potential consequences of arrests and convictions in order to help battered women charged with crimes avoid or minimize these negative consequences whenever possible.

In many communities, local legal aid offices have become well versed in trying to remedy some of the civil legal consequences of arrests and convictions. Also, some public defenders offices have information about cleaning or expunging criminal records. In addition, as discussed previously, it is essential that anyone charged with a crime who is not a U.S. citizen should consult with an immigration attorney who has expertise in the overlap between criminal convictions and immigration.

Contact the National Clearinghouse for the Defense of Battered Women at 1-800-903-0111 ext. 3 for more information about the indirect consequences of arrests and convictions, and resources for addressing them.

### **NEED FOR FURTHER SERVICES**

Battered women in jail have many needs, only some of which are related to their criminal charge. Advocates are in a position to identify those needs and provide referral information. Again, your role is as a bridge-builder, connecting women to other sources of support.

“It’s just more abuse, ... All the time, while you’re on trial, they talk about you so bad on the witness stand and no one says, ‘That’s not true.’ They called me a witch, a bitch, a voodoo, a money grubber, they said I didn’t care about my family... I was so hurt I couldn’t say anything. I don’t think they realize. They act like you’re a piece of furniture or a piece of meat. They talk about you as though you didn’t exist... I was more battered there than I was before I got there. Your husband says these things and you figure he’s just mad and you make allowances. But when people of character say these things, you think, well, if they believe it, maybe it’s true. Maybe I am no good. Maybe I’m not worth anything. You become a stranger that everyone talks about. They say terrible things and treat you like an awful person and pretty soon you just decide you must be worth nothing.”

— A battered woman serving a sentence of 50 years without parole

# Group Advocacy

## WHY PROVIDE GROUP ADVOCACY? WHAT ARE ITS GOALS?

Support groups in jail have many of the same goals of support groups offered in agencies. We all want to help battered women:

- Find a safe space in which to begin to talk about the battering
- Decrease isolation and increase trust
- Recognize that others share similar experiences
- Begin to form networks of support
- Develop increased coping skills to manage the effects of trauma
- Understand the dynamics and effects of battering
- Learn about building healthy relationships
- Increase self-esteem
- Learn stress management and self-care
- Break intergenerational cycles of violence
- Develop skills in safety planning
- Learn about community resources

Clearly, there is also a lot of overlap between the goals of individual advocacy and group advocacy in jail.

## UNDO DESTRUCTIVE MESSAGES OF THE CRIMINAL LEGAL SYSTEM

Many battered women point out that dealing with police, prosecutors, jail staff, and others involved in the criminal legal system simply replicates their experience of battering. Once again, they are isolated, told that they are not worthy, and dehumanized. Once again, their freedoms are restricted.

Incarcerated women are bombarded with messages that they are bad, they deserve blame, they ought to feel shame. But this time, the destructive messages are not just coming from their abusive partner — they are coming from a system that is supposed to be fair and impartial. The impact on a woman's self-esteem can be devastating.

A support group can help put these messages in perspective. By listening to the experiences of the others in the group, incarcerated women can begin to see that the job of the prosecutor is to paint defendants in the most negative light. By having advocates come to the jail each week to support them, group participants can begin to hear other messages: they are valuable, they are worth fighting for, and their stories do matter.

### DEAL WITH THE STIGMA OF INCARCERATION

As advocates, we can well appreciate that many battered women feel a sense of shame at having “allowed” their partners to abuse them. They may not talk about the battering because the stigma of being seen as a battered woman may feel too painful.

Incarcerated battered women have multiple layers of stigma to cope with, both in jail and after release. Researcher and activist Beth Richie identifies six ways in which incarcerated battered women may feel marginalized or pushed to the edges of society:

- As women in a male-dominated society
- Often, as women of color
- As low income women (the vast majority of women in jail are low income; if they had sufficient resources, they probably would have been able to make bail)
- As battered women
- As “criminals”
- As incarcerated women

Some women may also experience oppression if they have mental health issues; have physical disabilities; identify as lesbian, bisexual, queer, or transgendered; or differ in any other way from our society’s concept of “normal.”

