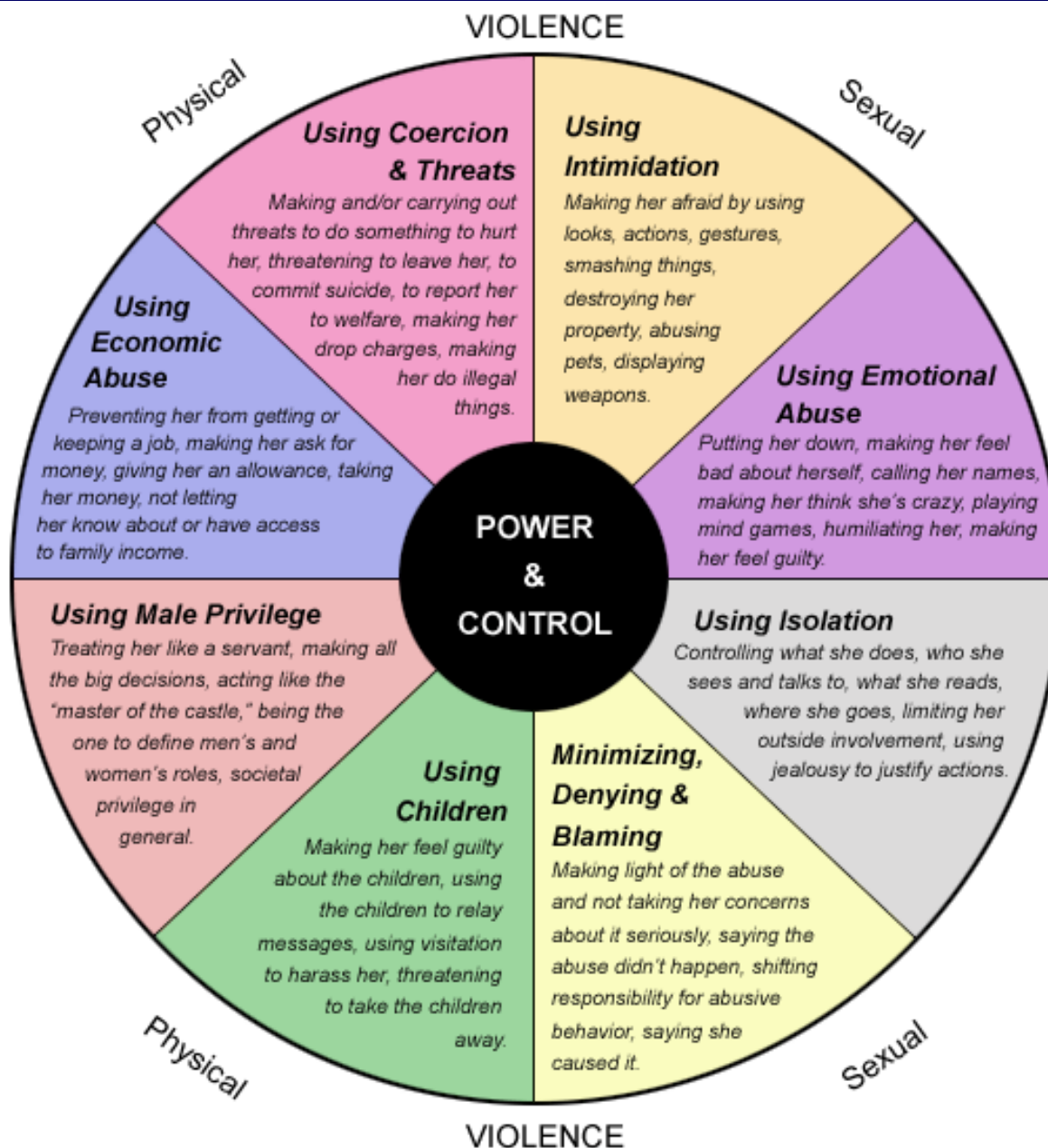


Protective Orders: Practical Considerations

Judge Elizabeth Cutter,
Fourth Judicial District (Hennepin)
Michelle Jacobson
Minneapolis City Attorney's Office

