

Strengthening Community and Organizational Responses: Serving Immigrant Victims of Domestic Violence, Sexual Assault, and Stalking

Improving Safety for Communities, Officers and Immigrant Survivors: Focusing on Primary Aggressor Determinations

Plenary III
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Thank you to OVW

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Learning Objectives

By the end of this plenary, participants will be better able to

- Build collaborations between police/ prosecutors and victim advocates/attorneys can benefit victims
- Know how self-defense and primary aggressor determinations are made
- Understand how these determinations are particularly helpful in cases of immigrant victims
- Employ best practices for police response at crime scenes to promote effective justice system response to hold offenders accountable

Multiple Choice Exercise

Have you ever worked with an immigrant victim client who was arrested in a domestic violence case?

A Yes

B No



How advocates can
collaborate with law
enforcement and
prosecutors?

What are the Benefits of Building Community Engagement?

Building Community Engagement

Build meaningful relationships characterized by respect
and thoughtfulness



Openness to and awareness of people's unique identities
and histories



Ongoing relationship with community

Best Practices for Collaboration Between Law Enforcement And Advocates

- Coordinated community response is the best way to address community problems including
 - family violence, sexual abuse, stalking, dating violence, and human trafficking
- Involves judges, advocates, law enforcement, healthcare providers, educators, and other professionals

