

Charging Considerations in the Prosecution of Marital Rape¹

The majority of sexual assault victims know their assailants.³ Despite this fact, many people (including jurors) still associate the words “rape” or “sexual assault” with violent attacks by strangers. A current or former intimate relationship between a victim and defendant creates additional complexities that often make the arrest, prosecution, and conviction of an intimate partner rapist even more difficult. These complexities are only magnified where the intimate relationship is marital.

The criminal justice system is a critical piece of a just response to marital rape.⁴ If its response is indifferent or ineffective, victims remain vulnerable, offenders are not held accountable, communities are less safe, and justice is not accomplished. To increase the effectiveness of the criminal justice system’s response to this crime, allied criminal justice professionals must recognize the trauma experienced by victims of marital rape, the lethality indicated by the presence of sexual assault in an intimate partner relationship, and the contexts in which these assaults occur, in order to appropriately charge these crimes. In addition, prosecutors must appreciate the individual responses that the victims have to their victimization and the way in which perpetrators’ abusive conduct throughout the marital relationship can establish force and coercion⁵ in a sexual violence incident.

This *Strategies in Brief* describes the remaining legal exemptions to prosecuting marital rape and sets forth key considerations necessary to making accurate charging decisions in marital rape cases. Further, because AEQUITAS has already developed extensive resources relevant to the prosecution of intimate partner sexual assault more broadly, this article refers to those resources throughout and strongly encourages readers to consult them when developing strategies to overcome biases, misconceptions, and legal hurdles in marital rape cases.⁶

The Law

Historically, marital rape was considered a legal impossibility. During the 17th century, Chief Justice Matthew Hale “established the irrevocable consent theory, which argued that men had an absolute right to sexual relations within the bond of marriage, and provided the foundation for a marital rape exemption . . . [I]t remained the basis for successful arguments against spousal rape laws for centuries in both Great Britain and the United States.”⁷ This remained a legal and societal norm until the 1970s when Nebraska became the first state to strike the marital rape exemption from its laws.⁸

Today, the sexual assault of a spouse is recognized as criminal in every U.S. jurisdiction, although the absence of a marital relationship remains an element of certain specific crimes of sexual violence in many jurisdictions. AEQUITAS has developed a state-by-state compilation identifying offenses that retain a marital exemption for otherwise criminal sexual conduct.⁹ A summary of those exemptions appears in the text box below.

- **Forty-one** jurisdictions have statutory provisions providing marital exemptions to offenses that criminalize sexual conduct based on the age of the victim (*i.e.*, statutory rape).¹⁰

- **Twenty** jurisdictions have spousal exemptions for offenses that criminalize sexual conduct based on the victim's lack of capacity to consent to that conduct. A victim's capacity to consent is implicated where the victim has a cognitive or physical disability; is unconscious, asleep, or otherwise physically helpless; or where the victim is so intoxicated or impaired by a substance as to have lost the capacity to consent.¹¹
- **Twenty-seven** jurisdictions have spousal exemptions to laws that otherwise prohibit sexual conduct between individuals who are in certain custodial, therapeutic, academic, and/or supervisory relationships.¹²
- **Eleven** jurisdictions have statutory or case law marital exemptions for certain sexual offenses committed against competent adults. In these situations, an adult who is otherwise *capable of* sexual conduct has not consented to sexual conduct in this particular circumstance, or has been subject to sexual conduct by force or coercion.¹³
- Only **four** jurisdictions are entirely silent, effectively meaning that no marital exemptions exist.

Charging Decisions

Notwithstanding the above-mentioned marital rape exemptions, prosecutors are likely to be able to charge marital rape under an alternative legal theory, including other sexual violence, domestic violence, and/or stalking offenses.¹⁴

Despite the common perception that offenders who are married to or in a relationship with the victim are less dangerous than stranger-rapists, rapists sharing a home with the victim tend to “be more experienced; more invested; cross more boundaries; are safer from exposure; create more betrayal and family conflict; and are more psychologically/emotionally involved in offending.”¹⁵ Marital rapists occupy the lives and homes of their victims. “Most victims of marital rape report being raped more than once, with at least one-third of the women reporting being raped more than twenty times over the course of their relationship.”¹⁶ Finally, marital sexual assault victims suffer psychologically due to the betrayal of trust and intimacy. According to some research, victims often “suffer long-lasting physical and psychological injuries as severe—or more severe—than stranger rape victims.”¹⁷

