

# Exploring Gender-Based Violence and the Canadian Legal System: A Court Watch Infographic from Northwestern Ontario Women's Centre

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# About the Northwestern Ontario Women's Centre

The Northwestern Ontario Women's Centre (NOWC) was founded in the Spring of 1973, following an event called the Northern Women's Conference organized by local women's consciousness-raising groups. Over the years, countless projects, initiatives, and organizations have emerged as a result of women organizing together through auspices of the Centre.

**What we do:** Northwestern Ontario Women's Centre provides frontline advocacy, support, and information to local and regional women experiencing violence, poverty, human rights concerns, or problems with legal (family, criminal) or administrative systems. We provide public education and training on these issues to women, the public, and community organizations. We also partner with others to raise awareness of inequalities and oppression and work to change the intersecting systems that impact women's lives.

**How we make a difference:** We are often either the first contact or last resort for women experiencing violence. We help women move from crisis stability: we direct and support them to navigate and access other services such as high-risk teams, shelters, income support, counselling, and legal and human rights services. We work towards the prevention of gender-based violence as well as economic justice and food security by engaging women, local organizations, and the public in education, programming, and systemic advocacy.

**Who we serve:** We serve self-identified women, trans and non-binary people of all ages, ethnicities, cultures, abilities, orientations, citizenship status and income levels from Thunder Bay and Region. A high proportion of women requesting our services identify as low-income, survivors of violence, sole support mothers and/or Indigenous people, with statistics validating these trends. Stakeholder consultations also identified an emerging need for support among newcomer women, youth, and young women, and survivors of trafficking.

# About the Court Watch Project

Gender-based violence (GBV) is a pervasive issue globally, affecting individuals across various demographics. Intimate partner violence (IPV), which is a prevalent form of GBV, refers to a pattern of behaviour by one partner designed to coerce, control, and dominate the other partner.<sup>1</sup> Such behaviour includes physical, psychological, sexual, emotional, financial, verbal, spiritual, online, and social abuse and intimidation.<sup>2</sup> IPV can occur between current and former spouses (married, common-law, or domestic partners), dating partners, and ongoing sexual partners.<sup>3</sup>

In Canada, as in many other countries, the justice system plays a crucial role in addressing GBV by providing avenues for justice, protection, and support for survivors; however, there has been ongoing debate about whether the Canadian legal system effectively addresses GBV or inadvertently contributes to the criminalization of women while failing to protect them adequately.

The Court Watch Program is a form of community oversight where trained volunteers systematically monitored the treatment of criminal court cases related to woman abuse. Quantitative and qualitative data were used to assess: the consistency and adequacy of bail conditions and sentencing, the provision of safety for women and their children, the adherence to domestic violence policy, and the attitudes of court personnel, among other concerns. Our Court Watch results clearly demonstrate the ways in which our criminal legal system continues to silence, disregard, and further harm those who have already been subjected to abuse and violence.

The data presented in this report sheds light on some concerning patterns related to gender-based violence and the Canadian legal system, including: overrepresentation of Indigenous individuals as the accused in cases of gender-based violence; a disproportionate involvement of males as perpetrators; and gender disparities in survivors' reporting and access to services. Addressing these challenges requires a collaborative effort involving policymakers, law enforcement agencies, service providers, and communities. By working together, we can build a legal system that is fair, effective, and focused on the safety of all women and children impacted by gender-based violence.

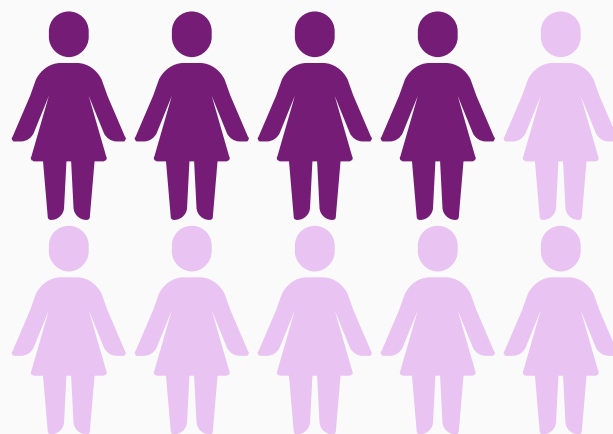
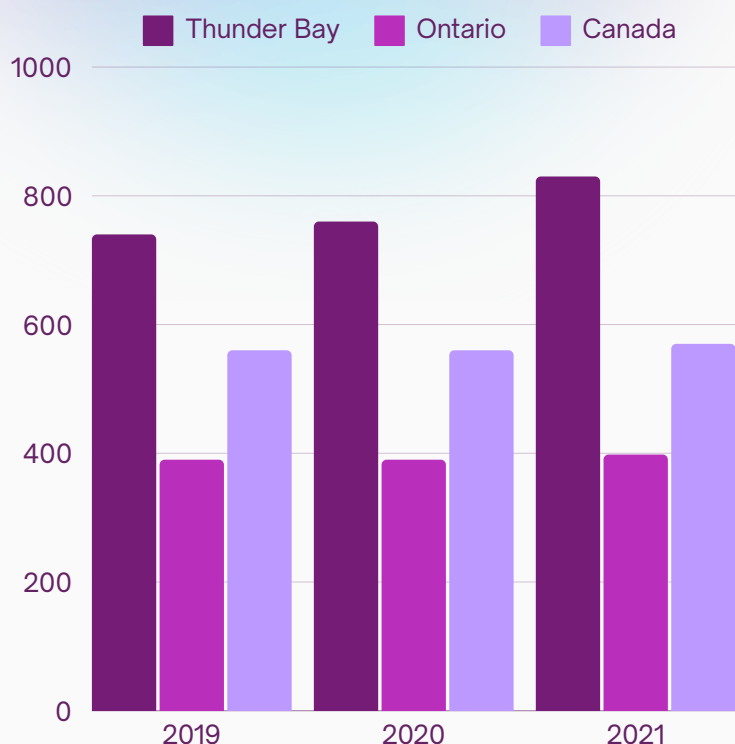




# Gender Based Violence in Thunder Bay

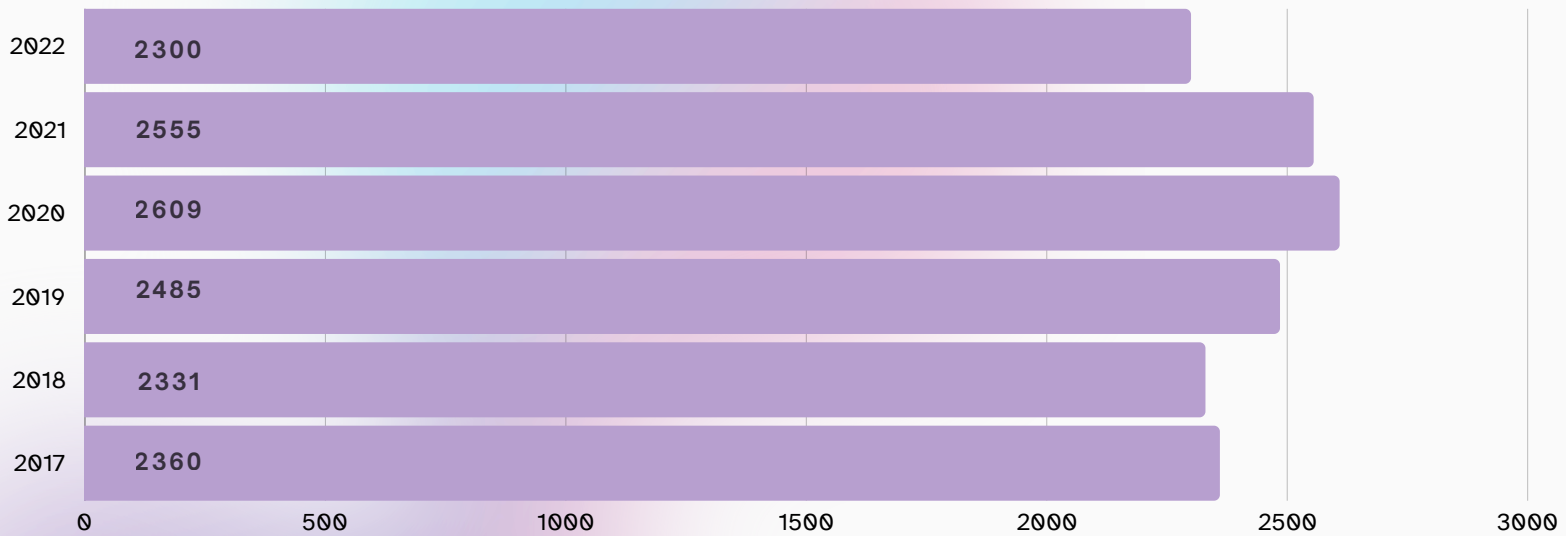
Rates of gender-based violence in Thunder Bay are among the highest in Canada and include a colonial legacy of missing and murdered Indigenous women. Most of the women we support have child custody, separation, and/or child welfare issues, which are complicated by intimate partner violence, including coercive control and/or poverty. Many face ongoing and increased risk of harm from controlling or abusive ex-partners; this risk is exacerbated by a lack of understanding of gender-based violence and coercive control by legal personnel, as well as structural gaps in the criminal and family law systems.

