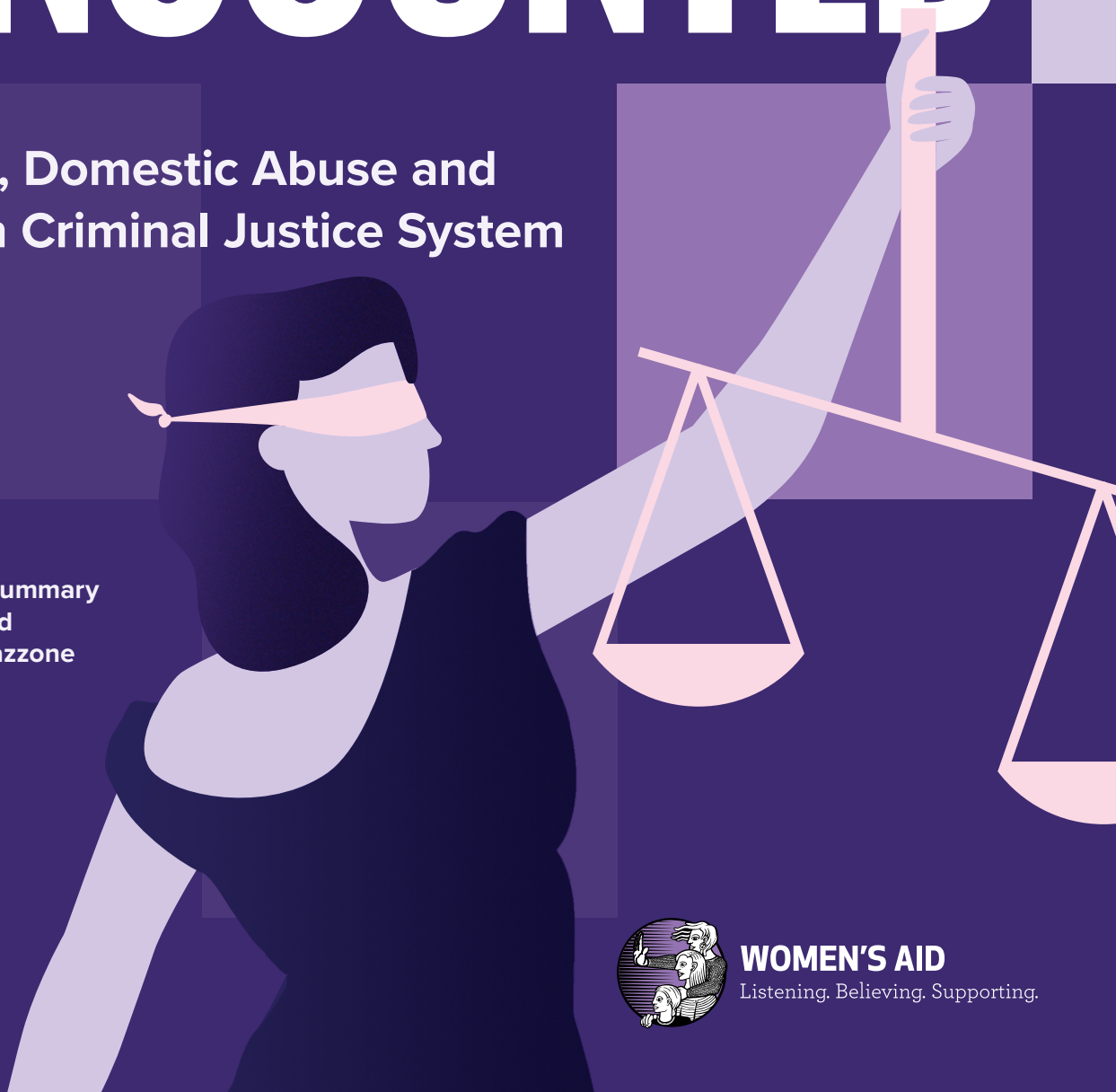


# UNHEARD AND UNCOUNTED

Women, Domestic Abuse and  
the Irish Criminal Justice System

An Executive Summary  
by Women's Aid  
and Monica Mazzone



**WOMEN'S AID**

Listening. Believing. Supporting.

## Women's rights are human rights and the right to live free of domestic violence and abuse is a fundamental one. It is essential that the response of the criminal justice system to domestic violence victims vindicates their right to justice and ensures their protection from violence.

For 45 years, Women's Aid has supported tens of thousands of women experiencing domestic violence and has heard the many difficulties they encounter when accessing the criminal justice system to seek justice and safety. We have heard about dissatisfaction with both the process and outcomes of criminal proceedings against perpetrators, which women often described as inadequate and merely "a slap on the wrist".

