

# Domestic Abuse and Family Proceedings Bill - Committee Stage

## Call for Evidence

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## What this input is based on:

Dr Tony McGinn has completed in-depth interviews with perpetrator and survivors of domestic abuse ( $n=38$ ) and systematic literature reviews of previous studies in this field, over the past six years, in NI and ROI. Dr Susan Lagdon has completed in-depth interviews and focus groups with survivors of domestic abuse ( $n = 22$ ), police officers ( $n = 25$ ), and specialist support workers ( $n = 4$ ) responding to the needs of victims in Northern Ireland, over the past five years. The following input is offered based on the collective findings from this work, which can also be accessed through the following publications:

McGinn, T., McColgan, M., Daly, M., & Taylor, B. (2019). Participants' views about the survivor contact element of IPV perpetrator programs: a preliminary study. *Violence and Victims*, 34(6), 889-909.

Lagdon, S, Ni Dhonaill, C., Waterhouse Bradley, B., Armour, C. (2018). *If Everybody Helps An Evaluation of Domestic Abuse Support Workers (DASW)*. Coleraine: Ulster University.

McGinn, T., & Taylor, B. (2017). A systematic synthesis, of qualitative studies, of partner-violent men's views on intervention and change. *Trauma, Violence, & Abuse*, Advance online publication. Retrieved from <https://doi.org/10.1177/1524838017742167>

McGinn, T., Taylor, B., & McColgan, M. (2019). A qualitative study of the perspectives of domestic violence survivors on behavior change programs with perpetrators. *Journal of Interpersonal Violence*. Retrieved from <https://doi.org/10.1177/0886260519855663>

McGinn, T., Taylor, B., McColgan, M., & Lagdon, S. (2015). Survivor Perspectives on IPV Perpetrator Interventions A Systematic Narrative Review. *Trauma, Violence, & Abuse*, 17(3), 239-255. doi:10.1177/1524838015584358

Lagdon, S., Armour, C., & Stringer, M. (2015). *Every Voice Counts: Policing Response to Intimate Partner Violence in Northern Ireland*. Ulster University

Lagdon, S., Armour, C., & Stringer, M. (2014). Adult experience of mental health outcomes as a result of intimate partner violence victimisation: a systematic review. *European Journal of Psychotraumatology*, 5 (0).

We would like to offer five points of feedback, listed here, and further explored in the supporting text to follow:

1. The aggravated status proposed in the new legislation is an important recognition of the additional trauma visited upon domestic abuse victims, and enhanced likelihood of recidivism.
2. New legislation must support prosecution regardless of victims' interventions
3. Perpetrators' rehabilitation efforts are not grounds for sentencing leniency
4. Judicial penalties should be designed primarily for the purpose of specific and general deterrence, and incapacitation.
5. The proposed legislation should ensure that victims are not left to enforce judicial penalties.

## Aggravated status is key:

We believe the proposed legislation will be of benefit to surviving partners and children, affected by domestic abuse. Item 15 (4) (c) which states "in determining the appropriate sentence, treat the fact that the offence is so aggravated as a factor that increases the seriousness of the offence ..." is key.

**It is important that violence perpetrated within a domestic environment is given aggravated status.**

It is clear that here, in Northern Ireland, as in many other regions, domestic environments have been seen as grounds for leniency in responding to perpetrators (Elmastry, 2017; Kramer, 2016). We believe there has been a deference to the interpersonal complexities involved which has not served society well. This can be seen clearly when victims of abuse, withdraw complaints, or offer support to the perpetrator during the judicial process (under duress or otherwise) leading to cases being dropped. Furthermore, the covert nature of coercive control related behaviour creates evidential difficulties even though this type of abuse is known to have significant emotional and psychological impact on victims (Lagdon, Armour & Stringer, 2014, 2015) and in many cases, maintains further abuse. Wolf et al. (2013) reported that; “Women discussed the damaging cumulative effect of physical violence, emotional abuse, and manipulation on their self-esteem, limiting their ability to break free of their abuser and to seek help from the police. Victims are often emotionally entrapped by their abuser’s promises that things would change for the better or convincing arguments that she brought the abuse upon herself or that the abuse did not really occur”. (p.124). It is important that victim’s experience of coercive control are validated and responded to with the seriousness of this offence.