44% of women in Canada experience GBV, but Thunder Bay has among the highest per capita rates of intimate partner violence and sexual assault of any municipality in Canada.<sup>4</sup> In 2018, Thunder Bay ranked third out of 34 census metropolitan areas regarding the number of victims per 100,000 residents;<sup>5</sup> our rates are consistently higher than both the provincial and national averages and disproportionately affect Indigenous women. Thunder Bay is a regional hub for many rural, remote, and northern communities, including First Nations. According to Statistics Canada, Indigenous women (61%) were more likely to have experienced IPV in their lifetime (since the age of 15) when compared to non-Indigenous women (44%).<sup>6</sup> Many barriers in Thunder Bay affect these higher rates of victimization, including: colonial policies and attitudes that have contributed to the intergenerational trauma and violence experienced by Indigenous people; racism; the housing crisis; substance use crisis; income and food security crisis; and influx in human trafficking.

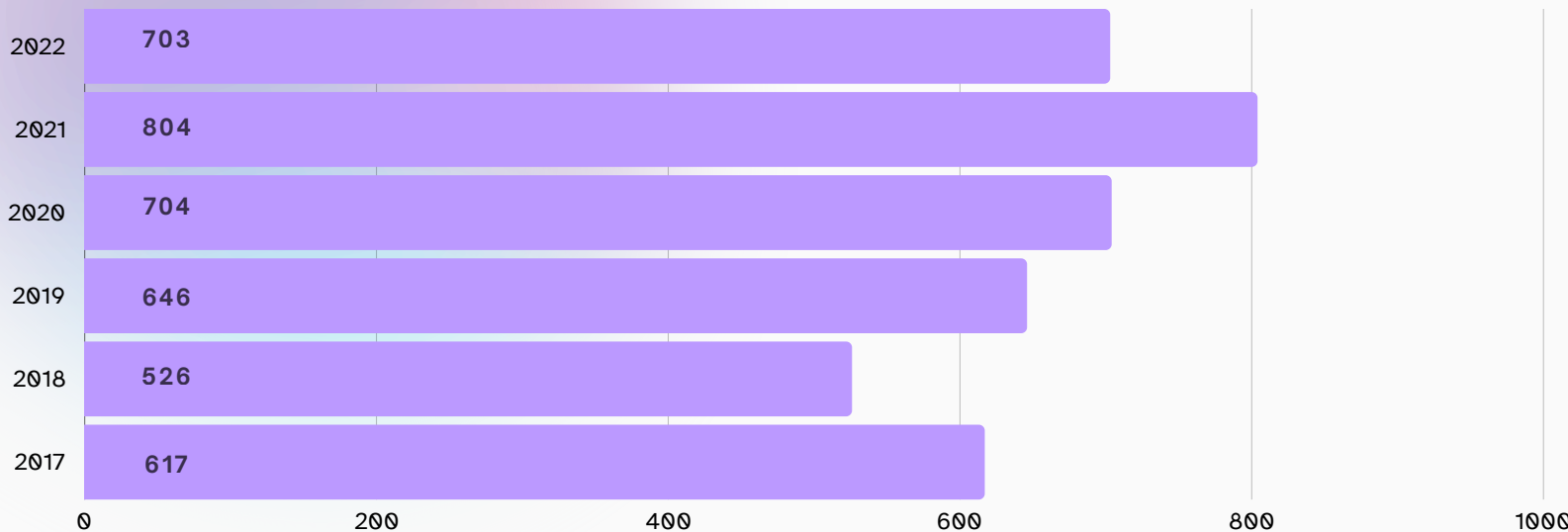


More than  
**4 in 10 (44%)**  
women in Canada have experienced  
IPV in their lifetime

# Thunder Bay Police Services Domestic Disturbance Query



TOTAL NUMBER OF REPORTABLE INCIDENTS PER YEAR



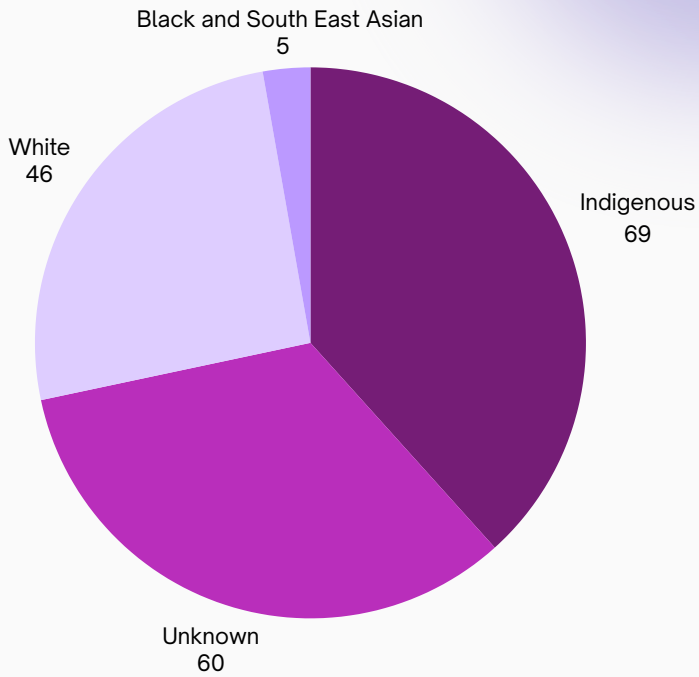
TOTAL NUMBER OF CHARGES FROM REPORTABLE INCIDENTS PER YEAR  
(ALL CRIMINAL CODE SECTIONS)



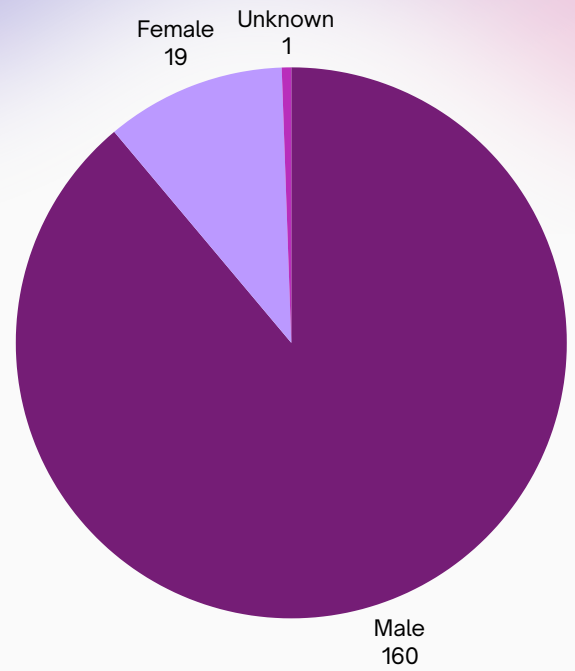
**Note the differential values between reports and resulting actual charges. There are many reasons for this; however, it speaks to one of the reasons why women may not want to report.**