There is a significant data gap within the Criminal Justice System. The relationship between victim and offender is not recorded in the Central Statistics Office nor in Courts Service data. Therefore, domestic violence related offences are not identifiable in the data and it is not possible to analyse domestic violence related crimes and sentences effectively. This major flaw makes it impossible to evaluate and monitor how the Criminal Justice System responds to victims experiencing abuse by a current or former intimate partner.

In the absence of official data, Women's Aid researched and collected data in two strands. The first strand collated information from cases reported in the media on domestic violence offences, charges and sentences.

The second strand was a consultation with 20 women to evaluate their engagement with the criminal justice system and how it responded to their need for safety and their right to justice.

**This report summarises the findings of these two strands of work.**

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

### Limitations

The cases included are not a representative sample of cases going through the courts, but solely reflect media interest.

The findings are based on media reports **only**. Women's Aid did not have any access to the original case files or notes, nor any way of verifying accuracy of the details. The findings are solely based on partial details as reported in the media.

### Key Findings

- 97% of the victims were women (63 of 65 cases) and over half (52%) of the incidents occurred in their own home (34 cases).
- At least 25 of the 65 perpetrators (38%) were reported to be former partners at the time of the offence, demonstrating that leaving an abusive relationship does not always end the abuse.
- Children were mentioned as part of the household in 39 cases (60%) and were reported to have been on the premises when the offence was committed in 21 cases. The emotional impact of witnessing violence against their mother and/or its aftermath should not be underestimated.
- Children were reported to have been physically injured in 5 cases.
- In 41 cases injuries were reported, ranging from bruises to injuries requiring hospitalisation (8 cases).
- In 16 cases the victim was reported to have been choked, strangled or otherwise made unable to breathe, and weapons were mentioned in 15 cases.

- A history of domestic violence was noted in 24 cases and 15 women were reported to have an Order under the Domestic Violence Act at the time of the incident. It is likely that this figure is underestimated due to the limitations of the methodology and that in more cases the incident reported was not the first the woman had experienced.
- A total of 104 charges were mentioned in the 65 cases, including many serious assaults and sexual offences.
- Of 50 cases where sentences were reported, 45 were prison sentences, ranging from 1 month to 8 life sentences. Of these 45 prison sentences, 32 were reported as suspended (7 fully and 25 in part).

## Conclusions – Strand One

- The severity of domestic violence crime is illustrated by the use of weapons, the number of women choked or strangled as well as the number and gravity of the charges. The risk that violent perpetrators pose to their partners and children is very real and very prevalent. It is vital that when discussing domestic violence crime the data available should not be limited to breaches of Domestic Violence Orders and should include all offences committed by abusers.
- The lack of data prevents any effective monitoring of how the criminal justice system responds to domestic violence crimes. Women’s Aid would have liked to be able to compare sentencing of crimes occurring in a domestic violence context with the same crimes more generally. This has proven impossible because of the lack of accurate sentencing data.
- Detailed data on sentencing by offence is quite limited in general. There is no official data on sentencing for domestic violence crime. The data gathered through the media watch is hampered by the limitations outlined above in terms of completeness, accuracy and not being a representative sample.
- What the sentencing media watch can do is offer us a limited picture in the absence of any data.
- Official court data is urgently needed to understand sentencing in domestic violence cases.