**New legislation must support prosecution regardless of victims’ interventions**

Will efforts to prosecute perpetrators continue to be way-laid by changing victim statements, the withdrawal of victim statements, or the overt support of a perpetrator by the victim? Domestic abuse differs from other violence due to the intimate relationships involved, which can facilitate coercive control of victims particularly where children and vulnerable family members may be concerned. The experience of domestic abuse and links with mental health are also well documented (Lagdon, Armour & Stringer, 2014). Victims may experience post traumatic stress disorder or ‘battered woman syndrome’ (Walker, 2009), anxiety, depression and suicidal ideation all of which can impact ones capacity and resilience to proceed with prosecution. In addition, thinking about domestic abuse more broadly, we should be conscious that violence in our society has repercussions outside the home; it breeds further violence through intergenerational transmission (Ehrensaft et al., 2003) and it is violence that children, and the abused partner’s extended family and community are also exposed to. While it is important to keep victims and survivors of domestic abuse at the centre of the judicial process, it should not follow that they are in a position to veto prosecution efforts, which sometimes seems to be the case at present. Perpetrators, and their representatives in the judicial system have been able to exploit this veto, by coercing victims to retract statements and support perpetrators. Does the proposed legislation respond to this shortfall in existing procedures?

In support of this point we would offer an extract from McGinn’s 2016 study report (McGinn, 2016)

“ ... my investigation of change processes in partner-violent men highlighted how some do not change. This is not something I had envisaged finishing of my PhD thesis with. But I took the time of a number of abuse survivors as they described the abuse they had lived with, and how a perpetrator programme had not helped. They offered their time in the hope that what they were telling me might change things for people in their situation. At the end of this project, I can see that manualised group-work with their partner, was unlikely ever to change things for them. The physical extraction of their violent partner from their lives, would have however. That task falls to the judiciary. As testament to the stories I was told, of barring orders which were left to survivors to enforce, of perpetrators continuing to intimidate while in custody, of the small sentences that result in the unlikely event of conviction, I would like to finish with an extract from my interview with Roslin (a pseudonym) which highlights the need for a strong autonomous response from the judiciary.

*Interviewer: That’s something I’ve often wondered about, this procedure were the police prosecute, and then the victim retracts her statement, and then the police drop out?*

Roslin: The police were fed up with me retracting statements, they said they can't put up with this any longer, because they said that they actually know him well. And they said to me, "you know you can't put up with this, you know he will end up killing you." And (agency name) and everybody said he would kill me. But they just went on ahead and took him on...

*Interviewer: They had enough evidence?*

He had been up that many times, and he had just got community service. One time he wrote out what he wanted me to say to the judge, and I had to say it to the judge ... for the judge, and the judge said that it was heart-warming, and all this here. I had to say it for him. And then when he was going to court and all, I was thinking I hope to God that he's taken away for a while. And there I were saying to him, "but God I hope everything goes alright for you." And then when he did go to jail, I felt relieved.

Roslin (Survivor).

## Perpetrators' rehabilitation efforts are not grounds for sentencing leniency

There may be value, for victims and their families, and, more generally, communities and society, in considering what the functions of the penalties against perpetrators of domestic abuse are. Considering commonly understood purposes of judicial penalties is an appropriate starting place: retribution, restitution, rehabilitation, specific and general deterrence, or incapacitation.

Retribution and restitution are not likely to be a priority for abuse victims. A small body of research exists which provides insights into what victims and survivors of domestic abuse want from services (Hare, 2006): 'justice' does not feature in this. Survivors and victims' want safety, primarily, they want their (ex-) partner to change, and they want the violence to stop.

