

Self-Defense and Predominant Aggressor Training Materials

Self Defense and Defense of Self; There is a Difference

The following materials provide an outline of topics to cover by someone in your community who is knowledgeable about the law, the patterns of charging in the prosecutor's office, and the local realities of victims of domestic violence. We recommend you bring someone in to explain the factors that constitute self-defense, an attorney from the public defender's office would be a logical choice to make this presentation. Your local presenter may want to make changes to be sure our generic versions below match your state law or local policies of police and prosecutors.

What Are Police Trying to Determine When They Investigate Domestic Assault Cases?

Presenter should explain that tonight we are going to learn about how in an ideal world police would investigate domestic assault cases to;

- a. Decide first if anyone assaulted the other or committed related crimes and explain what an officer has to establish to make an arrest (establishing probable cause).
- b. Determine if both parties used violence and whether one was acting in self defense; if one party was acting in self defense then the officer should only arrest the party who was not acting in self defense.
- c. If both parties used illegal violence the officer should (in most jurisdictions) decide who the predominant aggressor is and arrest him or her. (NOTE some jurisdictions and states do not allow for a predominate aggressor arrest and require that all parties committing an act of illegal domestic violence be arrested.) (Some jurisdictions do not require arrests but encourage it.) Handout a summary of what your state law and local department policy says on these matters.
- d. Write a report

What Constitutes Domestic Assault Criminal Charges Under the Law?

Presenter should go over the language of state law on what constitutes an assault (domestic abuse related assault if language is specific.) Next the presenter should pass out the state specific language to participants.

What is Probable Cause?

Presenter describes what probable cause is. In order for a police officer to make an arrest on a domestic assault case s\he must first meet a certain threshold of evidence. That threshold is called probable cause.

In 1983 the U.S. Supreme Court held that officers must consider the “totality of circumstances” available to them in making a probable cause determination.

The Supreme Court further ruled that an officer could use training and education to draw conclusions regarding the circumstances.

Exercise One: Probable Cause

Blacks Law Definition of Probable Cause – Probable cause is the existence of circumstances that would lead a reasonable and prudent person to believe in the guilt of the suspect.

Below is a list of facts from a domestic violence case. The presenter should go over the operative words in the definition of *totality of circumstances* up against the facts of this case. After the group has considered the facts of the case and all the ways in which law enforcement is organized to determine if an arrest needs to be made and who to arrest, the group should say who, if anyone should be arrested, and why. The decision of the officer is at the end of the exercise.

During the Exercise the group should **consider the totality of circumstances – which** means s\he has connected the dots and has considered everything s\he observed and heard and didn't ignore some of the evidence.

Here is a case scenario the presenter can use. There are also a number of video tapes that can be shown once the group understands what to look for¹. Presenter should review with group what the totality of circumstances are in this case.

Case Facts

Her Statement: We got in a fight when he returned home from drinking with his friends and he wanted me to stay up and watch a show with him...I said no and that I was not sleeping in the same bed with him because he stank.

His statement: She got all jealous because I spend time with my friends. She doesn't have any friends and hates it when I go out without her.

Her Statement: She said he grabbed my cell phone and kept me from calling for help by smashing it against the wall.

Observation: The cell phone is sitting on the counter-top broken into pieces.

Her Statement: She said he grabbed her by the hair and pulled her across the room.

Observation: There is a clump of what looks to be her hair on the floor.

Her Statement: She said he slapped her in the face and grabbed her around the neck pulling her over to the kitchen table; she says she bit him to get free.

Observation: She has what looks to be a hand mark on her left cheek

¹ Included in *Turning Points: A Nonviolence Curriculum for Women*, there are four vignettes used specifically for the self defense section.

His statement: He said she bit him and he was acting in self defense. He denies pulling her across the room and says he slapped her to get her away when she bit him he said he may have grabbed her by the hair he doesn't remember that.

Observation: He has a bite mark on his right forearm. A small end table is knocked over.

Her Statement: She says she was afraid of him and still is

His Statement: He says she kicked him as he was going to answer the door to let the police in; in the back of the leg.

Her Statement: She says she did kick him but pretty much missed as it glanced off to the side; she added that she should have kicked him harder.

Observation: She is very hostile toward the officer and generally aggressive during the interview.

Observation: There was no sign of him being kicked.

Three Risk Questions

The officers asked the man and the woman three risk questions:

1. Do you think your partner might seriously injure you or your children?
2. What was the time you were the most afraid of your partner?
3. Is the abuse or violence changing? Is it getting worse, staying the same or getting better?

His Answer: Yes she could do serious damage when she's a nut case like tonight there is no telling what she'll do. A couple of weeks ago she tried to drive both of us off the road

I had to grab onto the steering wheel to keep her from killing us. She's definitely getting worse because I'm telling her I'm going to leave.