Minimizing Fears and Barriers



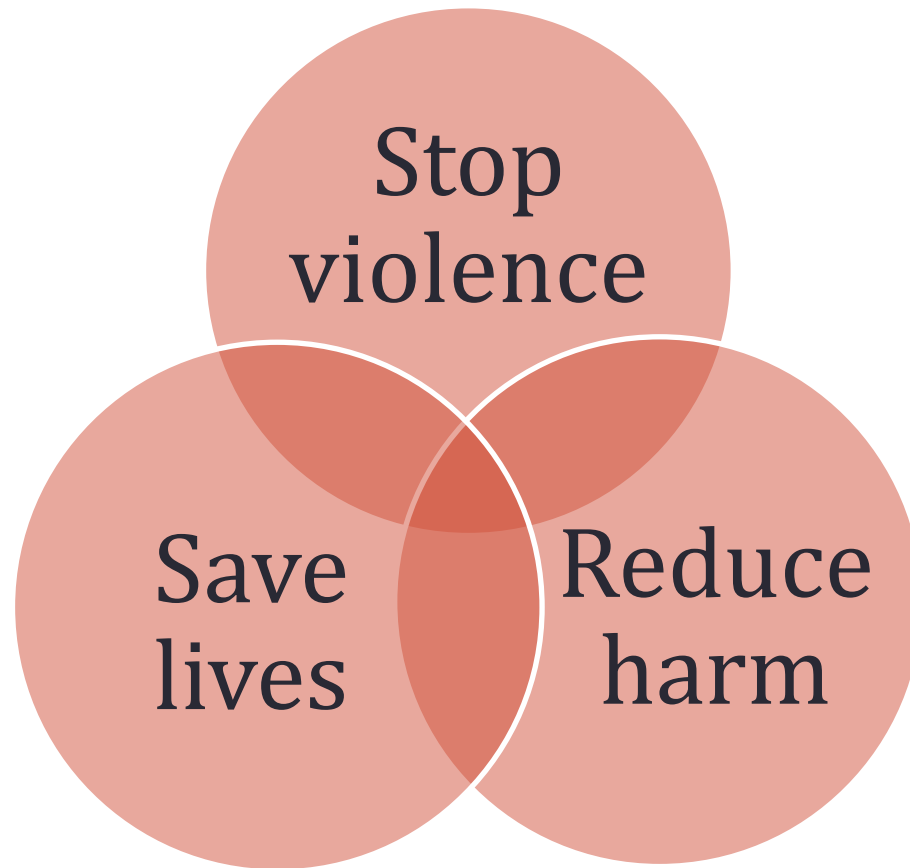
Immigration
relief

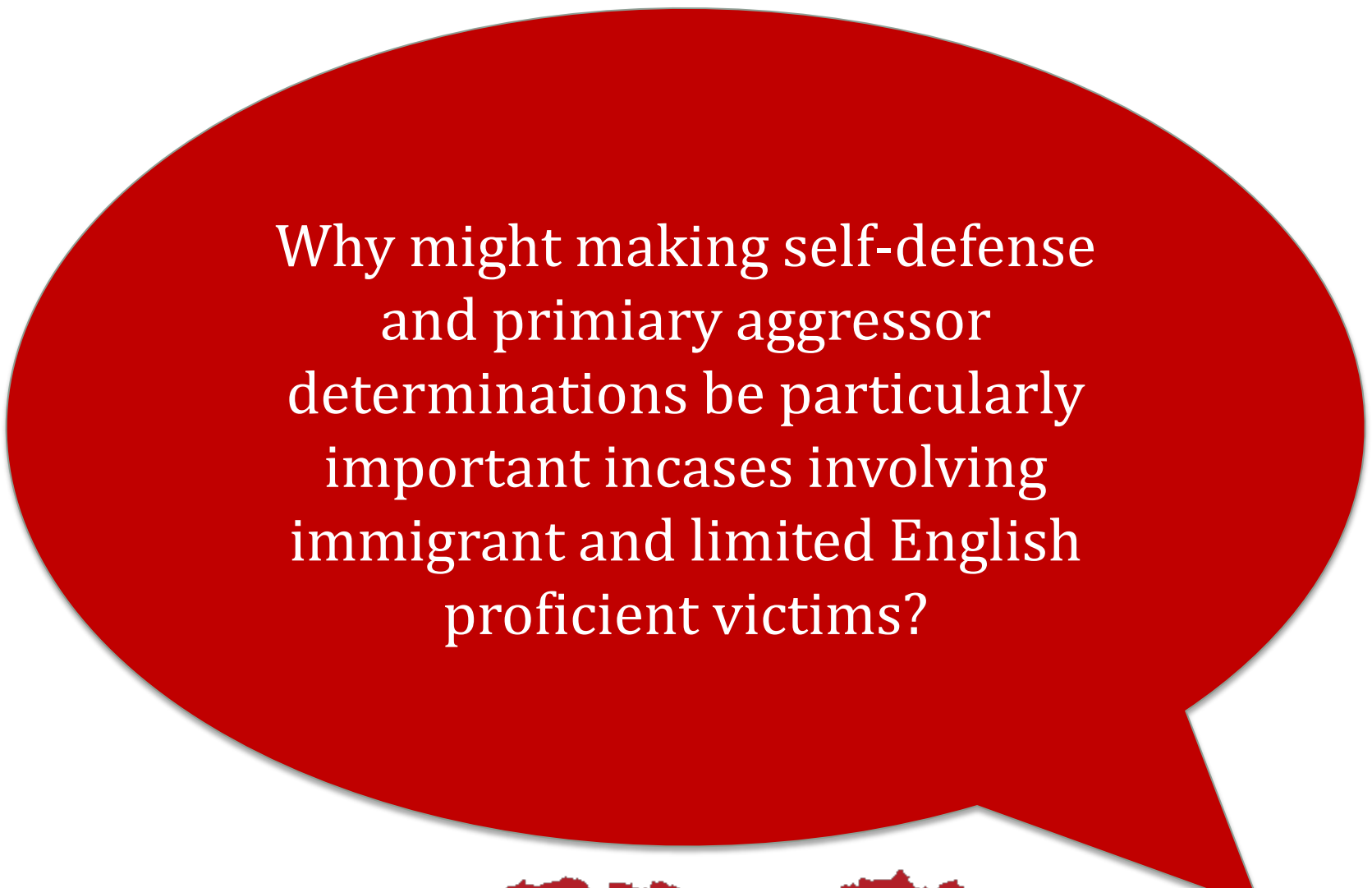


Language
Access

The Blueprint for Safety

Coordinated justice system response to:





Why might making self-defense
and primary aggressor
determinations be particularly
important in cases involving
immigrant and limited English
proficient victims?

Small Group Activity

- Share at your tables examples of immigrant survivors you have worked with who called the police for help and self-defense or primary aggressor determinations were not made.
- What happened as a result?