Introduction of Topic and its Relevancy



MN Judicial Branch's DV Risk Assessment Bench Guide

- Created by the Gender Fairness Implementation Committee in 2009
- A tool to help judges “do things better”
- Focus is on obtaining more and better information to make well informed decisions in DV cases

Risk Factors

- Access to firearms
- Use or Threats of a weapon
- Strangulation
- Threats to Kill
- Violence is increasing in frequency or severity
- Forced Sex

Risk Factors

- Controlling over daily activities
- Jealousy
- Threats to Commit Suicide
- Victim's fear of re-assault or be killed
- Pending or prior OFPs or criminal charges

Risk Assessment Guide Use

- Get information from as many sources as possible
- Do not ask victim safety or risk questions in open court
- Ensure that victims are given access to a confidential advocate

Lethality indicators

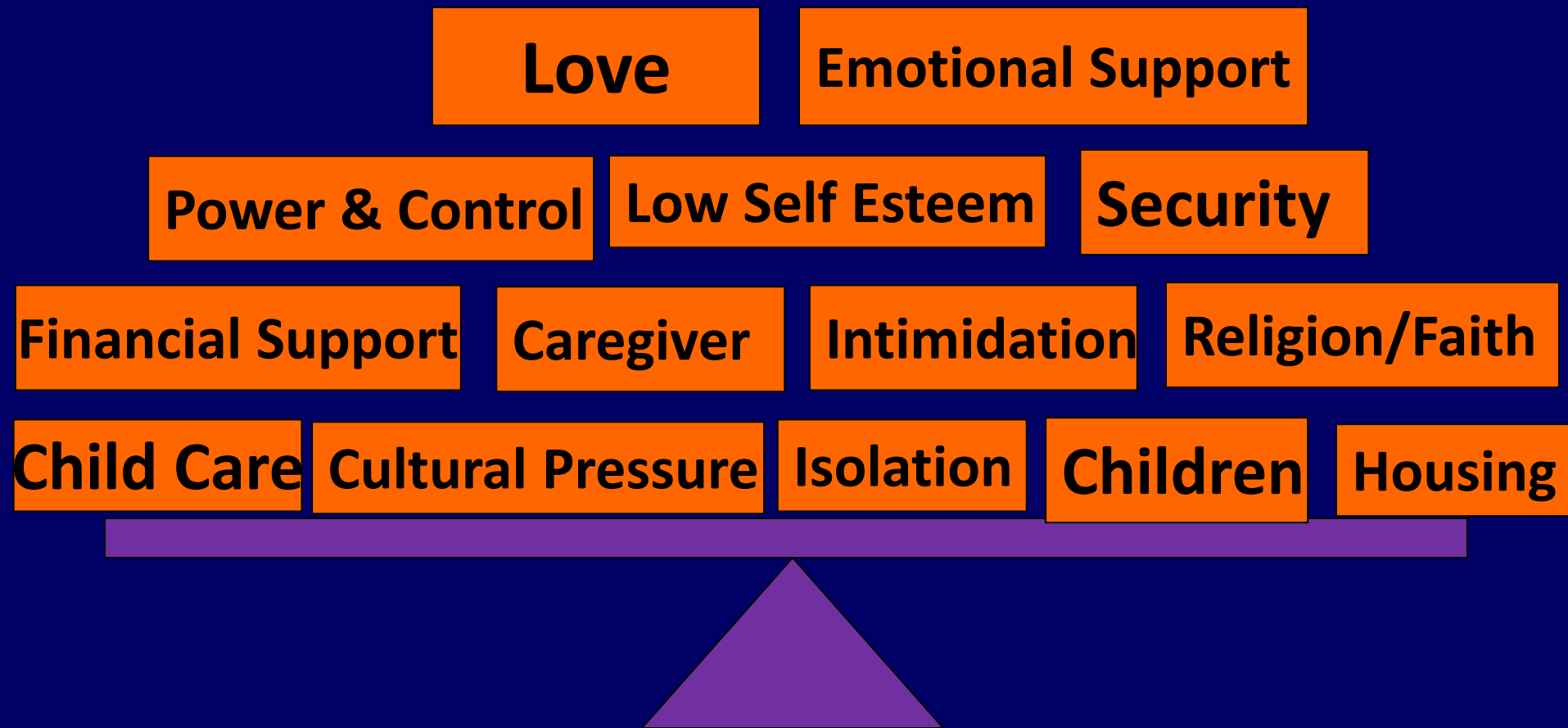
- **Access to a Gun**

- Firearms increase lethal violence six times
- Threatened use of a firearms increases lethality risk 20 times
- 2/3 of homicides committed by assailants prohibited from possessing firearms