Judicial penalties should not make allowances for rehabilitation efforts. It is argued here that the focus on rehabilitation in some US and European jurisdictions has been easily manipulated by perpetrators and their legal representatives. The likelihood that perpetrators of domestic violence will change is low. Evidence from the British crime survey, provided by Walby, Allen, and Britain (2004), showed that 88% of partner-violence survivors stated that the violence in their relationship ended because the relationship ended (not because the perpetrator changed). A US based longitudinal study of 348 men arrested for partner-violence related offences (Pico-Alfonso, Echeburua, & Martinez, 2008) showed that three quarters of them reoffended, and an international review of 31 studies of sanctions concluded that the various sanctions applied to this population have no effect (Maxwell & Garner, 2012). The first systematic review of the efficacy of perpetrator behaviour change programmes Babcock, Green, and Robie (2004) was ambivalent about their usefulness. Since then, a series of reviews and meta-analyses have been conducted (Akoensi, Koehler, Lösel, & Humphreys, 2012; Coulthard et al., 2010; Feder, Wilson, & Austin, 2008; Ferrer-Perez & Bosch-Fiol, 2018; Smedslund, Dalsbø, Steiro, Winsvold, & Clench-Aas, 2011). None of these have offered clear direction on the harm or benefits of perpetrator change programmes. Yet engagement with perpetrator programmes, therapy or anger management is routinely offered in court as grounds for leniency, and the deferment of barring orders and custodial sentences. This does not align with our policy rhetoric about eliminating domestic abuse from our society, as there is no evidence, of rigour, that perpetrators engaged in rehabilitation efforts are more likely to change than those who are not.

It is argued here, therefore, that the new order should expressly state that engagement with therapy or behaviour change programmes is not permitted as grounds for leniency in either family of

criminal courts. The following extracts from interviews I completed during a study I completed in 2015 (McGinn, 2016) are offered in support of this position.

*Interviewee 12* (a domestic abuse survivor): “And the performance he gives in court is just... He’s horrific, he ... to the point where he told the judge that he must stop my maintenance because I was drinking it. He was giving me 40 a week. He may as well not have done it (the behaviour change programme) for what he got out of it. He wouldn’t say anything about it. The only reason he did it was to get back with his kids.”

*Interviewer*: “And did it help him get his kids back, did the court look favourably upon it?”

*Interviewee 12*: “Yes.”

*Interviewee 15* (a domestic abuse survivor): “He was told that I couldn’t be with him because of the domestic violence so he was doing a course to show that he was safe to be around children.” (Survivor from current study.)”

*Interviewee 31* (a perpetrator of domestic abuse, talking about peers on a behaviour change programme): “No, you see they didn’t take responsibility, they took responsibility because that is what they were told to do.”

*Interviewer*: “So they didn’t genuinely take responsibility?”

*Interviewee*: “Yeah. There was an awful lot of guys on that course who were ticking boxes, they were there because their solicitor, or whoever, had said they should be there.”

*Interviewer*: “There is an argument that this course should mean nothing in a court of law?”

*Interviewee*: “I agree.”

*Interviewee 38* (a domestic abuse survivor) “The family court social workers got involved, I did say to him “Why are you doing the course this time?” you know, “You walked out before” out of a previous course, and I think he is just doing, doing it to tick the box, you know. Just in case he would appear in court, he can say “I have done ...” I said to him “I don’t think you’re ever going to change.” He said “no, I’m not going to change.”

## Judicial penalties should be designed primarily for the purpose of specific and general deterrence, and incapacitation.

It is argued here that specific deterrence, that is, the deterrence of individuals from recidivism, and their incapacitation to visit further abuse upon their victims is a real tangible benefit to victims in the judicial process. When a perpetrator is forcibly removed from an abused family, or a barring order is robustly enforced, the abused partner is afforded room to reconsider their circumstances, it offers abused partners time and space to make use of supports (Lagdon et al. 2018). At the very least it offers an abused family respite.