DHS Enforcement Priorities

Civil Immigration Enforcement Priorities (DHS Memo, Sept. 30, 2021)

Threat to National Security

- Terrorism
- Espionage
- Priority for apprehension and removal

Threat to Public Safety

- Serious Criminal Conduct
- Mitigating or extenuating facts or circumstances

Threat to Border Security

- Apprehended at border or port of entry
- Entered after Nov. 1, 2020
- Totality of the facts and circumstances

Criminal Activity Can Impact

- Both admissibility to the United States and Deportation
- To be granted immigration relief one must be admissible
- Applies to immigrants seeking legal immigration status and lawful permanent residency
 - There are limited waivers of inadmissibility
- Immigrants in the U.S. with or without legal status can be subject deportation (removal)
- Criminal activity is a factor in both
- Conviction of domestic violence is a deportable offense

Convictions for Immigration Purposes

- Conviction by judge or jury
- Pleas and Nolo contendere
- Admission of sufficient facts as part of a diversion program
- Expungements & vacated convictions
 - No effect, unless based on due process violations (not immigration results)
- Stipulation to attach police report = record of conviction

Mitigating Factors

- Post-Nov. 1, 2020, entrants who are
 - Victim of domestic or sexual violence in the U.S.
 - SIJS eligible child
 - Victim arrested for domestic violence
- Being a crime victim of domestic violence
- Being a witness in a criminal or civil case
- Having a form of humanitarian immigration relief available to them,
- Being a caregiver or provider for family members in the U.S., etc.

DHS Victim-Centered Approach

- Facilitate access to Justice and to victim-based immigration benefit
- No immigration enforcement action against survivors applicants/recipients
- Search for evidence that suggests a noncitizen is a victim of crime when encountering a victim of crime
- No immigration enforcement action against known beneficiaries of victim-based immigration benefits
- No immigration enforcement against victims and witnesses during criminal investigation or prosecution

Large Group Discussion

What are the most important tools for law enforcement to have on scene when responding to domestic violence involving immigrants?

Making Arrest Decision

Is there probable cause that a crime has been committed?

Does PD policy require an arrest under the circumstances of the crime or is arrest discretionary?

When both parties have used violence, did one party act in self-defense?

When both parties have used violence but neither acted in self-defense, who is the predominant aggressor?

Making Arrest Decision



Video 1

Video 2

Video 3

Self-Defense

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

Elements of Self-Defense

- Person using force had a reasonable belief that s/he was at risk of bodily harm
- Risk of harm was actual or imminent
- The force used was that force reasonably necessary to prevent or stop the infliction of bodily harm



Defensive Wounds on Suspect



















Predominant Aggressor Assessment

- Used when it cannot be determined that either party used self-defense
- Used to determine custodial arrest when both individuals have committed crimes
- Other person who committed a crime can still be charged

Self-Defense Assessment

- Applies to every person in a community
- Consider a flow chart starting use of force/threat
- If self-defense, no need to conduct a predominant aggressor assessment

Determining Predominant Aggressor

- History of violence
- Offensive vs. defensive wounds
- Statements
- Severity, extent of injuries
- Each party's ability to do what is alleged

Determining Predominant Aggressor

- Likelihood of future injury
- Force, violence used to retaliate, punish
- Size and strength of the parties
- Intent of the law

Dual Arrest

- Appropriate when officers have probable cause to believe both parties committed family violence crime against each other, and:
 - No issues of self defense
 - Unable to determine a predominant aggressor
- Officer must document grounds for dual arrest.

Inappropriate Dual Arrest

- Lessens ability to prosecute DV cases and often results in dismissals
- Increases liability (arresting one party without probable cause)
- Victim safety concerns and re-victimization
- Decreases chance that victim will seek help in the future
- Traumatic for children
- Not ideal/discouraged

Predominant Aggressor

- Predominant aggressor only applies when the officer has determined that both parties acted illegally and neither acted in self-defense.
- Always make a self-defense determination before doing a predominant aggressor determination.
- The predominant aggressor is not necessarily the person who hits first.
- Investigate who is causing the greatest harm and using the most aggression

Predominant Aggressor Determination:

- Who used the most force in this incident?
- Who appears to use the highest level of violence in the relationship?
- Who has a history of violence?
- Who has a history of past protection or harassment orders from this victim or other victims?
- Who poses the greatest ongoing threat to the other?
- Who appears to be the most afraid of the other or especially afraid of future injury?

