

The Impact of Arrests and Convictions on Battered Women

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What happens when battered women get arrested? In our experience at the National Clearinghouse for the Defense of Battered Women, we find that at each stage of the legal process, battered women face extremely difficult choices and are often given poor and/or incomplete information and advice. Generally, women are not properly warned about the potential long-term consequences of what it could mean for them and their children if they end up with a conviction (either as a result of a trial or a plea arrangement).

A note about women's safety:

This handout focuses primarily on the potential legal and economic consequences of an arrest and conviction for battered women. What we have also found, but which is not fully explored below, is that when battered women are arrested they often face increased risks and danger, especially when the alleged crime for which they were arrested is against their batterer. Both the woman and her batterer know that her arrest usually *decreases* her options and *increases* his power over her. For example, we hear from many battered women who have been arrested who report that they will never again call the police in the future, even if they are in grave danger. We also hear battered women describe the ways their abusive partners use their arrest as an additional tool to control them. Using the power of the criminal legal system as additional leverage, many abusive partners increase their levels of physical and emotional abuse, and/or coerce their partners into complying with various demands that further compromise battered women's safety.

As you read this handout outlining some of the legal and economic consequences of an arrest and/or conviction, we urge you to think about the ways in which an arrest and conviction can also limit battered women's resources for increasing their safety and give abusive partners additional means to control their partners.



After an arrest, battered women — often out of concern for their children — do what they can to get home quickly.

- In our experience, battered women who have been arrested often make statements to the police or participate in early hearings without the benefit of defense counsel simply because they are eager to speed up the process so they can get home to their children. They do so because they know that, while they are in custody, their children may be at great physical and/or emotional risk.
- When battered women who have children sit in jail waiting to be arraigned or to go to trial, their children are often placed with the batterer, his family, or foster care. Any one of these

situations may place the children at great physical and/or emotional risk. Additionally, the longer the children are not in the mother's care, the harder it may be for her to get them back.

Battered women face many pressures to take a plea.

- Some criminal defense attorneys representing battered women defendants do not understand the relationship between the women's history of abuse and potential legal defenses. Consequently they do not fully explore all of the woman's legal options. They often end up encouraging their clients to take a plea, especially when the plea involves no jail time.
- A protracted legal case against a battered woman may actually *increase* the danger she faces. This reality can make an early plea attractive and helpful — even if she has an excellent defense and could be acquitted if she went to trial. When battered women are facing criminal charges, their batterers often escalate their violence and threats, recognizing the increased vulnerability of their partner now that she is a defendant in a criminal case. To try to minimize the violence, many battered women will accept a plea offer very early in the process (often these are not the best “bargains”).
- Frequently, the battered woman's case will be continued a number of times so that the judge and attorneys can monitor the woman (especially if the charges are not particularly serious and/or the batterer is not cooperating with the prosecution). Often defense counsel, unaware of the danger the woman is facing, agrees to this strategy in the hope that it will result in the case being dismissed.
- In addition to the potential for increased danger, many women simply cannot come to court for the many appearances such a strategy requires because of work and/or childcare obligations or due to her batterer's sabotage or other forms of interference.

Battered women with convictions might face long-term, adverse consequences that may seriously harm them and their children.

A conviction (either as result of a trial or a plea) could adversely affect a battered woman's...

- **Employment options:** A conviction of certain crimes may bar one from getting licenses or employment in certain fields and can be grounds for firing. Many of the jobs barred by convictions are traditionally “women's work,” such as childcare, teaching, and healthcare jobs.
- **Public benefits:** A conviction could affect eligibility and in some cases can create a lifetime ban. At this point, these bans primarily apply to persons convicted of felonies involving the possession, use, or distribution of controlled substances that took place on or after August 23, 1996. States can opt out of this requirement to permanently ban those convicted of a drug-related felony from receiving TANF-funded benefits, and over half the states have done so, either in part or completely. Furthermore, incarceration or other time requirements (e.g., participating in community service or in rehabilitation groups) may prevent women from fulfilling work or training requirements attached to receiving benefits.
- **Housing:** A conviction of certain crimes could affect eligibility for public housing, causing a woman to be evicted from or denied admission to public housing. Additionally, private realtors or landlords frequently conduct criminal background checks and may refuse to rent a property to anyone with a criminal history.
- **Custody determinations:** If a woman is convicted of a crime either as a result of a trial or plea, this fact will almost certainly be used against her in any custody hearing. We hear of cases in which a woman's conviction is viewed as much more serious and/or aberrant than

that of a man, since many courts continue to hold mothers to higher or different standards. Additionally, an increasing number of custody statutes use convictions of domestic violence crimes as a presumption against awarding custody to the convicted parent. These statutes, designed to protect children from their battering father, can be (and are) used against battered women and cause further harm for their children.

- ***Immigration status:*** A conviction of certain crimes may prompt deportation.
- ***Education.*** We have been told that some convictions may affect certain scholarships and/or admission to certain schools. In particular, criminal conviction often prohibits women to gain higher education by making them ineligible to receive government or private grants or student loans.
- ***Voting rights and other civil rights.*** Convicted felons may lose the right to vote, to serve on a jury, or to hold public office. In over half the states, convicted felons may not vote while they are on parole or probation. And in 13 states, former felons who have served their sentence remain disenfranchised for life.

Additionally, being on probation or parole — which for some battered women lasts for a very long time — can also affect government benefits and public housing eligibility.

Many battered women are the primary caretakers of their children. They are often the ones who are supporting them, the ones who are seeking public benefits and/or housing. The loss of employment, public benefits, and public housing can have a terrible impact on the lives of battered women and their children.