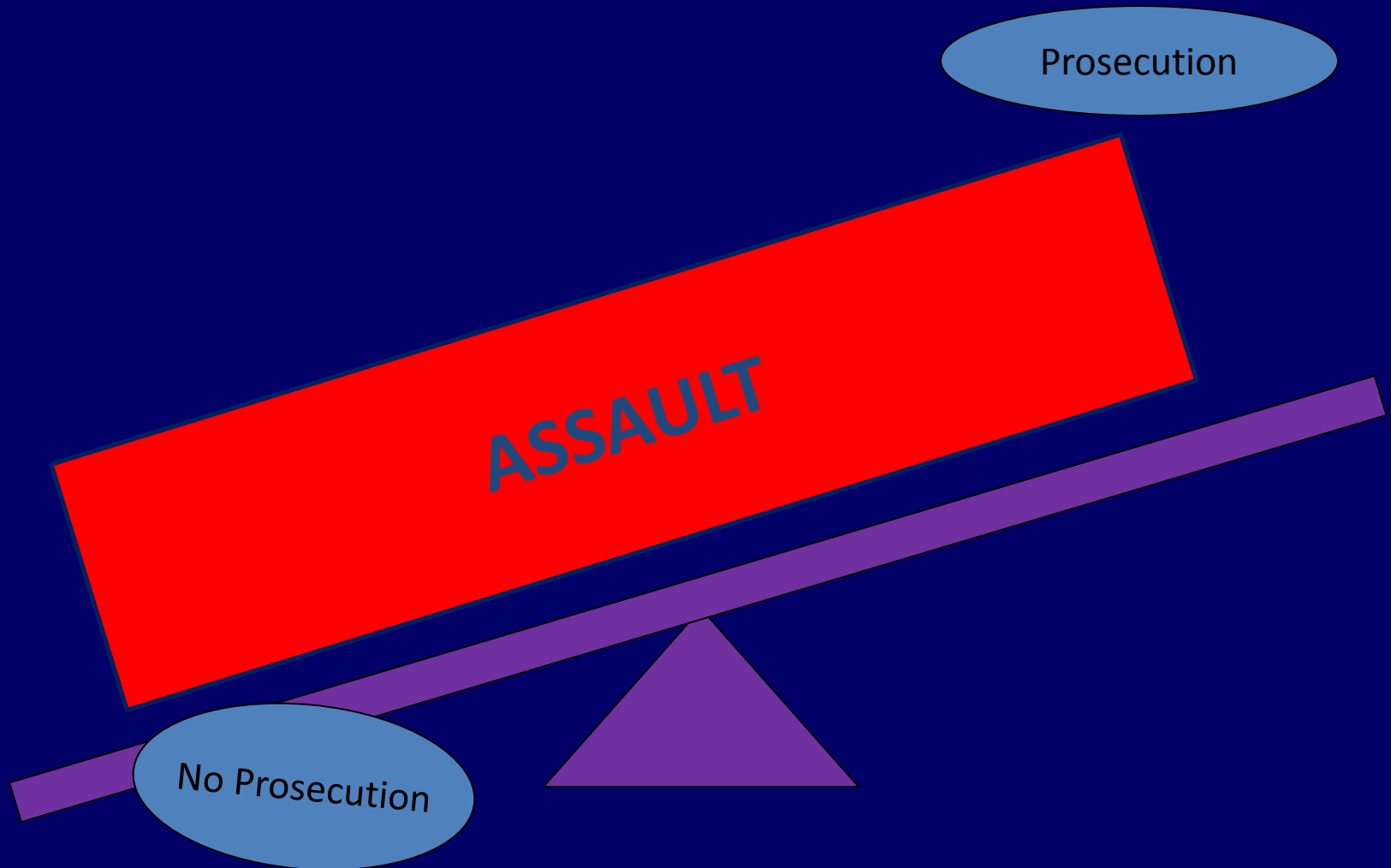
Source: Practical Implications of Current Domestic Violence, Andrew Klein, 2008