Support groups in jail can offer women ways of addressing those multiple stigmas on an emotional level, and on a practical level. For example, facilitators can provide practical information that women need to know about looking for work with a criminal record.

### PREPARE FOR RELEASE FROM JAIL

If you facilitate a support group for sentenced women, group members will know (at least approximately) when they will be released. One goal of the support group is to help battered women feel better prepared for their return to the community – certainly that will involve safety planning. It may also involve discussing feelings about reuniting with children after a forced separation, or the fears of and grief about not being able to reunite with children due to custody battles or termination of parental rights.

You may also want to provide resource and referral information to help women get assistance with housing, employment, education, expungement of criminal records, or any of their other needs – with the understanding that the barriers that people face who have been arrested or convicted often are even greater than those faced by other battered women. This might fall beyond the scope of what you or your agency normally provides. Your focus is on battering and its effects on their lives. You may not be able to take on the responsibilities of a case manager. Many domestic violence agencies have hotlines that provide referral information for any number of resources, however. If you cannot provide referral information directly, you can give women the number for any hotline that offers these resources.

## **GROUP ADVOCACY**

If you are not limiting participation in your support group to sentenced women (although, for confidentiality reasons it is strongly suggested that you do so), some group members may be uncertain about their fate. Will they be acquitted? Sentenced to time already served? Given probation? They may receive a county sentence that can be served in jail; they may be sentenced to a state prison. As group facilitator, you can provide information about all those possibilities, and you can help women address their fears and concerns about each.

### **WHO BELONGS IN THE GROUP?**

We've discussed the possibility of limiting individual advocacy to women whose charges stem directly from their battering. That criterion may not apply to group work with women, however. The distinction between crimes directly or indirectly related to abuse isn't likely to present much of an issue when facilitating a support group in jail.

The different needs of battered women who are awaiting trial versus women who already have been sentenced have a far greater impact on how group advocacy is done, as compared to the differences between women whose crimes are directly versus indirectly related to abuse. The discussion below on confidentiality in group work is designed to help you decide how you want to define the membership of your group. You may also want to speak with other advocates who have led support groups in jail before making a decision. (Contact the National Clearinghouse for names and contact information of other group facilitators.)

### **CONFIDENTIALITY IN GROUP WORK**

Confidentiality is a core issue in any type of group work. It has vastly more importance when a battered woman has an open legal case. It is critical that she not discuss the facts of that case with anyone other than her defense attorney.

What any battered woman says in a support group should be kept in confidence. It can be difficult to enforce the policy of "whatever we say here, stays here," however. Obviously, any time a support group member inappropriately passes on information that was shared in confidence by another group member, there is a serious breach of confidentiality in the group; one of the basic ground rules of the group has been violated. After that, it may be difficult for group members, even those not directly involved in the disclosure, to feel safe enough in group to share their own feelings and experiences.

If a battered woman shares information regarding the facts of her case in a support group and another person takes that information outside the group, the person who shared information may be in legal peril. A group member may try to use confidential information to leverage her own legal situation, hoping to make a better deal on her own case if she is able to provide the prosecution with useful information on someone else.

Even if the information is simply repeated to other women in the jail, problems may occur. The more that "word gets around," the more that information could end up used as evidence against the woman who disclosed the facts of her case in group.

Advocates who provide support groups in jail have devised various ways to protect confidentiality. Some advocates will offer emotional support groups only to women who have already been sentenced and who have no pending legal issues. For women awaiting trial, advocates may offer basic information sessions on domestic violence and/or community resources, but those sessions are structured to limit the amount of personal sharing on the part of the participants.

Other advocates welcome all interested battered women to attend their support groups. As facilitators, however, they take the responsibility to remind participants frequently that sharing the facts of one's criminal case is not appropriate in the group. Those advocates need to be super-vigilant, cutting off any discussions that begin to address issues directly related to a criminal charge.

Keep in mind that little, if anything, in jail is private. Simply by attending a support group for survivors of domestic violence in the jail, women reveal personal information about themselves to the jail community, even if they hardly say anything in the group. Advocates may want to talk to group members about this self-disclosure early on, to help women strategize about setting appropriate boundaries. Support group members should be prepared to handle non-group members who ask them questions about their experiences of abuse or about the group.