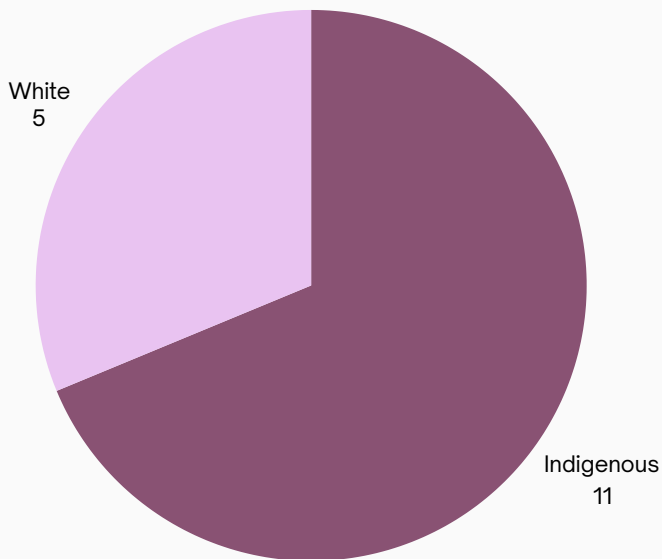
# Accused Demographics



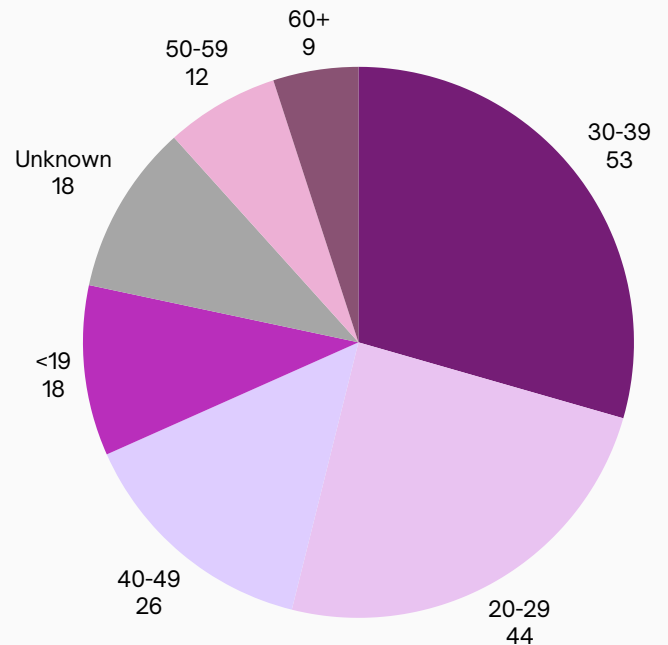
COUNT OF RACE OR ETHNICITY OF THE ACCUSED



GENDER OF THE ACCUSED



RACE OF FEMALE ACCUSED



AGE RANGE OF THE ACCUSED

# What the Data Suggests...

Based on this data, we can see that Indigenous people account for the highest total among those identified in the data, with 69 individuals involved as the accused; this data highlights a concerning pattern of overrepresentation of Indigenous people in cases related to intimate partner violence. Indigenous communities across Canada face systemic inequalities, including higher rates of poverty, unemployment, exposure to intergenerational trauma, and ongoing and historic systemic racism. These factors contribute to increased vulnerability to involvement in the criminal justice system.

Additionally, the majority of individuals involved as the accused in cases of gender-based violence are identified as male, with a count of 160, with most falling into the age range of 30-39. This finding aligns with broader patterns and research indicating that men are more likely to perpetrate acts of gender-based violence, including intimate partner violence, sexual assault, and harassment. Within the data, 19 females were involved as the accused in cases of gender-based violence; in this instance, two Indigenous females in the data were sentenced to jail time - one of whom spent 1.5 years in jail. It is important to note that there have been increasing numbers of women being arrested for allegedly perpetrating domestic violence against their partners, a very worrying pattern we see emerging. This is important to note because there are substantial legal, social, and economic consequences for women who are arrested, which may include: loss of child custody to a violent partner; the inability to find employment with a criminal conviction; incarceration; and even deportation. These consequences significantly add to the burden already being shouldered by women who are victims of IPV, and women's negative experiences with the criminal justice system may, in many cases, make them more vulnerable to further abuse.<sup>7</sup> Most of the available literature attributes the increase in women being arrested to the application of mandatory charging policies.<sup>8</sup> Police may feel compelled by these policies to arrest any party who has perpetrated violence, regardless of the context. Additionally, police officers often view the credibility of parties in IPV incidents according to their own prejudices, assumptions, and biases.<sup>9</sup>





# Mandatory Charging

Mandatory charging policies were introduced in the mid-1980s and made it compulsory for the police to lay charges in all IPV cases with a reasonable likelihood of getting a conviction.<sup>10</sup> These policies were intended to take the responsibility for deciding to lay charges off the shoulders of women and place it where it belonged - with police. These policies were helpful in many situations and assisted women in getting away from their abusers; however, over time, there have been many negative consequences of mandatory charging policies that were not anticipated when the policies were introduced, including the criminalization of women.

## How Women are Criminalized Through Mandatory Charging:

- Women may be inappropriately charged because the police rely on inaccurate (or dishonest) information and testimony from their partners
- When women are charged with domestic violence related offences, police often focus on individual incidents of violence while ignoring patterns of proof of ongoing violence
- Police do not see women who respond to abuse with aggression as survivors of violence using violence as a form of self-defence
- Police often silence or disregard women's narrative of abuse and minimize the harm that the violence has done to the women
- Police disproportionately charge men and women who belong to marginalized communities, including newcomers, people whose first language is not English, Indigenous, LGBTQ+, Black, and Caribbean communities
- Racialized women are often charged with assault when they "talk back" or "disrespect" police officers
- Charges against women and men often differ severely. For women, the charges for "assault with a weapon" read something like "threw Smarties pack at victim" or "threw water in their face" whereas charges for men include weapons such as knives, guns, etc.<sup>11</sup>

# Plea Bargains

## CONDITIONAL DISCHARGING AND PEACE BONDS

Compared to the data set in observing sentencing/plea deals, nearly all the sentenced men (only observed in our data to be six men) pleaded down to lesser charges and spent less time in jail. Some were given either a conditional sentence or 40 days in a custodial sentence.

Plea bargains are a common tool in the Canadian criminal justice system that can offer efficiency and resolution in criminal cases without going to trial; however, they can also raise concerns about fairness, transparency, and accountability. Plea bargains involve a negotiation between the Crown and defence in a criminal case and involves the defendant agreeing to plead guilty to a lesser charge or to a reduced sentence in exchange for a concession from the Crown, such as dropping some charges or recommending a lighter sentence.<sup>12</sup> Conditional discharges and peace bonds are frequent examples of plea bargaining in IPV cases.

### CONDITIONAL DISCHARGE

A conditional discharge occurs when a finding of guilt is made, but no conviction is registered. It is a sentence where the offender is given a probation order with conditions they must satisfy over time. In cases of IPV, these conditions may include no contact with the victim, domestic violence counselling, and anger management, to name a few. If the individual satisfies all of the conditions, the conviction itself will not be recorded.<sup>13</sup>

### PEACE BONDS

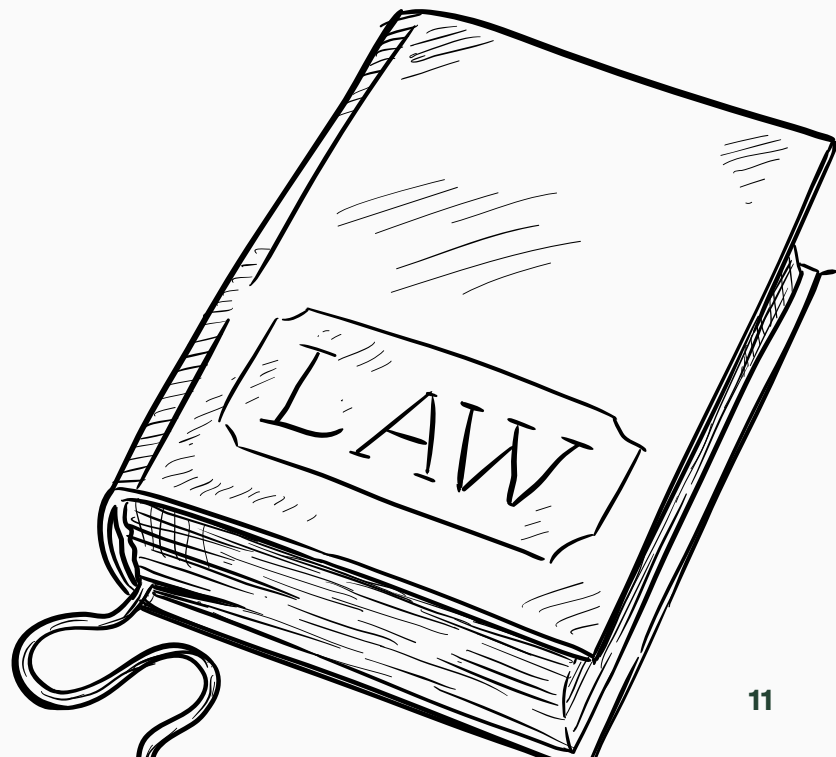
Crown prosecutors may agree to withdraw charges if the accused enters into a peace bond. Peace bonds are protection orders made under section 810 of the Criminal Code and are court orders that require the accused to “keep the peace and be of good behaviour”. Peace bonds may impose specific conditions that are designed to prevent the accused from committing harm or contacting the survivor, her children, or damaging her property. Peace bonds do not require the accused to plead guilty, and many accused will voluntarily enter into a peace bond to avoid a criminal record.<sup>13</sup>

The primary difference between a conditional discharge and a peace bond is that with a conditional discharge, the accused must plead guilty and admit guilt. A peace bond does not require a guilty plea or an admission of guilt.