Defense counsel often do not properly or fully inform battered women defendants of the potential long-term consequences of a criminal conviction.

- Many criminal defense attorneys are not aware of all the long-term effects that a conviction may have on their clients, or the particular impact it may have on women clients. As stated above, they often encourage their clients to accept pleas, especially if the plea offer does not involve jail time. If a plea seems particularly “attractive,” the defense attorney may not be as aggressive as s/he could or should be in investigating possible defense options or alternative resolutions that might be less likely to result in a conviction for their client.
- Defense counsel’s lack of awareness of all the potential ramifications of a criminal conviction often deprive battered women defendants of a thorough understanding of what it will mean for her if she takes a plea.

An important note to advocates: Despite the many potential downsides of battered women accepting plea bargains, we do **not** believe that plea bargains are bad for all women. In fact, we know that, for many women, taking a plea may absolutely be in their best interests. Each case and situation is different; therefore each case requires an individualized assessment. All of the potential issues, and all the advantages and downsides of any option — be it taking a plea, accepting a deferral, or going to trial — must be thoroughly examined and weighed by the woman herself in close consultation with her defense attorney.

Some batterers, now more sophisticated about the consequences of arrest for their women partners, use arrest as another tactic of control.

- We know of many women who have been arrested based on false charges by their batterers or have been inappropriately arrested at their batterer's urging. Understanding their increased power, the batterers often use the arrest and subsequent conviction, if there is one, against their partner in a variety of ways.

Arrest and incarceration of a battered mother can have an adverse affect on her children.

What message are we sending to children when their battered mothers are arrested, particularly if they are arrested for defending themselves? What happens to children when they are separated from their mothers due to incarceration?

Conclusion

From the time they are arrested to the final disposition of their case, battered women face monumental hurdles that make it very difficult for them to get good information and advice about their options. Many of them end up taking a plea or being convicted. When battered women end up with criminal records, they face many extremely problematic long-term consequences that can significantly harm them and their children. Therefore, it is extremely important that battered women defendants be fully informed about the potential consequences of their decisions. Battered women's advocates and defense attorneys need to educate themselves about the potential impact of criminal records on women, so they can provide women defendants with this information. Only then can women fully assess and make informed decisions about how to proceed in their legal cases.



The National Clearinghouse staff thanks Sharon Deitrich, Esq. of Community Legal Services in Philadelphia for all her excellent work helping to inform the legal and advocacy community (including our staff!) about the civil consequences of criminal records and for her many efforts in developing strategies to make it less difficult for people with convictions to secure a job, public benefits, or a place to live.

Easily Accessible Resources for Further Information

- ◆ ***After Prison: Roadblocks to Reentry – A Report on State Legal Barriers Facing People with Criminal Records*** a report by the Legal Action Center (2004)
Provides information about legal obstacles faced by individuals with criminal records upon reentering communities. Includes information on laws by state regarding collateral consequences and an analysis of the impact of those laws.
http://www.lac.org/roadblocks-to-reentry/upload/lacreport/LAC_PrintReport.pdf
- ◆ ***Every Door Closed: Barriers Facing Parents with Criminal Records*** by Amy E. Hirsch, Sharon M. Dietrich, Rue Landau, Peter D. Schneider, Irv Ackelsburg, Judith Berstein-Baker, and Joseph Hohenstein for the Center for Law and Social Policy and Philadelphia Community Legal Services (2002)

Examines the impact of a criminal conviction on employment, welfare benefits, housing, child custody, immigration, and student loans. Includes policy recommendations for enhancing the ability of people with criminal records ability to access needed resources.
http://www.clasp.org/publications/every_door_closed.pdf

- ◆ ***Federal Housing and Domestic Violence: Introduction to Programs, Policy, and Advocacy Opportunities*** by Robin Hammeal-Urban and Jill Davies for the National Resource Center on Domestic Violence (1999)

A review of federal housing programs and policies that includes a section on consequences of crime on a woman's access to public housing and related policy issues.
http://new.vawnet.org/category/Main_Doc.php?docid=105

- ◆ ***Relief from the Collateral Consequences of a Criminal Conviction: A State-by-State Resource Guide*** by Margaret Colgate Love for the Sentencing Project (2005)

This resource guide describes consequences for each state, for the federal system, and contains an executive summary with general information applicable nation-wide. Reviews state and federal laws and practices regarding restoration of rights following a criminal conviction. The website is interactive and designed to be updated as needed.
<http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=486> (

Please note: It appears the full article is no longer available from the Sentencing Project's website. It seems it was updated and republished in 2007/8 and is now only available in full from HeinOnline for \$68.00. You can however get specific tables and state information from

<http://www.sentencingproject.org/tmp/File/Collateral%20Consequences/execsumm.pdf>

- ◆ **Organizations, Websites, and Projects**

Following is a list of ongoing projects specifically related to collateral consequences with information available on-line. These websites are updated as new information is available.

- ***Legal Action Center*** criminal justice programs:
<http://lac.org/index.php/lac/161#help>
- ***The Sentencing Project*** Collateral Consequences focus:
<http://www.sentencingproject.org/IssueAreaHome.aspx?IssueID=7>
- ***Partnership for Safety and Justice***
http://safetyandjustice.org/info/topic/collateral_consequences

The National Clearinghouse for the Defense of Battered Women is interested in learning more about the impact of arrest and convictions on battered women. If you have general information, or specific examples, about the particular problems battered women face when charged and/or convicted of a crime, please let us know. Thanks in advance.