### **FORMAT AND STRUCTURE OF GROUP WORK**

You can structure a support group in whatever way feels most comfortable to you, given the constraints of the jail. Jail-based support groups take many different forms – psycho-educational groups, informational sessions, open or closed enrollment, fixed curriculum or topics proposed by group members, predetermined cycle, or on-going discussion groups.

The traditional format used at an agency may need some adapting to account for the realities of incarceration, especially:

- The constant turnover of women in the jail
- The jail's security concerns
- Confidentiality issues

In addition to your regular curriculum addressing domestic violence, sexual assault, and empowerment issues, you may want to incorporate other components into the support group. Advocates have crafted various approaches to respond to the needs of battered women in jail, including:

- Art therapy
- Writing workshops
- Reading groups
- Quilting groups

## **GROUP ADVOCACY**

You may want to offer a group that focuses on one of those activities, or you may want to incorporate an activity into your group format.

Remember that you need to be aware of the realities of life in jail and be creative in your suggestions. Journal writing, for example, may be difficult if women have limited access to pens and paper, and it may raise confidentiality concerns.

One facilitator of a jail-based support group notes that she prefers to have women color or draw during a group session. This provides a creative outlet and allows women to avoid eye contact during discussions of particularly difficult topics. This method also has the benefits that — unlike journaling or using worksheets — art does not risk confidentiality and does not create disadvantages for women who have literacy issues.

Another way that you might approach group advocacy is to assist incarcerated women in forming their own, peer-led support group. This can be an excellent solution to the problem of limited agency resources. You can provide handouts and other information on domestic violence, along with resources, referrals, and suggested guidelines around confidentiality. You can also help design the initial structure of the group and serve as a consultant. Your ongoing, direct involvement with the support group might vary, depending on the needs of the group and your availability.

“Too often, incarcerated women are returned to the streets facing the same problems and barriers that existed prior to their sentencing. Therefore, they have no choice but to use the same coping and survival skills that precipitated their incarceration... For any real change to take place, there must be education and community involvement concerning the plight of incarcerated battered women.”

— **Joanne S. Kurzmann**

# Systems Advocacy

## WHAT IS SYSTEMS ADVOCACY?

Another approach involves focusing on the systems that are failing battered women in jail. Systems advocacy brings together the people who make and implement policies that affect arrested and incarcerated women. We hope to challenge practices that interfere with justice for battered women.

## WHY PROVIDE SYSTEMS ADVOCACY? WHAT ARE ITS GOALS?

The primary goal of systems advocacy is to increase justice in the lives of women by engaging with the systems that have the power and potential to promote or inhibit justice. Specifically, systems advocacy works to influence those systems by:

- Educating policy makers about realities of battering and its effects
- Raising awareness regarding the impact that current policies and practices have on the lives of battered women
- Discussing the goals and purpose of current policies and practices
- Brainstorming ways to achieve important goals without compromising the safety and the interests of battered women
- Developing and sustaining positive work relationships with people who design and implement policies that affect battered women

## STEPS INVOLVED IN SYSTEMS ADVOCACY

Several steps are involved in systems advocacy:

- Identify the problem (consider utilizing focus groups, advisory committees, or other strategies for ensuring that the perspectives of a diverse group of battered women who have been charged with crimes are well represented).
- Assess who is in the best position to address it (i.e., Law enforcement officers? Police detectives? Police chiefs? Defense attorneys? District Attorneys? The Sheriff's Department?).
- Talk to key individuals or groups to raise awareness of the problem and strategize solutions.
- Design a protocol or action plan to ensure a consistent, new response.
- Evaluate the action plan and give feedback: Does the solution work? How can it be better?

Consider the following example: After visiting women in the jail, you may be aware of an increase in the number of women who are being charged with assault, many of whom you believe were acting in self-defense. It may be that when police are called to respond to a domestic violence situation, they end up arresting both parties. Or

they may arrest the woman if the man has scratches on him. This seems to be an increasingly common occurrence.