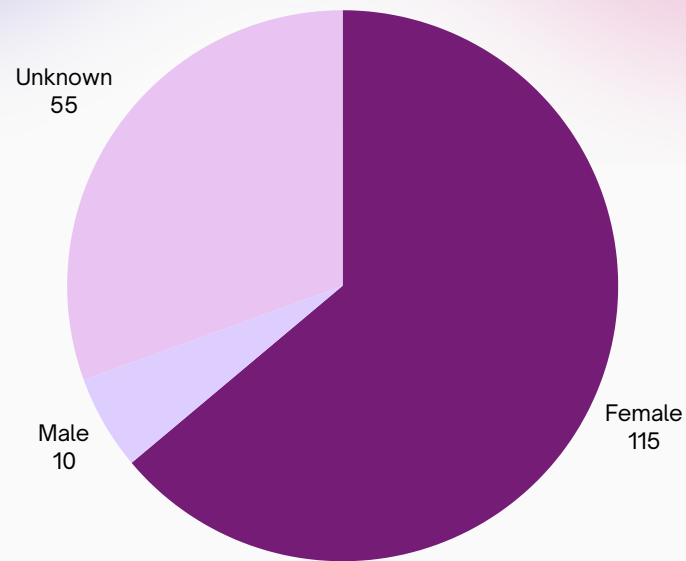
# Issues with Plea Bargaining

Some issues surrounding plea bargaining include a loss of transparency and accountability in the criminal justice system. Plea bargains are often negotiated in private between the Crown and Defence, without the involvement of the victim or the public. This means that the reasons for accepting or rejecting a plea bargain may not be fully disclosed, and victims and the public may not have the opportunity to voice their concerns or seek justice through trial.<sup>15</sup> Additionally, plea bargains may not fully address the goals of deterrence and rehabilitation in the criminal justice system. Plea bargains often result in reduced charges or sentences which may not fully reflect the seriousness of the offence committed.<sup>16</sup> This can send a message that certain crimes are not taken seriously and may not effectively deter future offenders. Further, plea bargains may not present opportunities for defendants to participate in rehabilitative programs, as they may not go through the same level of scrutiny and assessment as a trial. This can limit the potential for defendants to receive appropriate interventions for addressing underlying issues that may have contributed to their criminal behaviour.<sup>17</sup>

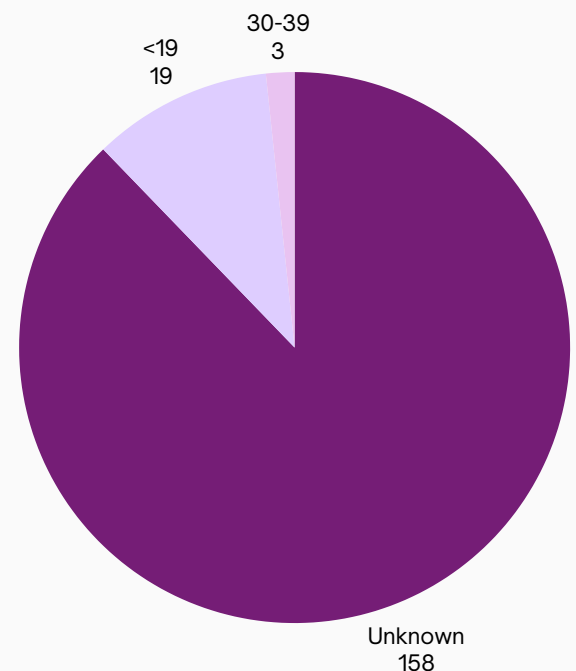


# Survivor Demographics

Out of the 180 observed cases of gender-based violence, 115 survivors were identified as female; only 10 were identified as male. The gender of survivors was unknown in 55 cases. This data provides insight into the gender distribution of survivors of gender-based violence cases. The gender distribution of survivors confirms the provincial and federal statistics and reflects broader patterns of gender disparities in reporting and seeking assistance for gender-based violence. Those who experience gender-based violence often do not report it to the police for a variety of reasons, including: harmful societal norms, stigmas, barriers to accessing support services, fear of criminalization, or lack of trust in the criminal justice system. Women may also choose not to leave their abusive partners or report the abuse because: it may not be safe for them to leave, they may worry about losing their children or housing, they may be worried about their financial situation, or they may lack support or resources. Efforts to address these issues and gender disparities in reporting and access to services require a multifaceted approach that addresses systemic barriers, promotes awareness and education, and ensures the availability of inclusive and culturally responsive support services. The seriousness of gender-based violence needs to be acknowledged at all levels, both in practice and in law reform, and women need to be believed.



GENDER OF SURVIVOR



AGE RANGE OF SURVIVOR

# Charges

Out of the 180 cases of gender-based violence, the following charges were most common:

- Assault (122)
- Failure to Comply (78)
- Sexual Assault (60)
- Assault with a Weapon (44)
- Mischief (42)
- Assault with Choking (31)
- Sexual Interference (26)
- Sexual Exploitation by Sexual Touching (25)
- Forcible Confinement (20)
- Assault Causing Bodily Harm (15)
- Forcible Entry (11)
- Luring a Person Under 18 Years of Age (10)
- Possession of Child Pornography (10)
- Sexual Exploitation by Invitation to Sexual Touching (10)
- Aggravated Assault (9)
- Kidnapping / Abduction (8)
- Criminal Harassment (4)
- Distribution / Publish Child Pornography (4)
- Break and Entering (2)
- Distribution of an Intimate Image Without Consent (2)
- Possession of an Intimate Image (2)
- Human Trafficking (1)
- IDVC Theft (under \$5000) (1)
- IDVC Weapons (1)
- Murder (1)
- Obtaining Sexual Services (1)
- Procuring (1)
- Voyeurism (1)
- IDVC Theft (over \$5000) (0)

Based on this data, we observed that assault-related charges have the highest total count (221 counts), indicating a significant prevalence of assault-related offences in the data. Sexual offences also have a substantial total count (149 counts), highlighting the prevalence of sexual violence-related charges. Additionally, failure to comply was among the highest charges (78 counts), which indicates a prevalence of bail conditions and raises questions about whether the bail system is working to keep women safe by enforcing these conditions. Further, we are concerned that the incidence of criminal harassment is so low (only 4 total counts) - especially considering that we have worked with many women who have experienced criminal harassment. This data raises questions about the ways in which criminal harassment is handled by both police and the legal system.