As the gatekeepers to the criminal justice system, prosecutors' impact on a victim's access to justice and safety cannot be overstated. According to research on downstream orientation, prosecutors' actual or predicted decisions during the charging stage and through adjudication influence whether law enforcement thoroughly investigate or refer cases for review and prosecution.¹⁸ A dedication to practices that are trauma-informed, victim-centered, and research-driven and a commitment to ethical obligations enable prosecutors to make fair charging decisions and to intervene at a critical moment in a victim's life to help shape their life path away from violence.

Ethical standards guide prosecutors to make charging decisions based on what a reasonable factfinder *should* conclude when weighing all available admissible evidence; they should not make charging decisions based upon probabilities dictated by the misgivings of the uninformed.¹⁹ The appropriate question to answer when deciding whether to prosecute a case should be: “Given the evidence that will likely be admissible at trial, and the likely evidence and arguments of the defense, *should* a jury find that every element of the offense has been proven beyond a reasonable doubt?”²⁰ Marital rape prosecutions are legally and factually complex, involving dynamics and behaviors that may not meet expectations of rape. As a result, prosecutors may be concerned that these cases are not winnable. Specialized knowledge in both domestic and sexual violence dynamics, unique legal tools, and highly-skilled litigation strategies, including the use of expert testimony, can overcome these complexities, thereby allowing prosecutors to make charging decisions consistent with offender accountability and victim safety.²¹

Understanding Co-occurrence of Sexual and Physical Violence

Many prosecutor's offices have recognized the value of specialized units for prosecution of certain types of crimes requiring a high degree of expertise and experience. Domestic violence and sexual violence are two such categories of crime. While specialization has many important benefits, successful prosecution of marital rape requires the prosecutor to draw upon the special knowledge and expertise of both domestic violence and sexual violence specialties. In offices without specialized units, prosecutors should consult those in the office with particular skills and expertise in these cases.

Domestic violence prosecutors may have a great deal of knowledge about the power and control dynamics at work in abusive relationships, yet may lack depth of knowledge about evidentiary issues related to prosecution of sexual violence (e.g., working with rape shield statutes or understanding the results of a sexual assault forensic examination), the effects of sexual assault on victim behavior, or the kinds of support available to victims of sexual violence.

One of the greatest challenges for the domestic violence prosecutor may be simply to recognize that a victim has been sexually victimized. There is often a tendency for prosecutors to focus on the "presenting problem"—the crime to which law enforcement responded—without making further inquiry about whether a domestic violence victim has been sexually assaulted in the course of the violent relationship.

There are a number of reasons why victims of domestic violence may not ever disclose that they have been sexually victimized. They may believe the abuser who tells them they don't have the right to refuse sex. They may not recognize that what has happened to them is a crime or that it is related to the other abuse. They may be ashamed or embarrassed. A victim's lack of disclosure of sexual violence isn't only a barrier to comprehensive justice; it also enhances the risk to the victim. Research has shown that victims of domestic violence who are also subject to sexual violence are at an increased risk of being killed by their marital partner, compared with victims of domestic violence who had not been sexually assaulted.²² According to Professor Jacqueline Campbell, a physically abused woman also subjected to forced sex is over seven times more likely than other abused women to be killed.²³ A study in Houston based on approximately 150 interviews with abused women seeking protective orders revealed that "the women who were being both physically and sexually abused reported more of the risk factors for femicide, such as strangulation and threats to children, than did those subjected to physical abuse only."²⁴

When interviewing a domestic violence victim, it is important to ask whether the defendant spouse has ever made them engage in sexual activity when they did not want to, or to engage in sexual acts they did not want. If the victim answers in the affirmative, elicit more details using trauma-informed interviewing techniques.²⁵ If the victim is not already accompanied by an advocate, connect them with one, preferably one trained in working with survivors of sexual violence. Consult with an experienced sexual violence prosecutor to ensure you address all the issues that may be relevant in the prosecution of sexual violence. As described above, this information is not only relevant to the pursuit of criminal charges, it is critical to assessing the victim's safety.