Systems advocacy identifies the problem as inappropriate arrests of victims of ongoing battering who are acting in self-defense. If a man is scratched because he was battering his partner and she defended herself, then arresting the woman and charging her with assault is inappropriate. Ideally, the police would assess the situation and attempt to determine whether one of the parties was acting in self-defense. If, after assessing for self-defense, the responding officers believe that unlawful force was used, in many jurisdictions they are directed then determine whether one of the parties is a victim of ongoing battering and whether the other is the “dominant aggressor.”

A systems advocacy approach involves contacting members of the local police force and inviting them to engage in a dialogue around this issue. As advocates, you would attempt to identify key players who influence local policy and sit down with those people to discuss what might assist the officers in conducting a “dominant aggressor analysis.” You and your agency might also offer training to local police on the dynamics of domestic violence and the complexities of responding to domestic violence calls, or invite outside trainers to provide such a training, depending on what would be best received in your jurisdiction. The better the officers understand battering, the more likely they are to be able to identify self-defensive acts and to distinguish the dominant aggressor from the person defending herself against her batterer’s abuse.

Similarly, you could arrange meetings or trainings with local prosecutors and/or defense attorneys, to discuss this issue and others that might result in unfair treatment for survivors of battering.

## **Closing**

We hope info provided to you is useful, and we wish you the very best with your work. If you have further ideas, input, or questions please call:

The National Clearinghouse at 1-800-903-0111 ext. 3.

Advocacy with battered women charged with crimes is hard – and rewarding – work. Those of us engaged in this vital advocacy need to network with each other and write about our experiences (our successes and our challenges) so we can share ideas. Please consider sharing your writings with the National Clearinghouse for wider distribution.



## **Advocacy basics for working with battered women charged with crimes**

The following are some basic guidelines to follow when working with battered women charged with crimes.

Please see *Working With Battered Women in Jail: A Manual for Community-Based Battered Women's Advocates* published by the National Clearinghouse for the Defense of Battered Women (November 2009) for further information about each of the points listed below.

**Talk with the defense attorney representing a battered woman facing felony charges before talking to the defendant to discuss issues relating to confidentiality and to clarify your role as an advocate.**

**Do not talk to a prosecutor about a specific case without the full knowledge and agreement of a woman's defense attorney.**

**Avoid discussing the facts of the incident for which the woman was charged. Preface all the work you do by telling incarcerated women that you do not want to discuss any facts related to their case.**

**Be very thoughtful about what, if any, notes you make in your work with battered women defendants.**

**Have clearly established agency policies in place regarding record-keeping, testifying, and responding to subpoenas.**

**To protect the confidentiality and legal interests of battered women who are awaiting trial, consider offering individual advocacy or general information sessions (not support groups) for defendants who are pre-trial. Reserve support groups for those who are serving out their sentences in jail. Do not**

## **ADVOCACY BASICS FOR WORKING WITH BATTERED WOMEN CHARGED WITH CRIMES**

**disclose information that you learn from women with whom you work in jail with jail staff.**

**Ask questions about your advocacy strategies, not only in terms of the implications for the individual woman you may be advocating with, but also for any other battered women charged with crimes:**

- **“How could this strategy be used against women?”**
- **“Is there anyway it could backfire?”**
- **“In attempting to help, could I in fact be doing greater harm?”**

**If the woman you are working with is not a U.S. citizen, consult with an immigration attorney about the consequences of an arrest or conviction on her immigration status.**

**Remember that, in many ways, the distinction between whether the abuse a woman experienced is directly or indirectly connected to the charges she is facing is irrelevant to your decision to advocate, or your advocacy efforts.**