# Failure to Comply

Breach / Failure to Comply Details	Total Count
Failure to Comply	78

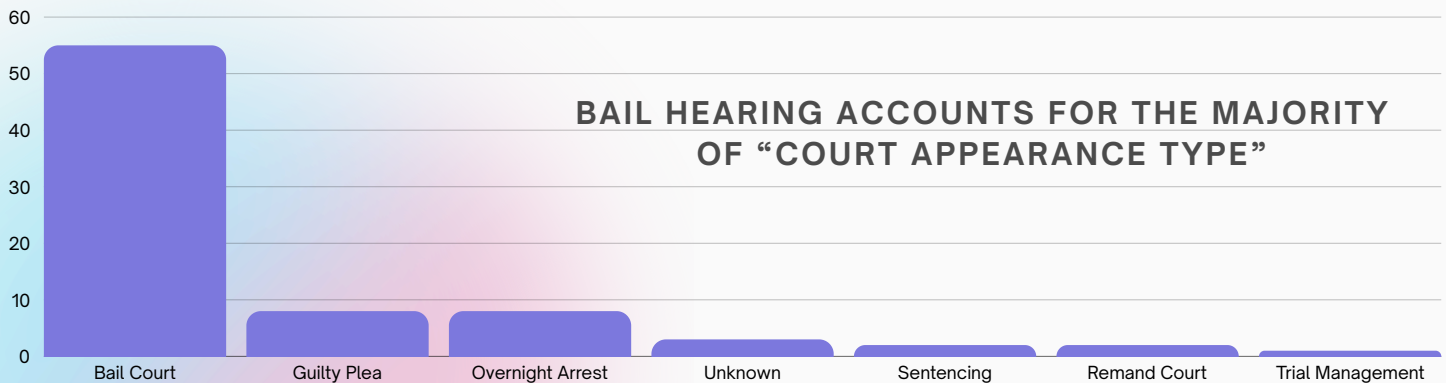
In cases of IPV, risk can be defined as the likelihood that violence will occur in the future if actions and safety measures are not in place.<sup>18</sup> It is imperative to identify patterns, frequency, severity, and nature of violence in addition to its imminence to occur in the future. Risk assessment is vital because it helps to prioritize cases for intervention and can also help identify monitoring and supervision strategies, safety planning for victims, and rehabilitation options for offenders.<sup>19</sup> Based on extensive research, the Domestic Violence Death Review Committee has created a list of risk factors that indicate the potential for lethality within abusive relationships. As of 2017, 41 risk factors were assessed, with failure to comply with authority being one of them.<sup>20</sup> The high number of failures to comply with no contact or proximity orders in our data suggests a significant risk to the safety and well-being of survivors of intimate partner violence. It highlights potential shortcomings in the effectiveness of the legal measures intended to protect IPV survivors. No contact orders are often put in place by the court to protect survivors from further harm or harassment by the accused. The failure to comply with these orders indicates a disregard for the survivor's safety and an ongoing risk of harm posed by the perpetrator.

For survivors of IPV, breaches of no-contact or proximity orders can have profound psychological and emotional impacts. These incidents may cause survivors to feel unsafe, anxious, and traumatized, undermining their sense of security, diminishing their trust in the police and legal systems, and exacerbating the trauma they have experienced. The data underscores the importance of providing IPV survivors with enhanced support services and resources to address no-contract or proximity order breaches; this may include access to crisis intervention services, safety planning assistance, and legal advocacy to navigate the complexities of the legal system and enforce protective measures effectively.

Addressing breaches of no-contact or proximity orders requires a coordinated response from law enforcement, the judiciary, and support agencies. All instances of IPV impose some level of risk, and risk assessments should inform practitioners of the "nature and degree of danger". Adequate identification of IPV and risk of future abuse will better inform what steps to take in criminal and family law proceedings and may lead to more effective no contact, proximity, and restraining orders. All levels of the legal system need to understand the trends in risk factors to better support and help survivors and limit the risk to others. Perpetrators who violate their orders must be held accountable for their actions through swift and appropriate legal consequences, including potential sanctions or additional charges for contempt of court.



# Bail Court



The primary goal of bail is to balance the presumption of innocence with the need to ensure public safety and maintain confidence in the administration of justice;<sup>21</sup> however, this can pose issues for survivors as courts tend to centre on the innocence or criminality of the accused over survivor safety. This principle can cause Justices of the Peace to question the credibility or motives of survivors, placing an undue burden on them to prove their innocence rather than focusing on holding perpetrators accountable, which can lead to victim blaming and skepticism of the survivor. Strict adherence to the presumption of innocence may not take into account the trauma experienced by survivors of IPV and could lead to their re-victimization in court. Therefore, a more trauma-informed approach is needed as it acknowledges the complexities and dynamics of IPV and prioritizes survivor safety and well-being whilst also ensuring due process for the accused.

One of the only services we have in Thunder Bay for survivors to utilize during the bail process is the Bail Safety Program. This program consists of a dedicated police officer who works with complainants/survivors to complete risk assessment, find past criminal involvement by the perpetrator, and provide any other relevant safety information to the Crown for bail court. This program is essential; however, it is incredibly underutilized - namely because the bail safety officer's work is often undermined by Justices of the Peace or defence lawyers. It is crucial that survivor-informed risk assessments are incorporated into the decisions and positions taken by Crown prosecutors and that all legal actors take this information into account during the bail process.

## Bail Process In Canada

### 01 Arrest

When a person is arrested and charged with a criminal offence, they may be held in police custody until a bail hearing can be conducted.<sup>22</sup>

### 02 Bail Hearing

At the bail hearing, the accused appears before a Judge or Justice of the Peace, who considers factors such as the seriousness of the offence, the accused's criminal history, ties to the community, and the risk of flight or reoffending. The Charter guarantees the accused's right not to be denied reasonable bail without just cause. The concept of "just cause" is limited to three grounds of detention, which are defined by the Criminal Code, stating that detention is just where it is necessary to ensure the accused's attendance in court; it is essential for the protection of public safety; and, it is required to maintain confidence in the administration of justice.<sup>23</sup> Therefore, a bail hearing involves a balance of potentially conflicting interests: the liberty interests of the accused and the Charter right to reasonable bail balanced against societal interests in public safety and confidence in the administration of justice.<sup>24</sup> When a bail hearing is held, the court determines whether the accused should be released with or without conditions, with or without sureties, or held in custody prior to trial. Based on Charter guarantees, Crown prosecutors are encouraged to use the "ladder" approach, which permits the court to move from the least onerous form of release to more restrictive forms, depending on if the Crown believes that the release of the accused would jeopardize the safety and security of the victim or public and that some form of community-based release with conditions cannot appropriately mitigate such risk.

### 03 Bail Conditions

If bail is granted, the accused may be given certain conditions, such as reporting to a bail supervisor, refraining from contacting the victim or witnesses and abstaining from drugs or alcohol. Conditions for bail should be rationally connected to one of the three grounds for detention in custody, related to the specific circumstances of the accused and the offence, realistic, minimally intrusive and proportionate to any risk.<sup>25</sup> These conditions are intended to mitigate the risk of harm to the public and ensure the accused's appearance at future court dates.

### 04 Bail Review

In some cases, the accused may seek a bail review if they are denied bail or wish to modify their bail conditions.<sup>26</sup>



# Factors Considered in IPV Bail Cases:

When considering bail in cases of IPV, judges and justices of the peace take into account several factors specific to these cases, including:

1. **Risk to the Survivor:** Judges or Justices of the Peace assess the risk posed by the accused to the survivor, considering factors such as the severity of the alleged violence, the history of abuse, and any threats or intimidation
2. **Safety Planning:** Bail conditions may include provisions to ensure the survivor's safety, such as no-contact orders, geographic restrictions, or requiring the accused to surrender weapons.
3. **Support Services:** The Justice of the Peace may consider whether the accused has access to support services, such as counselling or anger management programs, to address underlying IPV-related issues. The data reflects a gap in information; The Crown and Justice of the Peace do not use the information on risk factors. Clear communication between justice and Crown prosecutors helps uphold the principles of fairness and impartiality of GBV cases. It ensures that both parties have equal opportunity to present their arguments and evidence, leading to fair trial outcomes. Collaboration between the justice of the peace and Crown Prosecutors fosters a coordinated response to GBV within the legal system. It enables the exchange of information and best practices between different agencies involved in addressing GBV, such as law enforcement, social services, and advocacy groups.
4. **Victim Input:** Under the Canadian Victims Bill of Rights, victims and survivors of IPV have the right to convey their views about decisions being made in the Canadian justice system that affect their rights under the Act and to have those views considered.<sup>27</sup> This comprises the right for victims to provide input during the bail process, including expressing their concerns about the accused's release and suggesting appropriate bail conditions. When the Canadian Victims Bill of Rights first came into effect, it represented an important step for victims in Canada; the bill would ensure that, for the first time, everyone working in the system respected and upheld the victim's statutory rights. Unfortunately, over time, the implementation of the Act has been sporadic, inconsistent, and the objectives set out in the Act have not been met. This can be exemplified by the findings in our data where many - if not all - observed cases had victims being consulted only after bail conditions had already been granted, completely negating the purpose of valuing victim input and failing to meet the objectives of the Act.