## STRAND TWO: CONSULTATION WITH WOMEN

### Key Findings

#### An Garda Síochána

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

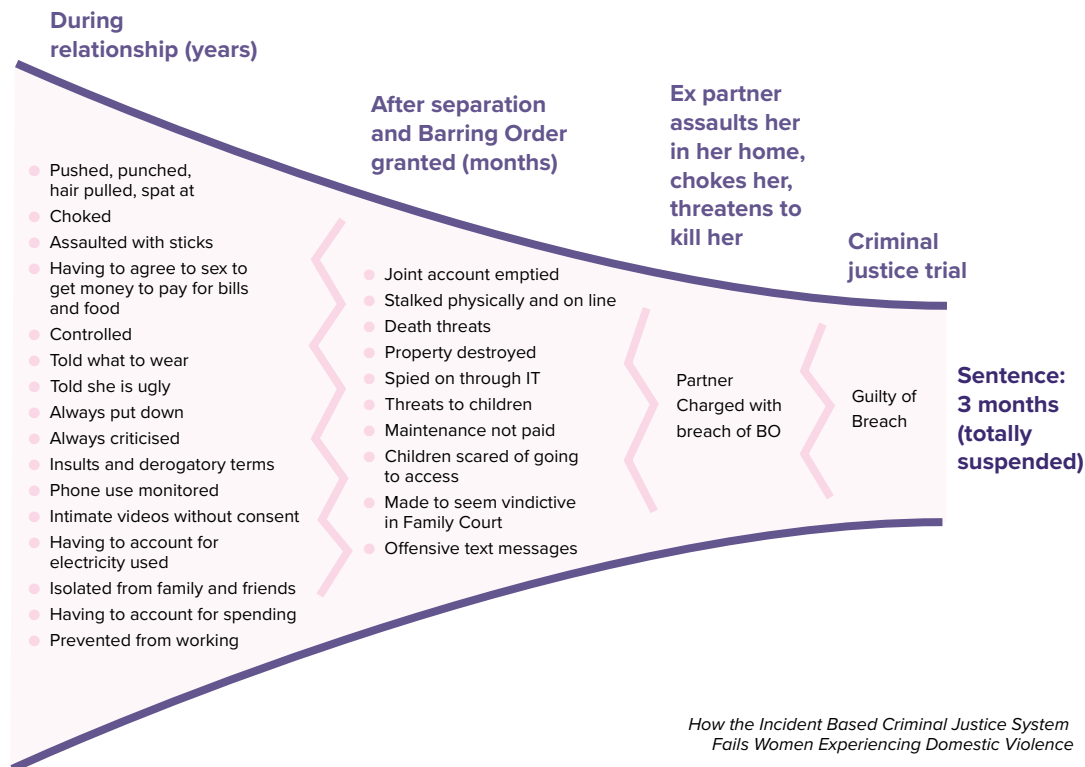
#### Criminal Court

- The Court process is both prolonged and stressful and there is a lack of support for victims before, during and after criminal trials.
- Most women were dissatisfied with the sentences passed down and did not believe that justice was carried out. The majority of participants believed that the final sentence did not reflect the severity of abuse they experienced.
- Most women did not believe that the criminal justice process had made them safer.

- Irrespective of whether there was a conviction or not, most of the women said they would not go through the process again or were not sure if they would.
- A number of factors influence women's decision whether to engage or not with the criminal justice process. These considerations include: the availability of support, safety and well-being of the children, belief that the process may or may not deliver justice and make them safer.

## Conclusions – Strand Two

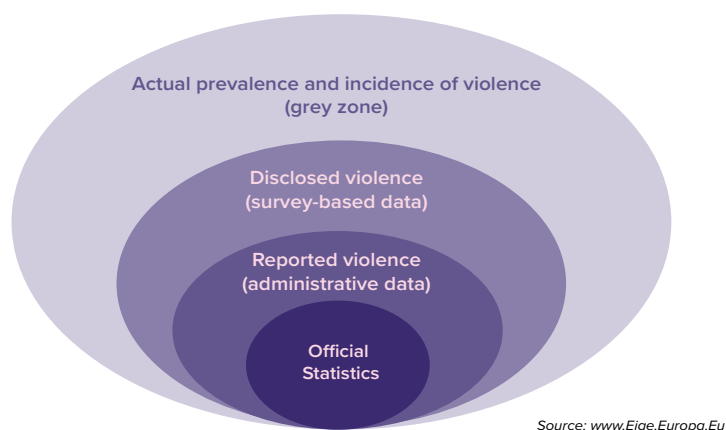
- Two overarching themes emerged from the consultation. The first theme is the **fragmentation of the criminal justice system** due to its incident based approach. The second is the **disconnection of the criminal and family law systems** when dealing with domestic violence.
- The consultation made clear the limitations of an **“incident”** based system in providing justice for victims.
- At each stage of the process, from the reporting and investigation to the trial, victim impact statement process and sentencing, the focus is on the particular incident which was reported. Years of abuse are reduced down to one or few charges for recent and in some cases relatively minor incidents. The impact of the cumulative abuse on the woman is lost to the Court. The illustration below shows how a victim's whole experience of domestic abuse is fragmented, reduced and circumscribed at each stage.



- **The disconnect between the criminal and family law systems is dangerous.** Criminal behaviour is not taken into account by the Family Law Court, even when there is a conviction and a sentence. Orders under the Domestic Violence Act are not taken into account by the Family Law Court. Domestic violence is considered a *“separate issue”* with the result that access is granted in cases where it puts the children and the mother at risk and exposes them to further abuse.
- Women said that abusive men were granted access to the children, generally unsupervised. The women's fears about the physical safety and the psychological well-being of the children were not heard by the Court. Cases were reported where children were forced to go to access visits against their will, even when they were terrified. Additionally, the safety of the women was generally not taken into consideration *at all* in access proceedings.