Excluded Factors

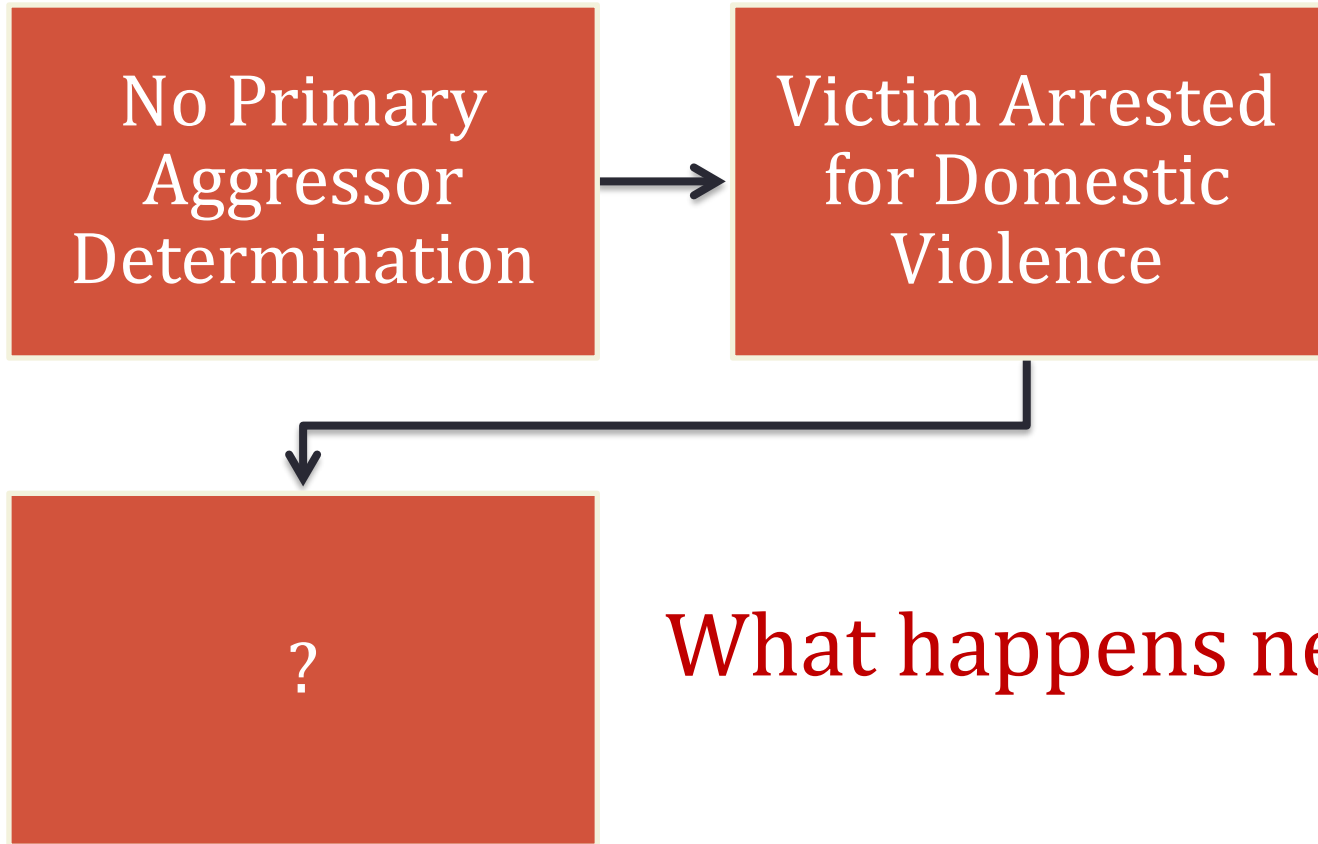
Arrests should be made without regard to

- Marital status, sexual orientation, religion, age, race, culture, immigration status, socio-economic position
- Victim's potential non-cooperation or lack of conviction in criminal prosecution
- Belief that the arrest won't lead to prosecution
- Verbal assurances of abuse will stop
- Previous police calls involving the same victim or suspect
- Denial of abuse despite evidence of DV
- Lack of restraining court order against the suspect
- Adverse financial consequences from arrest
- Alcohol or drug use/intoxication of parties
- Victim's emotional state
- Visibility of physical injuries during law enforcement response

Implications for Judges

- In dual-arrest cases, judges should require evidence of the primary/predominant aggressor.
 - **Careful!** Female victims may plead guilty to be able to return home and care for children.
 - Law enforcement finds it particularly challenging to determine the primary/predominant aggressor with same-sex couples