Her Answer: Yes because he doesn't realize how strong he is; I don't think he would try to kill me but twice he has choked me until I passed out. He is worse when he is drinking and when he's been out with his friends. It's like they wind him up.

Other Things To Consider When Determining Probable Cause

Using training and experience means the officer can use information s\he has learned from past experience and education to assume certain things to be true; for example, the officer can conclude that just because the woman isn't huddling in a corner crying doesn't mean she wasn't afraid just a few minutes earlier

Using prudence and caution means the officer can not just assume because both parties have injuries it's best just to arrest them both and let the courts figure it out. The officer is obligated to try and get it right and be cautious before arresting someone.

Believes in the probable guilt means the officer has to think it is more likely that the person to be arrested did commit the crime than it is that s\he did not commit the crime.

What is Self Defense?

Definition of self defense (change this if it is not right in your state.)

A persons justifiable use of force against another person when such force is necessary to defend themselves or a third person from what they reasonably believe to be the use or imminent use of unlawful force.

Elements to claim self defense

- The person using force had a reasonable belief that s\he was at risk of bodily harm. (note; the criteria is not, did the officer think she was at risk but, did she believe it and given her circumstances and history was it reasonable for her to believe it.)
- The risk of harm was imminent (this means a person can't use violence to prevent future harm just harm that is imminent.
- The force used was that force reasonably necessary to prevent or stop the infliction of bodily harm.

Determining Who is the Predominate Aggressor

Predominate aggressor - In cases where both parties use illegal violence against the other the pre-dominant aggressor is the party who is clearly the more aggressive and potentially dangerous of the two. **The officer must consider the event and the history of violence and force used by the parties.**

Criteria Used to Determine the Predominant Aggressor

Officers should when applicable consider the following to establish who is the predominant aggressor:

- Who is the more aggressive generally in the relationship? Especially if in this event the acts of violence were somewhat similar.
 - There are a number of calls to this home and he has been arrested twice before for domestic violence; once against her and once against his mother.
- Eliminate the probability that one party was acting in self defense.
 - In this case the officer concludes that the woman used self defense when she bit him but not when she kicked him.
- The comparative strength to each other.
 - he is stronger than her
- Each party's ability to do what was alleged.

- Both parties seemed able to do what was alleged.
- Witness statements
 - No witnesses except neighbor who called 911 and said she heard a woman screaming “I’ll call the police if you don’t get away from me!”
- Harm done, severity, and extent of injuries to each party; who was the most aggressive in this incident.
 - Bite mark on him fading, clump of hair missing on her, slap mark on her face fading.
- Likelihood of future injury to either party.
 - High likelihood of him assaulting her again with two past arrests and him not being very straight forward on this incident.
- Who is afraid of whom and what are they afraid of?
 - She may be afraid of him but she isn’t acting afraid she’s being very openly hostile toward him and officers.
 - He seems more annoyed than afraid.
- Why did each party use violence; was it to control, intimidate, to resist, to punish?

Problematic Criteria

Possible criteria officers should either not use or be sure to put in context.

- Who is the most irritating toward the officers?
- Who started the argument?
- Who threw the first blow?
- Who threw the last blow?
- Who was the most insulting to the other?
- Who is the drunkest?

The Officer's Decision

His wound looks like it could have been inflicted by her against him in self defense, however, when she kicked him at the end and freely admits to it that is retaliatory violence and it is illegal no matter how good of a reason she may feel she had for doing it.

In this case the officer concludes that the woman was acting in self defense when she bit him but not when she kicked him so they have probable cause to arrest both of them. However, when they apply the predominant aggressor criteria they decide they should not make a dual arrest because he is clearly the pre-dominant aggressor both in this incident and in the relationship overall.

Next use the video clips² and have the women decide on each case a) if there is probable cause to arrest either party; b) did either party act in self defense? C) if both parties acted illegally who is the predominant aggressor, the trainer will have to answer questions of the group, such as, have the police been here before? What happened then?

Use the video's you feel most comfortable using there are probably too many to get through in one night. The woman who stabs her husband in the hand is a good one. Most police would arrest her and probably not dig as deep as the officer did in this case. So be sure to talk about the fact that we are talking the ideal not what actually happens, this is why if you are arrested you need an advocate and an attorney and you need to go over the situation with the attorney in detail.

Conclusion

End the group by talking about the local realities of what this police or sheriff's department is likely to do on these cases, what the charging attorneys at the city or county are likely to do. Be realistic. It's a good issue for a local advocacy program to take up with a group of women in these groups. Impress upon women that if they are arrested again they must get an attorney and make sure that the right thing is done in her case. Just wanting to get it over with....never gets it over with.

² Turing Points: A Nonviolence Curriculum for Women, DVD #3 Track# 8, 9, 10, & 11