## OVERALL CONCLUSIONS

- The consultation highlights significant issues when women access the criminal justice system to seek justice and protection from domestic violence. For many participants, criminal proceedings while being long and stressful, did not tend to increase their overall safety. Many felt that the perpetrator was not adequately sanctioned for the crime and to deter future abusive behaviour.
- The justice system is too fragmented to adequately respond to victims of domestic violence. Breaking up years of abuse into separate incidents hides the continuous and cumulative nature of domestic violence. This helps to minimise the abuse and works in favour of the abuser. The separation of the criminal and family court and the lack of communication between the two hinders the safety of women and children.
- There is an urgent need to reconfigure the entire justice system so that the safety of victims of domestic violence is at its heart.
- An extensive audit of the current criminal and family law system is imperative to make it fully responsive to the needs of survivors of domestic violence. This conversation must also include what resources are needed to support change.
- An effective audit needs better data and research on innovative solutions drawing from other jurisdictions.
- Data on domestic violence should be obtained from many sources including: sample surveys to determine prevalence and incidents rates and administrative data on disclosed violence from the police, justice, health and social services. While administrative data cannot capture the full prevalence of violence against women, as illustrated below, it is important for assessing how systems and services respond to the needs of women who have experienced violence, and to monitor trends over time<sup>1</sup>.



- New victim focused solutions need to move towards a legal and procedural “defragmentation” of the court processes when dealing with domestic violence. The option of having one court to oversee all criminal and family law matters in the context of domestic violence, as in other jurisdictions, should be explored. At the very least, there should be efficient communication between the criminal and family courts.
- Courts proceedings should be shorter and better managed to avoid repeated adjournments.
- The idea of an overarching offence bringing together different and repeated incidents should also be explored as well as utilising the indictable offence potential of the new crime of coercive control.
- Better support for victims before, during and after court proceedings should be implemented. The Dolphin House Family Law Court Support and Referral Service could be replicated in other family law courts. Court support in criminal courts should be properly funded and expanded nationally.

<sup>1</sup> The Need to Improve Data Collection, European Institute for Gender Equality, <https://eige.europa.eu/gender-based-violence/data-collection>, (accessed 17.9.19).

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

## RECOMMENDATIONS

### Systems Change

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

### Safety and Support

5. Funding to organisations such as Women's Aid providing support in the family court should be increased to extend specialist domestic violence support to criminal courts. Organisations providing support to victims in the criminal courts such as V-SAC should be adequately funded and trained on the specifics of domestic violence.
6. Court support should be offered to all victims of domestic violence in both the family and criminal courts. Existing schemes in family law courts such as the Dolphin House Family Law Court Support and Referral Service need to be extended nationally and properly funded.
7. Consideration should be given to amend legislation to extend the Bail Act to all offences involving domestic violence, including summary offences.
8. An Garda Síochána and Courts staff should ensure that all victims of domestic violence are referred to specialist services as required by the Victims of Crime and the Domestic Violence Acts.<sup>3</sup>
9. Implementation of a mechanism to ensure that at the end of the Criminal Justice proceedings and regardless of outcomes, all women are offered links with post-trial support.

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<sup>2</sup> Recommendations to improve data collection on intimate partner violence by the police and justice sectors: Ireland, EIGE, November 2018, available at <https://eige.europa.eu/publications/recommendations-improve-data-collection-intimate-partner-violence-police-and-justice-sectors-ireland> (accessed 12.9.19).

<sup>3</sup> Criminal Justice (Victims of Crime) Act 2017, S7(1)(a) Domestic Violence Act 2018, S28

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

## Family Law and Children<sup>4</sup>

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

## Data

18. Implementation, without further delay, of the **gold standard** on data collection as outlined in the Second National Strategy for the Prevention of Domestic, Sexual and Gender Based Violence<sup>5</sup>. This should allow for the publication of Statistics on offences committed in a domestic violence context by type of offence.
19. Collection of data on prosecution and sentencing of the new offence of coercive control.
20. Collection of data on use of aggravating circumstances as introduced by S40 of the Domestic Violence Act 2018.

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<sup>4</sup> Detailed recommendations on Family law are included in Women's Aid submission on Family Court reform here: <https://www.womensaid.ie/download/pdf/20190409233709.pdf>

<sup>5</sup> The Second National Strategy for Preventing Domestic, Sexual and Gender Based Violence 2016-2021, Department of Justice, <http://www.cosc.ie/en/COSC/Second%20National%20Strategy.pdf/Files/Second%20National%20Strategy.pdf> (accessed 12.9.19).

# THANK YOU

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

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

Full Report available at [www.womensaid.ie](http://www.womensaid.ie)



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