In addition, we would argue that the cognitive distortions of many perpetrators are so deeply embedded, and their ability to deny their abusive behaviour is so well developed that custodial sentences are the only way to bring safety to some abused families. In the consideration of what degree of separation, and contact cessation, is necessary to ensure that this victim, or these children are no longer exposed to their violent partner/parent? We would argue that custodial sentences are more often the correct answer, in the prosecution of domestic violence perpetrators. Responding to domestic abuse with the seriousness it deserves will also project a clear message at a societal level that such abusive behaviour is not and should be tolerated.

The proposed legislation should ensure that victims are not left to enforce judicial penalties; they are rarely in a position to do so.

This recommendation is also based on interviews with survivors during McGinn's 2015 study (McGinn, 2016). Consider the following extract from the study report:

In a significant number of cases survivors discussed being trapped in relationships they could find no way out of. Reductions in violence, where they were experienced, were of course welcomed by survivors, but from my perspective as a researcher, interested in long-term sustainable family safety, it was clear that some abuse survivors actually needed their partner to see that that they, the abuse survivor, needed to be free from the relationship; they needed their partner to actively help bring the separation about, out of respect for the survivors' wishes and future happiness. Despite genuine separation being a survivors' basic human right, for some it was not even a realistic hope. The following extracts are representative of data which underpins this finding:

No. I could never do all that again, I was stalked. My house was broken into. My clothes were cut up, no I couldn't do it, definitely not. And it's not only that there ... it's the child that I'm thinking of. You see. He totally loves his daddy. (Interviewee becomes tearful). My hope is that one day he will leave me. So I will just wait for that day ... I got that last (judicial) order thinking that he would not come near the house, and he did come near the house, and I did let him in. Because he knew that I would not phone the police and get him lifted. I've been through all that there, there is no way of getting away from him, no way. The only way I could get away from him, is if he found a different person, because he was like the exact same, in the relationship he had before me. And then he tortured her, until he found me, and then that was him moved on, so he would need to find somebody else. Ethna (survivor).

One way to prevent scenarios like that described by Ethna, would be to properly resource integrated domestic abuse response teams from the services of police, social services, victims' advocacy services and the judiciary. Evaluation research by Lagdon, Ni Dhonaill, Waterhouse-Bradley and Armour (2018) on the usefulness of Domestic Abuse Support Workers (DASW) within NI police stations concludes that no single service should be solely responsible for meeting the needs of victims, their children and family members experiencing domestic abuse. The authors suggest that a coordinated response and continued support to victims and their families throughout criminal proceedings may negate some of the aforementioned barriers associated with victim withdraw and reunion with the perpetrator. Consider the following extract from the study report:

Well, one woman in particular, she has three times in the past to work with Women's Aid, but because hers is such a high risk case, he always got back in and back then Women's Aid didn't have the same rapport with the police to get information quick enough for her, whereas she has stuck with me now, since June, and she says it's the longest she's been out of the relationship, you know, the longest she's kept him away (DASW 2, p.4)....

I think is really important, is the reduction of repeat victimisation. So you've got a victim who previously maybe wouldn't have engaged with the police, you've got the support worker going in very quickly, engaging with them, and preventing them going back into that abusive relationships (Women's Aid 1, p. 2).

Having a DASW based in the police station has been noted as having an important brokering effect to such issues.

Yeah, and even if they have a woman coming in to withdraw statements, they'll say 'look [DASW NAME] is upstairs in the station, do you want her to come downstairs and have a

word with you?’ and quite a few times women have actually spoke to me and then says ‘no actually bring him back in and I’ll give that officer a statement now (DASW 2, p.2).

I couldn’t have got out [of the relationship] without [DASW NAME]. I know that. I’d still be with him now. I’d said I was out that many times. I’d called the police that many times, I’d spoken to Women’s Aid that many times... (Survivor 3, p. 4).

For those who were moving forward through the court system, having a direct link to information regarding policing, and their case was also cited as extremely important.