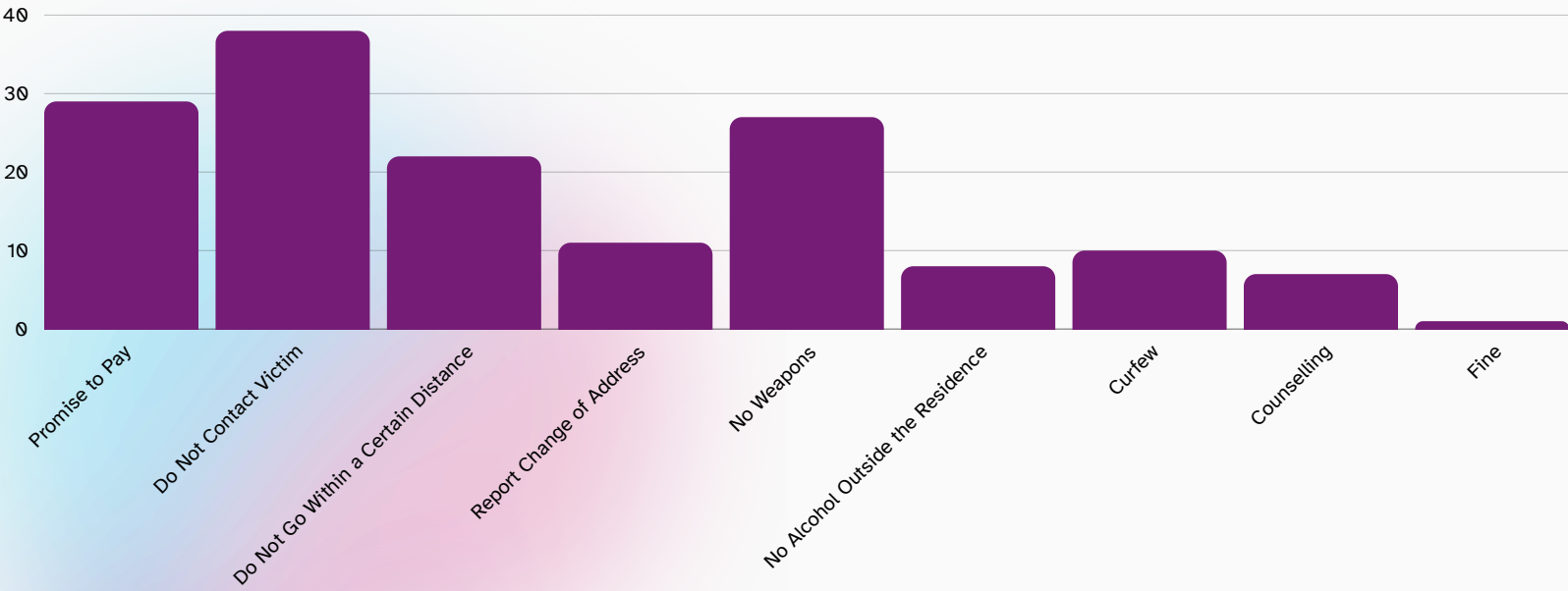


## RELATION TO INTIMATE PARTNER VIOLENCE

IN CASES OF IPV, THE BAIL SYSTEM IS PARTICULARLY IMPORTANT FOR ENSURING THE SAFETY AND WELL-BEING OF SURVIVORS. IPV CASES OFTEN INVOLVE COMPLEX DYNAMICS, INCLUDING PATTERNS OF CONTROL, MANIPULATION, AND COERCION BY THE PERPETRATOR. BAIL CONDITIONS CAN PLAY A CRITICAL ROLE IN PROTECTING SURVIVORS FROM FURTHER HARM AND ADDRESSING THE POWER IMBALANCE INHERENT IN ABUSIVE RELATIONSHIPS.



## BAIL CONDITIONS WITHIN OUR DATA



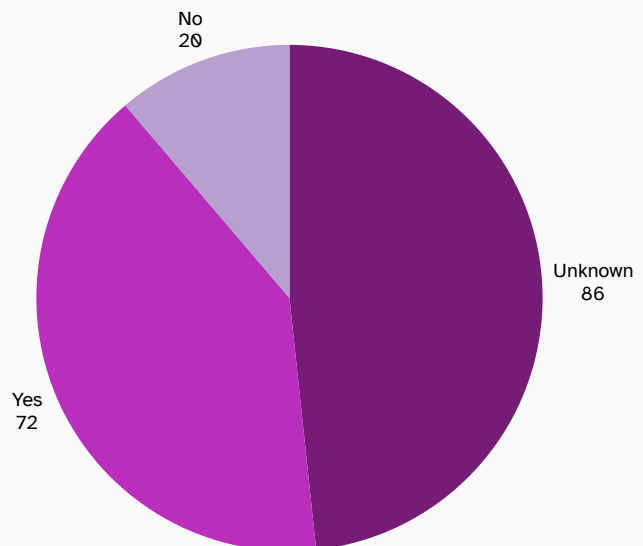
## IMPLICATIONS

Most cases (72 out of 178 where the status is known) involve individuals being released before trial. This data indicates that pretrial release is a common occurrence within the criminal legal system in cases related to intimate partner violence (IPV).

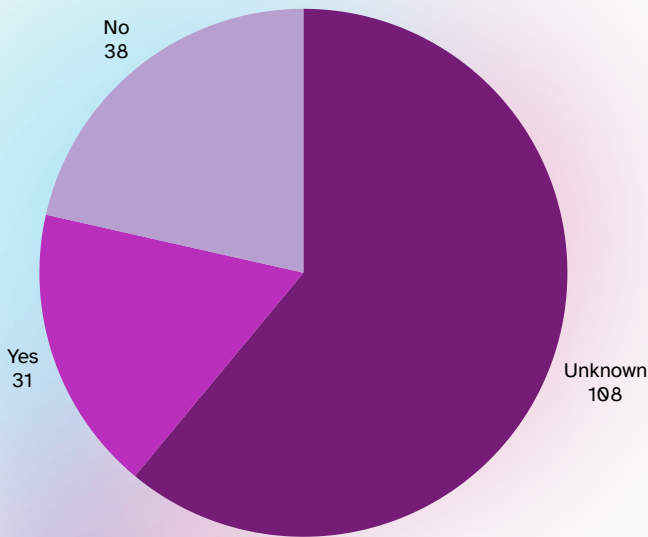
The pretrial release allows individuals charged with a crime to await trial outside custody under certain conditions. These may include reporting to a bail supervisor, adhering to curfews, or refraining from contacting the victim. Pretrial release decisions are based on various factors, including the severity of the offence, the accused's criminal history, ties to the community, and the risk of flight or reoffending. In cases of IPV, pretrial release decisions must also consider the safety and well-being of the survivor. Conditions of release may be tailored to address concerns about potential harm or harassment of the survivor by the accused.

Pretrial release in cases of intimate partner violence can be problematic for numerous reasons, including the fact that frequent breaches occur during this release period. Release conditions can be vague and only marginally increase with each breach, giving abusers many chances to breach bail without experiencing long-term detention as a consequence, putting survivors at repeated risk. Additionally, bail supervision programs are frequently unavailable, and sureties are usually inappropriate and unable to provide accountability, which further puts survivors at risk. Further, Justices of the Peace are reluctant to impose sanctions, such as a referral to Partner Assault Response (PAR) Programs, until the accused pleads or is found guilty. This leads to a lack of monitoring and accountability, which, again, continues to put survivors at risk.

## RELEASED BEFORE TRIAL



# Sureties



## Common Sureties Assigned Within Our Data:

1. Grandmother
2. Daughter
3. Ex-girlfriend

## SURETY RELEASE

Surety release involves a third party (surety) providing a financial guarantee to ensure the accused's compliance with bail conditions. This may include ensuring the accused attends court dates and adheres to their release conditions.

In cases where surety release is granted, individuals are released from custody pending trial, provided that a suitable surety is available to fulfil the requirements.<sup>28</sup> The appropriateness of a surety for someone accused of domestic violence can be a sensitive and complex matter, considering the potential risks involved.

The primary concern in cases of intimate partner violence is the safety and well-being of the victim. Sureties should be individuals who can be trusted to prioritize the safety of the victim and take steps to prevent further harm. Sureties should not have any bias towards the accused or the victim.<sup>29</sup> They should be impartial and able to fulfil their obligations without compromising the safety or rights of either party.