Sexual assault prosecutors, too, must look beyond the discrete act of sexual assault that has brought the case to their unit. In all likelihood, the sexual assault occurred within the context of ongoing violence, threats, and intimidation characteristic of intimate partner violence. It is critically important to consider the act of sexual violence within the context of the domestic violence relationship. For example, the victim may not have physically or even verbally resisted the act, but the implied force based on the history of violence may be sufficient to prove absence of consent or even force or

coercion.²⁶ There may have been unique and substantial pressures for the victim to remain in the relationship despite horrific and ongoing violence. The victim may also report they engaged in consensual sexual activity with their perpetrator subsequent to their rape. Consult with an experienced colleague who specializes in domestic violence cases to assist you in understanding the dynamics at work in the relationship that will be relevant to your case.²⁷

The Benefits of Charging Co-Occurring Crimes

For cases of marital rape, it is especially important to charge not only the appropriate sexual offenses, but also to charge any co-occurring crimes, including other forms of physical violence, threats, and stalking. Charging such offenses can help to ensure offender accountability and sets the stage for trial by placing the sexual assault in its proper context as an element of the pervasive abuse of the victim. It also supports the admission of evidence of the perpetrators' other abusive conduct. Moreover, some of the co-occurring crimes may be less susceptible to juror nullification (*i.e.* reluctance to convict despite available evidence) than a sexual offense involving a perpetrator and victim in a marital relationship.

Stalking can be a particularly useful charge, since it involves proof of a "course of conduct" directed at the victim and intended to cause the victim fear or substantial emotional distress.²⁸ A stalking charge will permit the introduction of any acts constituting the course of conduct, thereby obviating the need to file a motion under Fed.R.Evid. 404(b) or its equivalent to introduce them as "other bad acts." Proof of the course of conduct, which may include acts not independently criminal in themselves (*e.g.*, emotional, psychological, or economic abuse), will provide considerable context for the act of sexual violence, providing the jury with a fuller picture of the violent relationship.

The co-occurrence of sexual and physical violence in intimate relationships is quite common: two-thirds of women who were physically assaulted by an intimate partner were also sexually assaulted by that partner.²⁹ Also common is the abusive partner's reliance on prior physical assaults and/or abusive conduct to control victims and compel them to submit to penetration or contact on a separate occasion.³⁰ Perpetrators of marital rape may derive power over their victims by knowing and exploiting their victims' vulnerabilities to commit their crimes and prevent disclosures. Perpetrators may also rely on the justice system's belief in common domestic and sexual violence myths to escape accountability.

In addition to raping their marital partners, perpetrators may also force victims to engage in forced, coerced, or nonconsensual sexual activity with others. Marital rape can co-occur with human trafficking and commercial sexual exploitation. For example, victims may be sexually exploited by their spouses and forced to turn over any money received to their marital partner trafficker. The exploitation can occur in their marital home, the businesses of their marital partners, or in other locations.³¹

Marital partners may also film their victims' exploitation and make amateur pornography available to distributors and on the Internet.³² The pornography sometimes depicts marital partners beating and raping the women they exploit, and is used by other marital partners to perpetrate the same violence against their own spouses³³ or to recruit other victims. The victim's involvement in this activity may impact the victim's reaction to an assault, or his/her willingness to disclose the assault and report the perpetrator.

Charging crimes related to physical violence, image exploitation, stalking and /or human trafficking charges as appropriate allows the criminal justice system to hold perpetrators accountable for the breadth of their abuse against their partners. It also will permit the introduction of any acts constituting an element of the offense (including "course

of conduct” under a stalking charge), thus eliminating the need to file a motion under Fed.R.Evid. 404(b) or its equivalent to introduce them as “other bad acts, although prosecutors may want to develop and file these motions to anticipate and overcome any future appellate challenges.³⁴

Impact of Nonparticipating Victim on the Charging Decision³⁵

A prosecutor will rarely be able to successfully prosecute a marital rape case without the victim’s participation because of the difficulty in overcoming the perpetrator’s most likely defense, *i.e.*, that the victim had consented to the conduct. It is important to explore the reasons for victim nonparticipation to determine if they are caused by the absence of support that can be remedied by intervention by advocate and other members of the coordinated community response. For instance, the victim may be financially dependent on the perpetrator and thus reluctant to participate in a process that would result in the perpetrator losing a job or being imprisoned; a victim advocate be able to alleviate the victims’ financial concerns through referrals to victim compensation, career counseling, and other services.