It takes a long time, going to court, and sometimes you won’t hear anything for weeks, and you start thinking ‘have they forgotten me’?. But with [DASW], I can ring her, and she’ll say ‘okay, I’ll go find out for you’, and she’ll go and...and then ring me back a wee while later and say ‘oh, everything is okay, they are still working on your case, and it’s all okay’ and then you stop worrying (DVV1, p.5)

She [DASW] is always making sure I know what’s happening [with her case], even if nothing is happening. She’ll give me a ring, ‘it’s going through the court, you’ll have a date soon, and I’ll go with you’. And she is, she’s going with me tomorrow, and I don’t know if I could do it if she wasn’t (DVV4, p.2).



## References

- Ehrensaft, M. K., Cohen, P., Brown, J., Smailes, E., Chen, H., & Johnson, J. G. (2003). Intergenerational transmission of partner violence: A 20-year prospective study. *Journal of Consulting and Clinical Psychology, 71*(4), 741-753. doi:10.1037/0022-006x.71.4.741
- Elmastry, M. (2017). Eradicating the Plague: Charging and Sentencing Domestic Violence Offenders Using Science, Not Tradition. *Sw. L. Rev., 47*, 251.
- Hare, S. C. (2006). What do battered women want? Victims' opinions on prosecution. *Violence and Victims, 21*(5), 611-628. Retrieved from <http://ovidsp.ovid.com/athens/ovidweb.cgi?T=JS&CSC=Y&NEWS=N&PAGE=fulltext&D=med5&AN=17022353>  
<http://openurl.ac.uk/athens:uls/Resolver/?genre=article&sid=OVID:med5&issn=0886-6708&isbn=&volume=21&issue=5&spage=611&date=2006&pid=<author>Hare+SC>
- Kramer, R. (2016). Differential punishment of similar behaviour: Sentencing assault cases in a specialized family violence court and 'regular sentencing' courts. *British Journal of Criminology, 56*(4), 689-708.
- Lagdon, S, Ni Dhonaill, C., Waterhouse Bradley, B., Armour, C. (2018). If Everybody Helps An Evaluation of Domestic Abuse Support Workers (DASW). Coleraine: Ulster University
- Aggravated status McGinn, T. (2016). *Partner-violence perpetrator programmes: exploring the change process with partner-violent men and survivors*. Ulster University,
- Lagdon, S., Armour, C., & Stringer, M. (2014). Adult experience of mental health outcomes as a result of intimate partner violence victimisation: a systematic review. *European Journal of Psychotraumatology, 5* (0). (1.22, 54 Citations)
- McGinn, T., & Taylor, B. (2017). A systematic synthesis, of qualitative studies, of partner-violent men's views on intervention and change. *Trauma, Violence, & Abuse*, Advance online publication. Retrieved from <https://doi.org/10.1177/1524838017742167>
- McGinn, T., McColgan, M., Daly, M., & Taylor, B. (2019). Participants' views about the survivor contact element of IPV perpetrator programs: a preliminary study. *Violence and Victims, 34*(6), 889-909.
- McGinn, T., Taylor, B., & McColgan, M. (2019). A qualitative study of the perspectives of domestic violence survivors on behavior change programs with perpetrators. *Journal of Interpersonal Violence*. Retrieved from <https://doi.org/10.1177/0886260519855663>
- McGinn, T., Taylor, B., McColgan, M., & Lagdon, S. (2015). Survivor Perspectives on IPV Perpetrator Interventions A Systematic Narrative Review. *Trauma, Violence, & Abuse, 17*(3), 239-255. doi:10.1177/1524838015584358
- Walker, L. E. (2009). The battered woman syndrome (3rd ed.). 488. Retrieved from <http://ovidsp.ovid.com/athens/ovidweb.cgi?T=JS&CSC=Y&NEWS=N&PAGE=fulltext&D=psyc6&AN=2009-04904-000>  
<http://openurl.ac.uk/athens:uls/Resolver/?genre=article&sid=OVID:psyc6&issn=&isbn=978-0-8261-0252-2&volume=&issue=&spage=&date=2009&pid=<author>Walker%2C+Lenore+E.+A>
- Wolf, M. E., Ly, U., Hobart, M. A., & Kernic, M. A. (2003). Barriers to seeking police help for intimate partner violence. *Journal of Family Violence, 18*(2), 121-129., p.124