These are some of the factors that are considered when assessing the suitability of a surety in cases involving domestic violence:

- Sureties should have a clear understanding of the seriousness of domestic violence and the potential consequences of the accused's actions.<sup>30</sup>
- Sureties should be committed to ensuring that the accused complies with all court orders and does not pose a threat to the victim or the community.
- Sureties should be capable of monitoring the accused's behaviour and enforcing any conditions of release imposed by the court. This may require regular communication with the accused, verifying the compliance with court orders, and taking appropriate action if violations occur.
- In cases of domestic violence, sureties should be able to monitor properly, and in some cases, restrain the defendant from violating any bail conditions

The data suggests that daughters and grandmothers are two of the most common sureties allowed; in either case, the sureties are not appropriate for cases involving domestic violence.

Additionally, our data shows that ex-girlfriends are another common surety. This can be problematic because the accused may continue his abuse and / or exercise intimidation tactics against her so that she is not able to monitor him or enforce conditions effectively.

# Structural Issues Impacting the Safety of Women and Children

These issues and systemic gaps increase the risk of violence for women and children while simultaneously decreasing sanctions and accountability for perpetrators of violence.



## Police / Watch Commander

- Release conditions for accused to address to declare address within 24 hours to police, with no current process dedicated to verify address or follow-up
- Lack of daily accounts from Bail Safety to TBPS DV Coordinator
- Misinterpretation of Bill C-75 (changes to *Criminal Code* re: GBV and release) by watch commanders at TBPS; all accused are being released are being released (without conditions for no-contact) instead of using their discretion
- Accused charged with IPV and have multiple breaches, but being released on a UTA without no-contact orders and without conditions that would reinforce the court-based conditions



## Crown

- Lack of accountability for sureties, minimal follow-up surety applicants
- MAG's (Crown prosecution) classification of high risk offender's is not shared with civilian agencies who support survivors
- Survivor is not represented in court and access to Crown attorney is indirect through VWAP
- New Crowns are not fully trained on DV flow chart and unable to make changes on the fly due to inexperience (minimal understanding of the regional context and community needs)
- Vetting Process: Senior Crowns used to support newer Crowns when reviewing things like overnight arrests
- Survivor's are frequently not made aware of the accused's release conditions



## Defence Counsel

- New defence counsel unfamiliar with the processes and lacking a GBV lens
- Undermining safety measures for women
- Lack of accountability for the accused by defence counsel; accused being encouraged to wait out the 18 month ceiling established in *R v Jordan* in hopes that the charges will time out



## Justice of the Peace

- Lack of use of release from custody table
- "Bail set not met" release on conditions because surety is not in court, which results in JPs acting on false information on quick turn-arounds, and no notice is being given to Crown to examine
- Surety approval outside of public court process, and no background or approval of surety is presented, and no record of who is designated given to other sectors
- Justices of the Peace are reluctant to impose sanctions, such as referral to PAR programs until abuser pleads/is found guilty
- Approves sureties are not appropriate (i.e. grandmothers) and unable to provide accountability
- Vague or inappropriate release conditions for perpetrators



## Criminal Court Process

- Abusers rights take priority over survivor safety
- Principles of "Public Safety" used in bail release considerations do not apply to women and children survivors
- Bail supervision programs are frequently unavailable
- Bail safety recommendations do not hold up long-term
- Release conditions are vague and only marginally increase with each breach
- Abusers are given many chances to breach bail without experiencing long-term detention as a consequence, putting survivors at repeated risk
- Difficulty in satellite court campus -- release from custody is happening steadily with no connection to victims because VWAP doesn't cover that jurisdiction
- Parts of district not served by VWAP



## Bail Safety Program

- Disclosure concerns for risk assessment (past violence and safety concerns shared with Bail Safety, VWAP, and Crowns Office must also be shared with defence counsel / perpetrator)
- Adequate time and resources are not available to conduct proper bail safety interviews
- Victim impact statements are limited and not often used

## BAIL SUMMARY

In sum, the bail system in Canada is supposed to play a crucial role in addressing cases of intimate partner violence by balancing the rights of the accused with the need to ensure survivor safety and well-being; however, many structural and procedural gaps in the current system still need to be addressed. Victims and survivors of intimate partner violence deserve a justice system that treats them with dignity and respect, keeps them safe, and holds offenders accountable. By considering the specific dynamics of IPV cases, taking victim safety into serious consideration, and implementing appropriate bail conditions, the justice system can help make this a reality for victims and survivors.



# Broader Legislative and Procedural Issues

Historically, the Canadian legal system has struggled to effectively address IPV, with barriers such as underreporting, victim-blaming attitudes, and systemic inequalities impeding access to justice for survivors. Previous legislative reforms have sought to improve the response to IPV, including amendments to the *Criminal Code* and the introduction of specialized courts and support services for survivors.<sup>31</sup> However, many negative consequences of these various legislative reforms have come up that were not anticipated when the policies were introduced, specifically regarding Bill C-75, the addition of choking offences to the *Criminal Code*, and the implementation of Early Intervention programs.

## Bill C-75

Bill C-75 introduced several amendments relevant to IPV, including changes to prosecuting offences, enhancements in victim support services, and restorative justice measures. One significant change is the hybridization of certain IPV offences, allowing prosecutors to choose whether to proceed summarily or by indictment. Further, Bill C-75 introduced a reverse onus at bail for an accused person charged with an offence against an intimate partner if that person has a prior conviction for a similar offence. Generally, the Crown would have to show why an accused should be detained or released on certain conditions; however, these new amendments will push the onus onto the accused, who will need to show why they should be released – otherwise, the accused may be detained until trial. Additionally, Bill C-75 includes provisions to enhance victim support services, including measures to facilitate access to restraining orders and support resources. The goal of these amendments is to standardize practices to improve the criminal justice system's efficiency and effectiveness while respecting the accused's rights and maintaining public safety. The amendments aim to further assist in enhancing bail court efficiencies and help better protect victims of intimate partner violence; however, that has not necessarily been the case.

While Bill C-75's reforms promise to address IPV, they are not without challenges and limitations. Critics have raised concerns about the potential impact of hybridization on access to justice for IPV survivors, particularly those from marginalized communities. The bill has also led to reduced penalties for serious crimes, potentially undermining public safety and the safety of women. Additionally, bail reform efforts that focus on reverse onus have been criticized for being ineffective at increasing safety and may lead to increased criminalization of marginalized communities - including survivors of intimate partner violence. There are also questions about the adequacy of legal protections for survivors and the extent to which the reforms address systemic issues such as gender-based violence and inequality. Moreover, implementing Bill C-75 presents practical challenges, including maintaining adequate resources to support victim services and training legal professionals to handle IPV cases sensitively and effectively. Bill C-75 includes measures to enhance victim support services, including provisions for restraining orders and access to counselling and other resources; however, the effectiveness of those measures will depend on their implementation and the availability of adequate support resources – resources still lacking in many legal jurisdictions, including Ontario.

Overall, Bill C-75 has significant implications for addressing intimate partner violence within the Canadian legal system. Still, its success will depend on effective implementation, ongoing evaluation, and a commitment to addressing the underlying factors contributing to IPV within Canadian society.

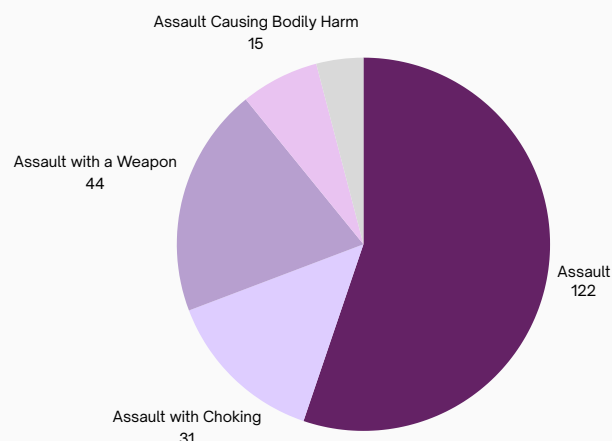
# Canadian Criminal Code and Choking

Historically, choking or strangulation were often treated as a subset of assault or other related offences rather than being specifically delineated as a distinct offence itself; however, the growing body of research and understanding about the dynamics of IPV, particularly the significant risk posed by non-fatal strangulation, has led to legislative changes to address this issue more effectively.