Given the prevalence of intimidation in intimate partner violence cases³⁶ and the subtle tactics employed by abusers to prevent their partner’s participation in a prosecution,³⁷ prosecutors must conduct a careful analysis of the case for evidence of intimidation or other conduct that may allow for the admission of otherwise inadmissible out-of court statements via the forfeiture by wrongdoing doctrine.³⁸ At a forfeiture hearing, the prosecutor can introduce the history of abuse between the defendant and the victim; prior charges filed, even if they were withdrawn; testimony from bond hearings; testimony from prior cases; evidence from police, a prior prosecutor, family, or friends about the victim’s fear of the defendant; evidence about the victim’s fear of testifying in prior cases; and anything else that shows the defendant did something to prevent the victim from testifying. Significantly, hearsay is permissible at a forfeiture hearing. If the prosecution successfully establishes forfeiture by wrongdoing, the defendant is precluded from objecting to the introduction of a victim’s testimonial statements and, depending on the facts of the case.³⁹

Conclusion

A multi-disciplinary effort by well-trained partners committed to trauma-informed approaches is critical for any effective prevention and response strategy targeting intimate partner sexual assaults. However, the critical component played by prosecutors is the ability to implement specific legal strategies that can simultaneously enhance victim safety and effectuate offender accountability. The multi-disciplinary contribution from prosecutors can only be realized with recognition of the prevalence of co-occurrence between intimate partner physical violence and sexual assault. Only with the cultivation of the knowledge and skills to overcome barriers to the successful prosecution of these crimes can the entire multi-disciplinary response be enhanced and outcomes for survivors be improved.