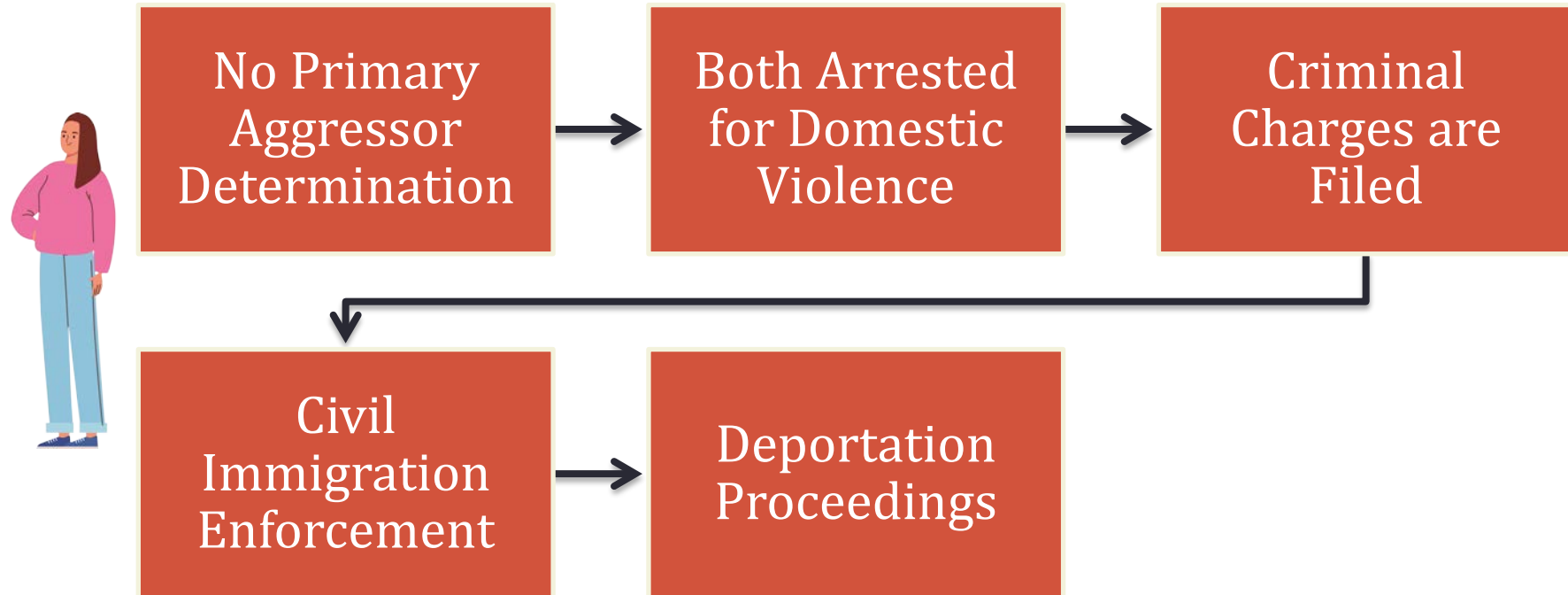
The Chain of Events



What happens next?