Dynamics of Domestic Violence

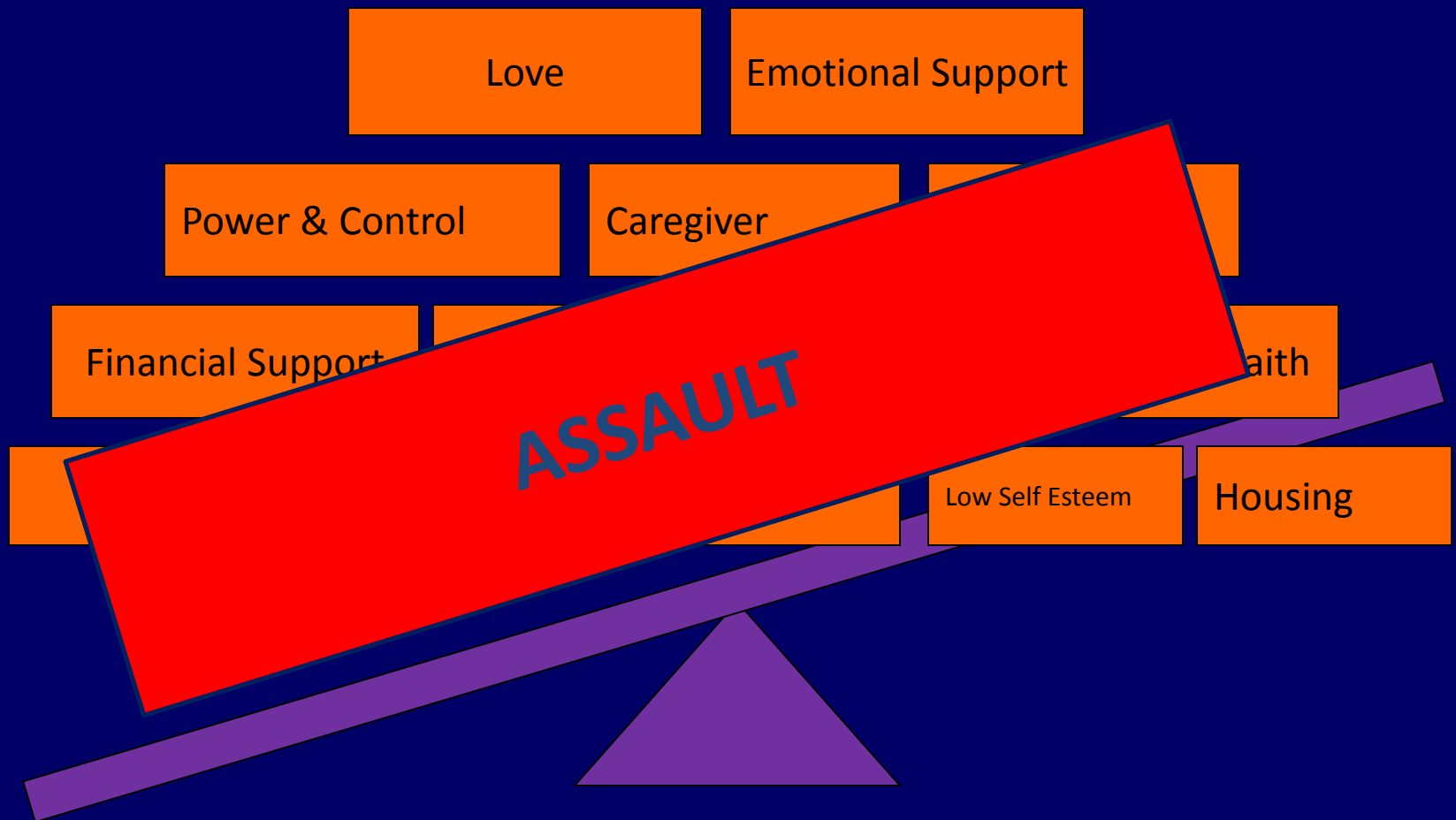
Dynamics of Domestic Violence



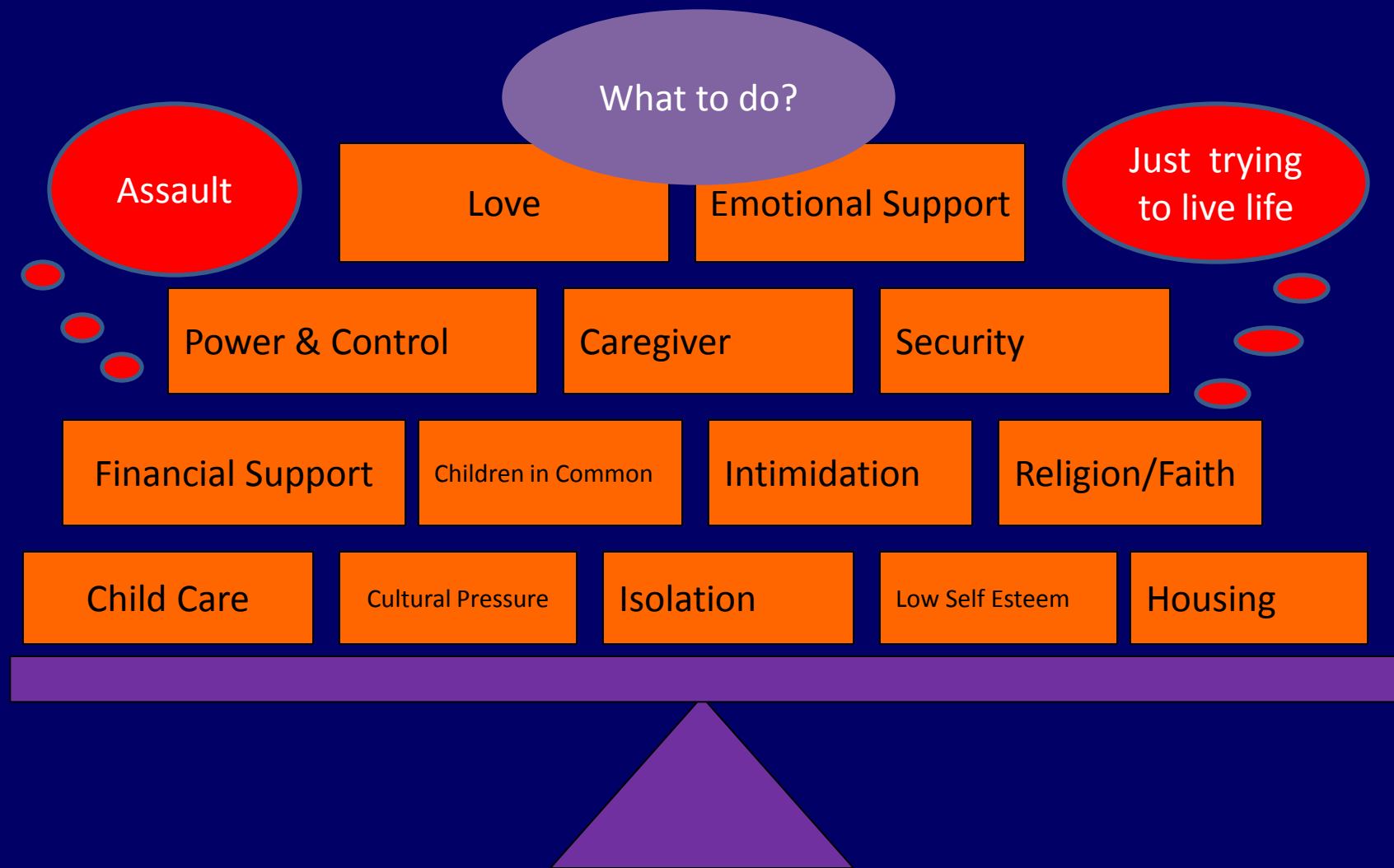
Expected Victim Reaction to Crime



Dynamics of Domestic Violence



Dynamics of Domestic Violence



VICTIMS: How Do They Cope

- Minimize or Deny
- Take Responsibility
- Use Alcohol or Other Drugs
- Self Defense
- Religion
- Seek Help
- Nothing