Endnotes

1. “Marital rape” as the term is used in this article refers to all forms of sexual violence, including penetration and contact offenses.
2. Teresa Garvey, Attorney Advisor, AEquitas. Some excerpts of this article were adapted from the following: AEQUITAS, THE MODEL RESPONSE TO SEXUAL VIOLENCE FOR PROSECUTORS (RSVP): AN INVITATION TO LEAD (2017), *available at* <https://aequitasresource.org/wp-content/uploads/2018/09/Model-Response-to-Sexual-Violence-for-Prosecutors-RSVP-An-Invitation-to-Lead.pdf>; Viktoria Kristiansson, *Walking a Tightrope: Balancing Victim Privacy and Offender Accountability in Domestic Violence and Sexual Assault Prosecutions Part II*, 10 STRATEGIES (2013), *available at* https://aequitasresource.org/wp-content/uploads/2018/09/Issue_10_Walking_A_Tightrope_Balancing_Victim_Privacy_and_Offender_Accountability_in_Domestic_Violence_and_Sexual_Assault_Prosecutions_Part_II_May_2013.pdf; Recording by Jonathan Kurland and Tom McDevitt, *Under the Radar: Prosecuting Intimate Partner Sexual Assault* (recorded April 27, 2018), *available at* <https://aequitasresource.org/resources/>. Significant contributions to this article were made by Holly Fuhrman, Associate Attorney Advisor. This paper was supported by research conducted by Georgetown University Law Center students Sarah Eberspacher, Janelle Sampana, Alexandra Coyle and Shelby Smith. AEquitas would also like to thank Cary Zhang, Temple University Beasley School of Law 2021, for her contributions to this article.
3. See National Crime Victimization Survey 2005, Nat’l Archive Crim. Just. Data, *available at* <https://www.icpsr.umich.edu/icpsrweb/NACJD/studies/4451/version/1> (last visited Sep 19, 2019) (“In seven out of every ten assaults, the defendant is either the victim’s intimate partner, other relative, friend or acquaintance.”).
4. See e.g., U.S. DEP’T OF DEF. SEXUAL ASSAULT PREVENTION AND RESPONSE, *RESTRICTED REPORTING*, <https://www.sapr.mil/restricted-reporting> (last visited Sep 29, 2019).
5. See e.g., EVAN STARK, RE-PRESENTING BATTERED WOMEN: COERCIVE CONTROL AND THE DEFENSE OF LIBERTY, *available at* https://www.stopvaw.org/uploads/evan_stark_article_final_100812.pdf (discussing domestic violence dynamics and coercive control, which may be applicable in these cases.).
6. In addition to its numerous resources, AEquitas is available 24/7 to discuss issues related to the prosecution of marital rape and/or intimate partner sexual assault. Please call (202) 508-0040 to be connected to an AEquitas Attorney Advisor.
7. Joann M. Ross, *Making Marital Rape Visible: A History of American Legal and Social Movements Criminalizing Rape in Marriage*, Dissertations, Theses & Student Research, Department of History at University of Nebraska, ii (2015), <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1085&context=historydiss> (last visited Sep 19, 2019).
8. Adopted from Alexandra Coyle, *Prosecuting Marital Rape in the Era of #MeToo* (on file with AEquitas), citing Deborah C. England, *The History of Marital Rape Laws*, *available at* <https://www.criminaldefenselawyer.com/resources/criminal-defense/crime-penalties/marital-rape.htm> (last visited Feb. 21, 2019).
9. This compilation is current as of April 2019 and is available upon request.
10. Arkansas, for example, exempts spouses from being prosecuted under sexual assault in the fourth degree, which prohibits a person twenty years of age or older from engaging in sexual intercourse, deviate sexual activity, or sexual conduct with another person who is less than sixteen. See Ark. Code Ann. § 5-14-127. (“A person commits sexual assault in the fourth degree if the person being twenty (20) years of age or older: engages in sexual intercourse or deviate sexual activity with another person who is: less than sixteen years of age and *not the person’s spouse*; or engages in sexual contact with another person who is less than sixteen years of age and *not the person’s spouse*...”) (emphasis added).
11. N.Y. Penal Law § 130.10(4) (“In any prosecution...in which the victim’s lack of consent is based solely on his or her incapacity to consent because he or she was...mentally disabled...it shall be a defense that the defendant was married to the victim.”).
12. Georgia, for example, has a sexual assault statute prohibiting sexual contact between a teacher, principal, assistant principal, or other administrator of any school and another individual who the actor knew or should have known is enrolled at the same school, but caveats that “such contact shall not be prohibited when the actor is married to such other individual.” Ga. Code Ann. § 16-6-5-1(b)(1).
13. Haw. Rev. Stat. § 707-733. For instance, sexual assault in the fourth degree in Hawaii criminalizes knowingly subjecting another person *not married to the actor* to sexual contact by compulsion.
14. See discussion *infra*.
15. Jennifer Gentile Long, *Prosecuting Intimate Partner Sexual Assault*, 2 THE VOICE, NAT’L DISTRICT ATTORNEYS ASS’N NEWSLETTER, *available at* http://www.ndaa.org/pdf/the_voice_vol_2_08.pdf.
16. Patricia Mahoney, *The Wife Rape Fact Sheet*, Wellesely College Stone Center, <https://mainweb-v.musc.edu/vawprevention/research/wiferape.shtml> (last visited Sep 19, 2019).
17. See FINKELHOR, D. & YLLO, K., LICENSE TO RAPE: SEXUAL ABUSE OF WIVES (1985); Diana Russell, *Rape in marriage* (1990).

