

European Group on Sentencing & Penal Decision-Making. What is, and Should be, the Role of Gender in Sentencing and Penal Decision-Making? European Seminar. Thursday 18 June – Friday 19 June 2026, University of Maia, Portugal



Sentencing & Penal Decision-Making European Working Group

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Sentencing and Penal Decision-Making? European
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**University of Maia & Interdisciplinary Centre for Gender Studies
(CIEG), Maia, Porto, Portugal**

Organisers: Ana Guerreiro (Host) and Cyrus Tata (Chair)

ABSTRACTS

Sentencing of Femicide in the Netherlands

Sigrid van Wingerden, Leiden University (and Ellen Gijsselaar, Marloes van Noorloos and Mojan Samadi)

Femicide has received increasing attention in Dutch public debate and media coverage in recent years. Femicide refers to the killing of a woman by her (former) intimate partner and occurs approximately twenty times per year in the Netherlands. Heightened societal concern has prompted politicians to propose legislation introducing femicide as a distinct criminal offence. However, it remains unclear how femicide is currently addressed within existing sentencing practices.

This study combines quantitative analysis with doctrinal legal research. First, we examine sentencing outcomes in femicide cases in comparison to other homicide cases, focusing specifically on the role of the relationship between perpetrator and victim. Second, we conduct a qualitative analysis of judicial decisions to identify which characteristics of femicide are taken into account during sentencing according to the reasoning of the judges, and to what extent judges explicitly acknowledge the gendered nature of the violence.

The Conditional Nature of Gendered Punitiveness: Evidence from a Cross-National Vignette Study

Ines Sučić, William DeSoto, Aurela Anastasi, Eva Bertok, Simona Franguloiu, Dean Lipovac, Milana M. Ljubičić, Mojca M. Plesničar, Ljubljana University, Slovenia

This study examines how offence type, offender sex, and respondent characteristics shape public punitive attitudes across five Central and Eastern European (CEE) countries: Albania, Croatia, Romania, Serbia, and Slovenia. Using a vignette-based design, we analysed sentencing preferences among 2,068 adult respondents, focusing on two outcomes: recommended sanction type and imprisonment length. The study incorporates a wide range of predictors, including sociodemographic factors, experiential variables, and attitudinal measures, allowing for a comprehensive assessment of both legal and extra-legal influences on punitiveness.

Across all models, offence type emerged as the strongest and most consistent predictor of punishment preferences. Respondents recommended harsher sanctions and longer prison sentences for more serious and harm-producing offences, confirming the central role of offence severity in structuring punitive judgments. Offender sex also showed a stable and significant effect: male offenders were more likely to receive prison sentences and longer imprisonment terms than female offenders. However, this gender effect was conditional on offence type. The largest disparities were observed for severe crimes, particularly child sexual abuse and homicide, where male offenders were punished more harshly. In contrast, no gender differences were observed for abuse of authority, and in some cases, female offenders received slightly harsher sentences, suggesting offence-specific reversals of typical gender patterns.

Respondent sex played a limited role overall, with only modest differences observed in sentencing preferences. However, an interaction effect indicated that female respondents differentiated more strongly between male and female offenders when assigning imprisonment length. Other sociodemographic variables showed weak or inconsistent associations with punitiveness, with the exception of parental status, which was linked to greater punitive tendencies. Among attitudinal factors, liberal political orientation and higher trust in criminal justice institutions were consistently associated with lower punitiveness.

These results contribute to a more nuanced understanding of gendered punishment, highlighting that disparities are not uniform but emerge through the interaction of offence characteristics, social norms, and individual dispositions.

Sentencing Rape in Portuguese Courts: What Drives Judicial Decisions?

First author: **Pedro Sousa** (School of Criminology, Faculty of Law, **University of Porto**, and CIJ)

Coauthors:

Ana Guerreiro (University of Maia; School of Criminology, Faculty of Law, **University of Porto**, and CIJ; CIEG-ISCSP-UL)

Jorge Quintas (School of Criminology, Faculty of Law, **University of Porto**, and CIJ)

This study investigates sentencing patterns in Portuguese courts, examines how legal and extralegal factors interact to shape judicial outcomes, and aims to contribute to the broader literature on judicial decision-making in sexual violence cases.

Drawing on an exhaustive content analysis of 89 court decisions, we analyse variations in conviction rates, custodial sentences, and sentence lengths to assess sentencing consistency. The dataset captures a wide range of legal and extra-legal variables, enabling a nuanced examination of the factors that influence judicial reasoning at both the trial and appellate levels.

Our findings reveal that custodial sentences dominate sentencing outcomes and that practices remain broadly consistent across trial and appellate courts. Through statistical analysis, we identify key predictors of imprisonment: prior criminal records, mental disorders, substance abuse, negative personality traits, and the presence of aggravating or mitigating circumstances. Sentence length, in turn, is primarily shaped by crime severity, mental health history, and substance use. The influence of extra-legal factors persists even after controlling for legally relevant variables, suggesting that judicial discretion operates beyond strictly normative frameworks.

Taken together, these results illuminate the tension between legal principles and offender-centred considerations in sentencing. While legal factors remain dominant, extra-legal variables exert a meaningful influence on judicial discretion, raising important questions about consistency, proportionality, and fairness in criminal justice responses to sexual violence.