Bail and Conditions of Release

Special Considerations in Domestic Abuse Cases

Minn. Stat. § 629.72 Requirements

- Applies in domestic abuse, harassment, violations of an OFP and DANCO (518B.01, subdivision 2)
- Judge must review:
 - the facts surrounding the arrest, and
 - the victim or witness account of incident

Findings Must Support the Bail Decision

Court must make findings on the record as to:

- Whether release poses a threat to victim, another family or household member, or public safety;
- Whether there is a substantial likelihood defendant will fail to appear

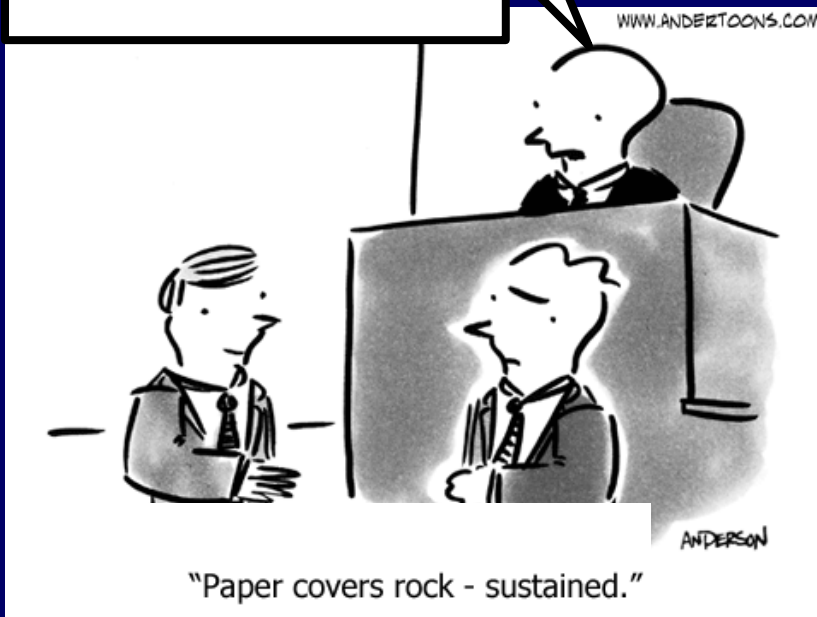
TO DANCO

or not

TO DANCO

(and a little
OFP too)

“Paper
covers rock,
sustained.”



What is a DANCO?

- Minn. Stat. § 629.75
 - Criminal or Delinquency cases
 - Defined case type
 - Pretrial or probationary
 - Unrelated to conditions of release
 - Issued in a separate hearing

DANCO: *State v. Ness*

Due Process Challenge

- No Notice or hearing
- Encourages Arbitrary & Discriminatory Enforcement

DANCO: *State v. Ness*

- Supreme Court found no due process violations
 - Notice – issued in a separate hearing
 - Probable cause determined
 - Court determined whether a CR no contact order was appropriate
 - Court issues a written order

Factors to Consider

- Victim's Wishes
- Severity of the Incident
- Use of a Weapon
- Presence of manipulative or controlling behavior in the report

Factors to Consider

- Prior Assaultive History (convictions, dismissed, and uncharged cases)
- Prior or current OFPs, HROs, or DANCOs

Orders for Protection

- § 518B.01
- How differ from DANCO
- Kids
- Victim Autonomy

Orders for Protection

- Family or Household Member alleging Domestic Abuse
 - Physical harm, bodily injury, or assault
 - Infliction of fear imminent physical harm, bodily injury, or assault
 - Terroristic threats, criminal sexual conduct, or 911 interference

Model Policy on Imposing, Modifying and Enforcing NCO's

http://www.aequitasresource.org/model_policy.pdf

Overview

- DANCOS are an effective tool to promote public safety when used properly
- OFP is victim driven process

Questions??