18. See April Pattavina et al., *Examining Connections between the Police and Prosecution in Sexual Assault Case Processing: Does the Use of Exceptional Clearance Facilitate a Downstream Orientation?*, 11 *Victims & Offenders* 315 (2015).
19. *Id.*
20. MICHELLE MADDEN DEMPSEY, PROSECUTION RAPE: TOWARD A NORMATIVE VIEW OF EVIDENTIAL SUFFICIENCY (Jan. 2013).
21. AEQuitas has many webinars and resources dedicated to trial strategies in intimate partner sexual violence cases. See, e.g., recording by Jonathan Kurland and Tom McDevitt, *Under the Radar: Prosecuting Intimate Partner Sexual Violence* (recorded April 27, 2018), available at <https://aequitasresource.org/resources/>; see also Teresa Garvey, *Legal Jiu Jitsu for Prosecutors in Intimate Partner Violence Cases: Forfeiture by Wrongdoing*, 17 *Strategies Newsletter* (December 2018), available at <https://aequitasresource.org/resources/>.
22. See, e.g., Jacquelyn Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 *Am. J. Pub Health* 1089 (2003) (finding that a physically abused woman also subjected to forced sex is over seven times more likely than other abused women to be killed). See also How LAP Works, *Lethality Assessment Program*, <https://lethalityassessmentprogram.org/about-lap/how-lap-works/> (last visited Sep 9, 2019).
23. See Coyle *supra* note 8; Long *supra* note 15; Campbell, *supra* note 22.
24. *Id.*; see also *supra* note 18.
25. See, e.g., Viktoria Kristiannson and Charlene Whitman-Barr, *Integrating a Trauma-Informed Response in Violence Against Women and Human Trafficking Prosecutions*, 13 *STRATEGIES NEWSLETTER* (February 2015), available at <https://aequitasresource.org/wp-content/uploads/2018/09/Integrating-A-Trauma-Informed-Response-In-VAW-and-HT-Strategies.pdf>.
26. See Jennifer Gentile Long et al., *Evidence of Other “Bad Acts” in Intimate Partner Violence, Sexual Violence, Stalking, and Human Trafficking Prosecutions*, 13 *STRATEGIES* (May 2017), available at <https://aequitasresource.org/wp-content/uploads/2018/09/Evidence-of-Other-Bad-Acts-In-Intimate-Partner-Violence-Sexual-Violence-Stalking-and-Human-Trafficking-Prosecutions.pdf>. See also recording by Jonathan Kurland, *It’s About Context Not Character* (recorded Oct. 31, 2017), available at <https://aequitasresource.org/resources/>.
27. See also recording by John Wilkinson, *Introducing Expert Testimony in Domestic Violence Cases* (recorded on Oct. 29, 2015), available at <https://aequitasresource.org/resources/>.
28. The elements of stalking vary significantly from one jurisdiction to another, but this is a common formulation.
29. Lauren R. Taylor & Nicole Gaskin-Laniyan, *Sexual Assault in Abusive Relationships*, *Nat’l Inst. Just.*, <https://nij.ojp.gov/topics/articles/sexual-assault-abusive-relationships> (last visited Sep. 29, 2014).
30. This is particularly effective in compelling sexual penetration or contact without demonstrating overt force. Strategies for using 404b motions to establish force or lack of consent are discussed below.
31. See Raphael, J., & Shapiro, D., *Sisters speak out: The lives and needs of prostituted women in Chicago*. Ctr. Center for Impact Res. (2002), available at <https://www.issueab.org/resources/351/351.pdf>. In one study, researchers found that marital partners perpetrated up to 60 percent of the violence against women engaging in survival sex. *Id.* It further found that women on the street identified marital partners as being responsible for about one-fourth of the violence that they suffered. *Id.* In many instances, women who are addicted and/or in relationships with an addicted partner may trade sex for drugs, or be forced to have sex with other men for money to support a partner’s habit. Anecdotal information indicates that the exchange of sex for drugs is one of the most violent and degrading forms of sexual exploitation. CONNIE SPONSLER, *ADVOCACY ON BEHALF OF WOMEN USED IN PROSTITUTION: A HANDBOOK FOR RURAL ADVOCATES* (Praxis International, 2004).
32. For example, amateur pornography sites are prevalent on the Internet, with titles such as “Turning Wife into a Whore,” “Forced White Wife: Watch as this Housewife is Raped and Humiliated,” and “Wives that Whore from Home.” See Jane Anderson & Supriya Prasad, *Prosecuting Image Exploitation*, 15 *STRATEGIES NEWSLETTER* (March 2015), available at <https://aequitasresource.org/wp-content/uploads/2018/09/Image-Exploitation-Strategies15.pdf>.
33. See Christine Start & Carol Hodgson, *Sister Oppressions: A Comparison of Wife Battering and Prostitution*, 2 *J. Trauma Prac.* 17 (2003)
34. For guidance on permissible arguments for admission, see Teresa Garvey, *Making it Stick: Protecting the Record for Appeal*, 12 *STRATEGIES* (April 2012), available at https://aequitasresource.org/wp-content/uploads/2018/09/Making_it_Stick_Protecting_the_Record_for_Appeal_Issue_12.pdf.
35. Prosecutors handling cases with nonparticipating victims should consult the following AEQuitas resources for guidance: TERESA GARVEY, *WITNESS INTIMIDATION: MEETING THE CHALLENGE* (AEQuitas 2013), available at <https://aequitasresource.org/wp-content/uploads/2018/09/Witness-Intimidation-Meeting-the-Challenge.pdf>; Teresa Garvey, *Legal Jiu Jitsu for Prosecutors in Intimate Partner Violence Cases*, 17 *STRATEGIES* (AEQuitas 2018), available at <https://aequitasresource.org/wp-content/uploads/2018/12/Legal-Jiu-Jitsu-for-Prosecutors-in-IPV-Cases-Forfeiture-by-Wrongdoing-2.pdf>; & Jennifer Long and Teresa Garvey, *No Victim? Don’t Give Up: Creative Strategies in Human Trafficking Cases*, 7 *STRATEGIES* (AEQuitas 2012), available at <https://aequitasresource.org/>