**All battered women in jail need and deserve support, just as all battered women everywhere need and deserve support.**

## ENDNOTES

- 1 Quoted by Gayle Horii, *Advocating For Women in Prison*, *KINESIS*, March 2001, 19.
- 2 Debi Zuver, *Our Voices Within: Celebrating the Strength of Incarcerated Survivors*, California Coalition for Battered Women in Prison, 2002, 21.
- 3 Bureau of Justice Statistics: <http://www.ojp.usdoj.gov/bjs/glance/tables/jailagtab.htm>
- 4 James, Doris J. (2004). *Profile of Jail Inmates*, 2002. Bureau of Justice Statistics Special Report, U.S. Department of Justice. <http://www.ojp.usdoj.gov/bjs/pub/pdf/pjio2.pdf>.
- 5 See:  
Bloom, B., Chesney Lind, M., & Owen, B. (1994) *Women in California prisons: Hidden victims of the war on drugs*. San Francisco: Center on Juvenile and Criminal Justice.  
Bradley, R. D., & Davino, K. M. (2002). Women's perceptions of the prison environment: When prison is "The safest place I've ever been." *Psychology of Women Quarterly*, 26.  
Browne, A., Miller, B., & Maguin, E. (1999). Prevalence and severity of lifetime physical and sexual victimization among incarcerated women. *International Journal of Law and Psychiatry*, 22: 3-4
- 6 Survey participant. *Unlocking Options for Women: A Survey of Women in Cook County Jail*. Chicago Coalition for the Homeless, April 2002, p. 6.
- 7 Focus group participant. Focus groups were held at the Philadelphia Industrial Correctional Complex and the Cambria Community Center and were coordinated by the Working Group to Enhance Services to Incarcerated Women in Philadelphia, Summer 2001.
- 8 Survey Participant, 2002, p. 12.
- 9 Survey Participant, 2002, p. 11.
- 10 Focus Group Participant, 2001.
- 11 Ibid.
- 12 Ibid.
- 13 Survey Participant, 2002, p. 16.
- 14 Focus Group Participant, 2001.
- 15 Ibid.
- 16 Survey Participant, 2002, p. 18.
- 17 Ibid, p. 8.
- 18 Focus Group Participant, 2001.
- 19 Survey Participant, 2002, p. 17.
- 20 Lousie Bauschard and Mary Kimbrough, *Voices Set Free: Battered Women Speak From Prison*, Women's Self-Help Center, St. Louis, Missouri, 1986, 148.
- 21 It is beyond the scope of this piece to engage in lengthy discussions of the politics of prisons and jails, the politics of poverty, and the politics of race and gender. There are many gifted authors who insightfully address those topics (Beth Richie, Julia Sudbury, Angela Davis, and others).

22 Corporate Globalization and Prisons: On the Backs of Women of Color, *OFF OUR BACKS*, Volume xxxii, numbers 5/6, May-June 2002, 16.

23 *Women in Jail and Prison: a training manual for volunteer advocates*, National Council of Churches in Christ, U.S.A. 1982, 72.

24 Lori Pompa, co-facilitator of a training session of the Working Group to Enhance Services to Incarcerated Women in Philadelphia, November 2001.

25 Gayle Horii, *Advocating For Women in Prison*, *KINESIS*, March 2001, 19.

26 Horii, at 19.

27 Ibid.

28 Joanne S. Kurzmann, *Building Bridges: A Support Group and Advocacy Program for Incarcerated Survivors of Domestic Violence in Cumberland County, Maine*. Paper presented at the 10th National Workshop on Adult & Juvenile Female Offenders, 2003, p. 34.

29 Beth E. Richie, *Compelled to Crime*, Routledge, New York, 1996, 136.

30 King County Coalition Against Domestic Violence, *Victim-Defendants: An Emerging Challenge in Responding to Domestic Violence in Seattle and the King County Region* (<http://kccadv.org/Reports/victimdefendantfinalreport1.pdf>), 2003, p. 20.

31 Lousie Bauschard and Mary Kimbrough, *Voices Set Free: Battered Women Speak From Prison*, Women's Self-Help Center, St. Louis, Missouri, 1986, p. 119.

32 Richie, 1996, 160-161.

33 The National Clearinghouse for the Defense of Battered Women, *Support Groups for Battered Women in Prison and Jails*, 2001. 35.

34 Joanne S. Kurzmann, *Building Bridges: A Support Group and Advocacy Program for Incarcerated Survivors of Domestic Violence in Cumberland County, Maine*. Paper presented at the 10th National Workshop on Adult & Juvenile Female Offenders, 2003, pp. 42-43.