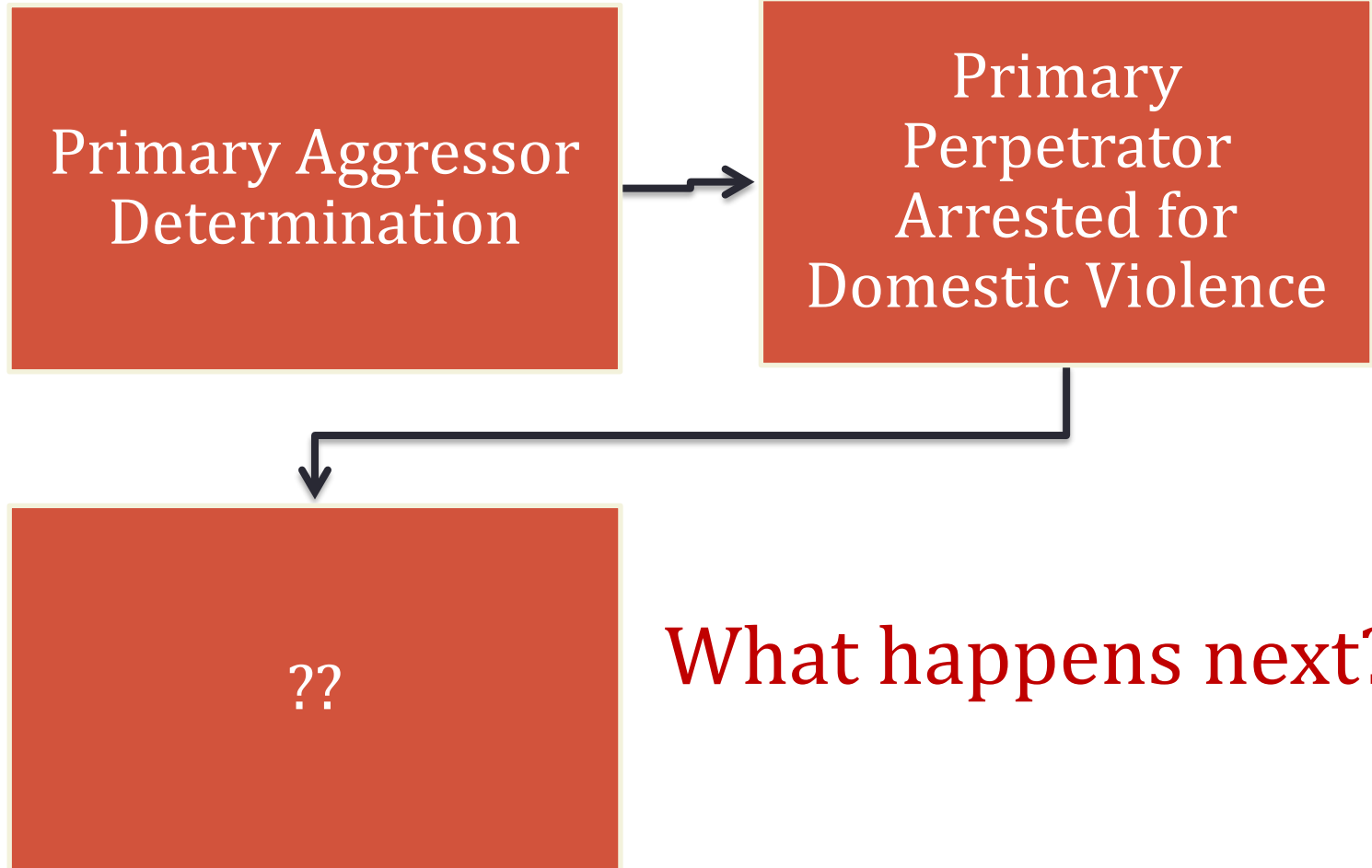


The Chain of Events

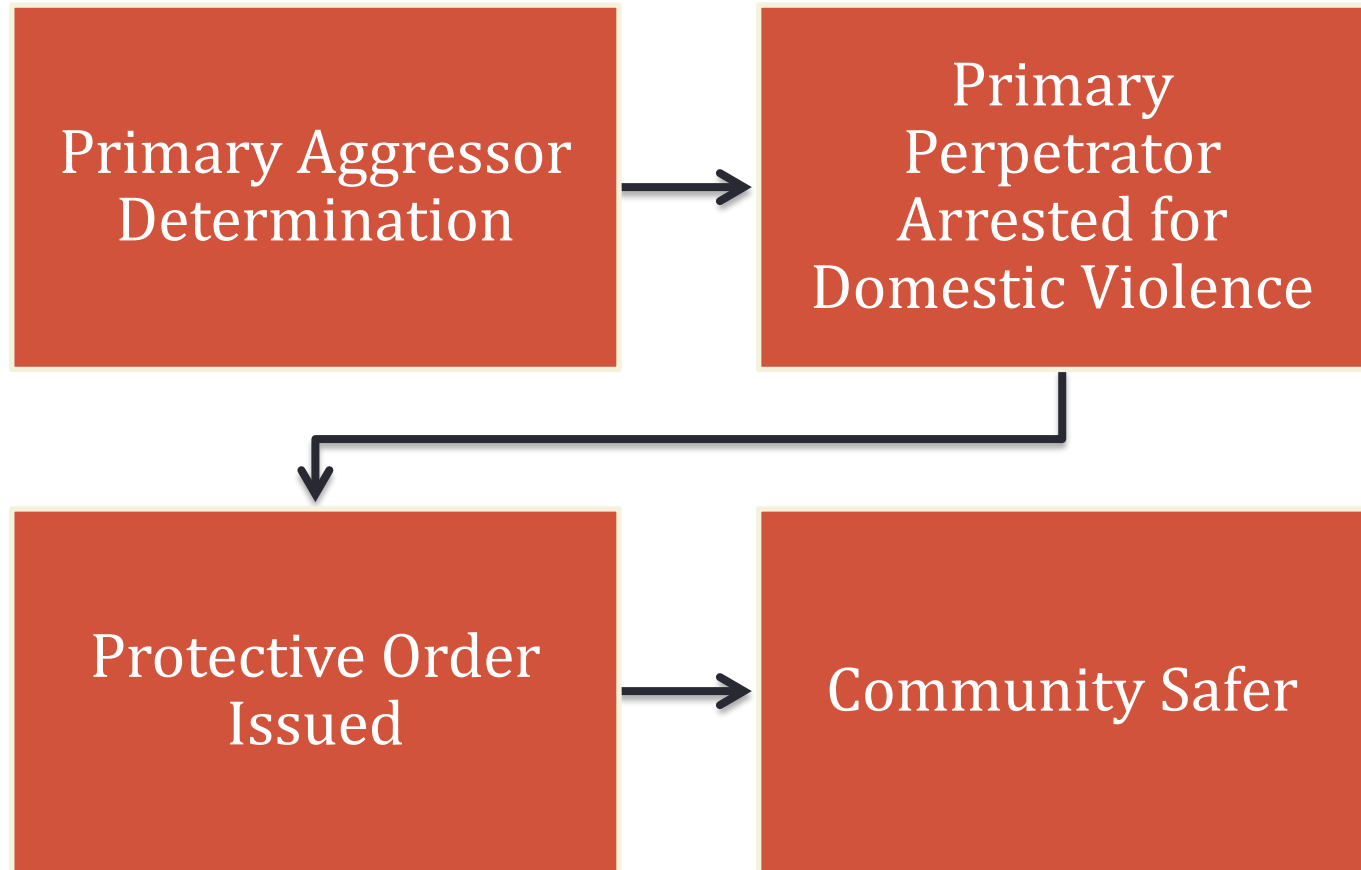


When a Primary Aggressor Determination is Made

The Chain of Events



The Chain of Events



Question: Issuance of
a protection order is
a deportable
offense?

A

True

B

False

Which is a Deportable Offense?

A Domestic violence criminal conviction

B Finding in a custody case that a protection order was violated

C Criminal conviction for violating a civil protection order

D Agreeing to diversion in a protection order enforcement case where upon violation diversion turns into a conviction

E All the above

Protection Orders and Immigration Considerations

- Issuance does not cause a deportable offense
- Violation of a protection order a deportable offense
 - Can lead to loss of lawful permanent residency and other immigration consequences for the perpetrator
 - A finding of violation of the protective provisions of the order can trigger deportation including findings in civil contempt cases and admissions for diversion
- Victims should not be charged with violation of orders issued for their protection

Large Group Discussion



- When both parties seek protection orders against each other or when the judge suspects the person seeking the protection order is the perpetrator
 - What steps do you think a judge could take?

Steps Courts Can Take



- Look for facts that related to a race to the courthouse
- Make primary aggressor determinations

What can the state
court judges see
about the criminal
record of either party?



Important of Primary Aggressor Determination

- Importance of determining who is the primary aggressor when the party against whom a protection order may be sought is the victim
 - This is particularly important for immigrant victims

Thank you!

Technical Assistance and Materials

- NIWAP Technical Assistance:
 - Call (202) 274-4457
 - E-mail info@niwap.org
 - Web Library: www.niwaplibrary.wcl.american.edu
- Asian Pacific Institute on Gender Based Violence
 - Email: <https://www.api-gbv.org/culturally-specific-advocacy/language-access/>
- Materials for this Plenary:
 - <https://niwaplibrary.wcl.american.edu/BostonLanguageAccess>
- Contact NIWAP to provide training for your jurisdiction