- wp-content/uploads/2018/09/S_Issue_7_No_Victim-Dont_Give_Up.pdf. Prosecutors should also consult Viktoria Kristianson, *Walking a Tightrope: Balancing Privacy and Offender Accountability in Domestic Violence and Sexual Assault Prosecutions, Part II*, 10 STRATEGIES (AEquitas 2013), available at https://aequitasresource.org/wp-content/uploads/2018/09/Issue_10_Walking_A_Tightrope_Balancing_Victim_Privacy_and_Offender_Accountability_in_Domestic_Violence_and_Sexual_Assault_Prosecutions_Part_II_May_2013.pdf (discussing various relevant privileges, including spousal testimonial privilege and the spousal communications privilege. Significantly, a victim is now permitted to testify against a spouse in every jurisdiction except for Maryland and the District of Columbia, which have statutes that permit victims to invoke a one-time marital privilege in domestic violence cases and not testify against the offender spouse.).
36. See, e.g., TERESA GARVEY, WITNESS INTIMIDATION: MEETING THE CHALLENGE (AEquitas 2013), available at <https://aequitasresource.org/wp-content/uploads/2018/09/Witness-Intimidation-Meeting-the-Challenge.pdf>.
 37. See, e.g., Amy E. Bonami et al., “Meet me at the hill where we used to park”: Interpersonal processes associated with victim recantation, 73 SOCIAL SCIENCE AND MEDICINE 1054-61 (2011) (discussing subtle intimidation tactics).
 38. See e.g., TERESA GARVEY, THE PROSECUTORS’ RESOURCE ON FORFEITURE BY WRONGDOING (AEquitas 2012), available at https://aequitasresource.org/wp-content/uploads/2018/09/The_Prosecutors_Resource_Forfeiture_by_Wrongdoing.pdf (“Forfeiture by wrongdoing is a longstanding exception to a defendant’s Sixth Amendment right to confront the witnesses against him. If a defendant causes a witness to be unavailable for trial through his wrongful acts, with the intention of preventing that witness from testifying, then the introduction of the witness’s prior ‘testimonial’ statements is not barred by the Confrontation Clause of the Sixth Amendment of the United States Constitution.”).
 39. For more on the use of forfeiture by wrongdoing in intimate partner violence cases, see Teresa Garvey, *Legal Jiu-Jitsu for Prosecutors in Intimate Partner Violence Cases: Forfeiture by Wrongdoing*, 17 STRATEGIES NEWSLETTER (December 2018), available at <https://aequitasresource.org/wp-content/uploads/2018/12/Legal-Jiu-Jitsu-for-Prosecutors-in-IPV-Cases-Forfeiture-by-Wrongdoing-2.pdf>.

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