Non-fatal strangulation, commonly referred to as choking, is a highly dangerous form of violence that can have severe physical and psychological consequences for survivors. Research has shown that individuals who experience non-fatal strangulation are at a significantly higher risk of future lethal violence from their intimate partners. The act of choking can lead to loss of consciousness, brain damage, internal injuries, and even death, making it a particularly concerning form of IPV.<sup>32</sup> Additionally, choking can be used as a coercive tactic by abusers to exert control and instill fear in their victims.

By delineating choking as its own offence, Canada aims to send a clear message that this behaviour is unacceptable and will be treated with the seriousness it deserves; however, this is once again not necessarily the case. Our data does not reflect Canada taking the crime of choking seriously. The results are reflected in the court's response to perpetrators: the disparity between the severity of choking as an offence and its relatively low rate of charges being laid is reflected in our data and can be attributed to various factors, including challenges related to evidence collection, legal interpretation, and systemic barriers within the criminal justice system.<sup>33</sup> Proving a choking offence can be challenging due to the often invisible nature of the injuries sustained by survivors. Unlike other forms of physical violence that may leave visible bruises or marks, the physical effects of choking may not always be immediately apparent, and may require a specialized medical examination for detection. As a result, there may be difficulties in gathering sufficient evidence to support charges of choking, leading to underreporting and undercharging of this offence.

Interpreting and applying the law related to choking offences can also pose challenges for prosecutors and law enforcement officials. In some cases, there may be uncertainty or disagreement about whether the evidence meets the legal threshold for charging someone with a choking offence, which was observed in our court watch project. Factors such as the intent of the perpetrator, the presence of corroborating evidence, and the survivor's ability to provide testimony can all influence charging decisions. Police and prosecutors may face resource constraints that affect their ability to thoroughly investigate and prosecute cases of IPV, including those involving choking.



## ASSAULT RELATED CHARGES

# Early Intervention Programs

The Early Intervention (EI) Program is an initiative of the Ministry of the Attorney General that provides specialized group counselling to people who have been court-ordered to attend due to criminal charges that involve intimate partner violence. The program focuses on helping attendees better understand their beliefs surrounding domestic abuse and presents non-abusive methods of conflict resolution. If an accused is eligible for the EI program, they will be required to complete the 16-week Partner Assault Response (PAR) program. Once they have completed the course, they will return to court, where the charges against them will be dealt with either by a conditional discharge or a peace bond. Typically, the only cases that are screened for the EI program are those cases where there is a minor assault and where the accused person does not have a criminal record.

Although there are good intentions behind implementing the Early Intervention Program, many issues also need to be addressed. Counterpoint Counselling and Educational Cooperative, based in Toronto, conducted a high-risk project from October 2020 to June 2021 that focused on creating collaborative and innovative ways to enhance the safety of survivors and increase the risk management of high-risk abusers. High-risk situations are defined as those where the survivor is at risk for serious or lethal violence by the abuser.<sup>34</sup> Counterpoint identified the Early Intervention Program screening process as a significant issue because more than 50% of the high-risk offenders they observed were being screened into the Early Intervention Program despite the program being designed for low-risk/first-time offenders.<sup>35</sup> This is problematic because being streamlined into the EI program results in the accused having no criminal justice oversight, such as a probation officer, and no monitoring, which makes it challenging to hold abusers accountable. The EI program is a one-size-fits-all counselling program which cannot effectively address all of the nuances of each case, especially those for high-risk situations. Additionally, the only avenue into the PAR program is through the criminal justice system. Men cannot sign up voluntarily, and community agencies cannot make referrals. Waiting until someone gets abused to get help for abusers is not useful, and this crisis-oriented model is not working.

Following a triple femicide in Ontario's Renfrew County in 2015, jurors involved in the coroner's inquest made 86 recommendations to help prevent gender-based violence; of these recommendations, a few pertained directly to the Early Intervention program and other means of providing support to perpetrators. The jurors recommended establishing clear policies within the courts to ensure that absent exceptional circumstances, those assessed as high-risk or where the allegations involve strangulation should not qualify for EI.<sup>36</sup> Crowns were also urged to consider a history of intimate partner violence and whether or not convictions resulted when determining whether EI is appropriate.<sup>37</sup> Additionally, jurors recommended opening PAR up to voluntary enrolment, establishing additional supports for perpetrators, such as a 24/7 hotline for anyone worried they might use violence, and providing consistent funding for providers, as well as more flexibility in their response, such as the ability to combine individual counselling with group sessions.<sup>38</sup> An investment in the response to gender-based violence – in the services, in the men – is a direct investment into the safety of women and children and must be taken seriously.

At this time, Thunder Bay does not have a formal early intervention process for domestic violence. Despite issues in other jurisdictions, especially in terms of screening – if used properly, the Early Intervention Program could be a good tool for addressing perpetrator attitudes about domestic violence right away and preventing gender-based violence. The government of Ontario must address the gaps in the EI services and implement them across the province, including Thunder Bay, where rates of gender-based violence are amongst the highest in Canada.



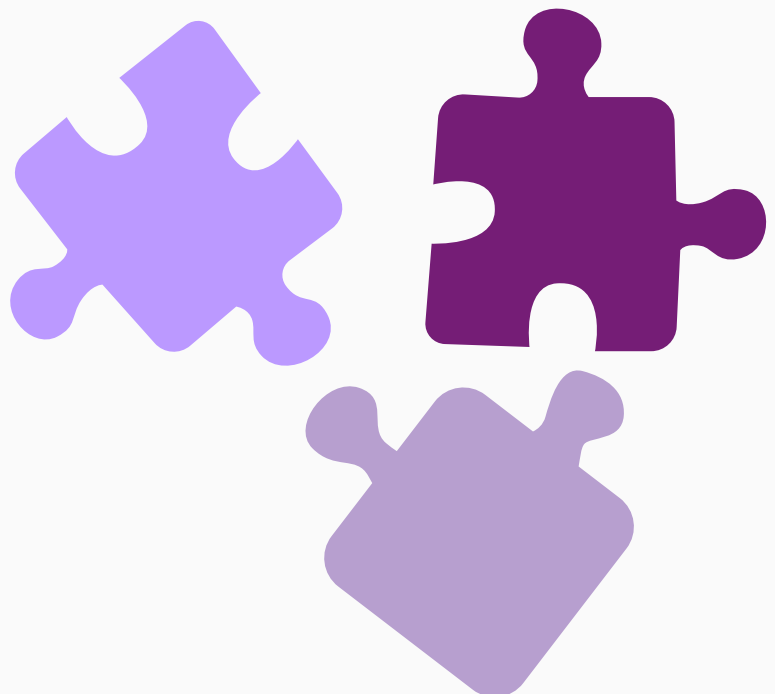


# Barriers

Historically, intimate partner violence has been dismissed or trivialized, with survivors facing significant barriers to seeking help. Although there have been improvements and shifts in societal attitudes and legal responses to IPV over time, many barriers still need to be addressed. Biases and stereotypes about intimate partner violence, such as gender, race, and socioeconomic status, may influence decision-making at various stages of the legal process, leading to disparities in charging and sentencing outcomes.

Survivors of IPV may face numerous barriers to reporting and seeking justice, including fear of retaliation, financial dependence on the perpetrator, lack of support services, and stigma associated with IPV. These factors can deter survivors from coming forward to report incidents of choking or other forms of violence, further contributing to undercharging and underreporting. Despite these issues, advocacy efforts, research initiatives, and changes in public discourse have led to increased awareness of the prevalence and impact of IPV, including the specific dangers posed by non-fatal strangulation. Lawmakers have recognized the need to make changes and implement progressive reform to address gender-based violence and protect victims and survivors. However, these reforms have been polluted and misinterpreted within the legal system, which backfires on victims and survivors. The reforms are being used more as weapons than tools for change, which needs to be handled.

Addressing these challenges requires a multifaceted approach that involves confronting structural inequities, including the colonial and patriarchal structures of our court and legal systems, improving evidence-collection methods, providing specialized training for legal professionals, addressing systemic biases within the criminal justice system, and enhancing support services for IPV survivors.<sup>39</sup> A victim-centred, intersectional, gender-specific, trauma-informed, anti-oppressive, and evidence-based approach is required to truly protect survivors, hold abusers accountable, and appropriately address the epidemic of gender-based violence.



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