This study contributes to ongoing debates on judicial decision-making and sentencing reform, with practical implications for policymakers, legal

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practitioners, and scholars working at the intersection of law and social science.

***Conformidad*» negotiations from a gender perspective: empirical evidence from Spain**

Olivia Benítez i Manrique

University of Girona

Plea bargaining and analogous institutions, such as the Spanish *conformidad*, have been widely studied, also from a gender-based approach. However, most research has focused on gender differences among defendants, paying less attention to the legal practitioners who negotiate and, in practice, shape the terms of such agreements.

This presentation is based on a broader study of the practical use of *conformidad* in the Spanish context. As part of that study, 500 judicial proceedings were observed, and 52 semi-structured interviews were conducted with defence lawyers, prosecutors, and judges. The fieldwork revealed several relevant issues concerning the role of gender in *conformidad* negotiations.

The findings suggest that, in situations of conflict or disagreement, women practitioners tend to adopt more flexible and pragmatic positions than their male counterparts, showing a greater willingness to facilitate agreements. Likewise, when tensions arise during negotiations, women judges appear to take a more proactive role, at times acting as mediators to ease tensions between the parties.

At the same time, these dynamics occur in a context in which women continue to face gender biases that may affect the recognition of their professional authority. Such biases are reflected, for example, in condescending attitudes and in a greater tendency to question women's knowledge, experience, or legal expertise, particularly in the case of younger professionals.

Taken together, these findings highlight a set of gendered dynamics in *conformidad* negotiations that deserve further analysis. They also point to the need for broader research on the role of gender in these negotiation processes and on whether differences in bargaining dynamics may ultimately affect outcomes for defendants.

Shaping gender victimhood: Unpacking judges' perceptions of women who are victims of sexual violence

Bárbara Pereira and Andreia de Castro Rodrigues

William James Center for Research (WJCR), Ispa - Instituto **Universitário, Lisbon, Portugal**¹

Abstract

Gender-based violence against women, particularly sexual violence (SV) such as rape, remains a pervasive social and legal problem, reflecting entrenched gender inequalities and power asymmetries. Despite increasing legal recognition, the response of criminal justice systems continues to raise concerns, particularly regarding how women who are victims are perceived and evaluated within judicial processes.

Judicial reasoning in SV cases frequently reflects these normative frameworks, placing strong emphasis on victims' behavior before, during, and after the assault. Credibility tends to be assessed against implicit expectations of the "ideal victim", privileging visible resistance, prompt reporting, and consistent conduct, while deviations may lead to skepticism and minimization of harm. Such assumptions overlook the variability of victims' responses and are inconsistent with trauma-informed perspectives.

Within this framework, our work has been examining how these dynamics operate in Portuguese appellate court rulings, focusing on the construction of gender victimhood, the interpretation of victims' behavior and credibility, and the judicial assessment of the seriousness of SV. Across these dimensions, we explore whether and how judicial decisions in cases of rape reproduce gendered biases in the representation of women who are victims.

The Sentencing Act 2026: A Progressive Dystopia for Women Offenders in England and Wales?

Gemma Birkett

City St George's University, England

New legislation in England and Wales instructs sentencers to suspend all custodial sentences of less than 12 months unless there is a pressing reason not to. Women offenders are expected to be a core beneficiary of this development. This rationale behind electronic monitoring, in addition to its cost-effectiveness, is that it is seen as a more 'humane' and progressive option on the grounds that it can be operationalised invisibly. This is both a positive and negative as far as women are concerned. There is an issue that in expanding the use of electronic monitoring for women (in order to reduce the prison population), new mechanisms of control will become normalised. While there is limited research on women's experiences of electronic monitoring, it has long been recognised that traditional forms of tagging (radio frequency) are experienced differently. Electronic monitoring is predominantly designed for male offenders, and research has highlighted gendered differences in relation to impact on relationships, families and children. Research has found that women often have lower rates of compliance with electronic tagging than men, largely relating to their domestic responsibilities and their inability to undertake their caring and domestic responsibilities within the inflexible operating system. Research has also revealed that surveillance in the community leads to increased levels of fear and anxiety among women. Tagging can be experienced as an 'electronic leash' where the 'shackled' carry the virtual prison wherever they go. Recent developments in the form of GPS tracking, alcohol abstinence tags and fingerprint technology only add to this increasingly *intrusive* form of surveillance. I use this paper to consider some potential implications for women offenders following the implementation of the Sentencing Act 2026. While seemingly good news, future judicial practice could be setting women up to fail in some form of progressive dystopia. There are important considerations with respect to increased levels of surveillance and net-widening, and the potential rub with decades of dedicated gender-responsive policy gains in England and Wales. The new legislation shines a spotlight on the growing use of 'gender neutral' technology in a gender-responsive age.

The Statistical Residual and the Doubled Penalty: How Sentencing Regimes Designed for the Ninety-Two Percent Compound the Punishment of the Other Eight

Vítor Neves

Lawyer, Porto, Portugal

Member, Legal Expert Advisory Panel (LEAP) – Fair Trials

Legal Committee, AI Ethics and Integrity Association (AIEI)

Women constitute approximately eight per cent of the Portuguese prison population, a proportion broadly stable across Western European jurisdictions and stable across decades. The global numbers tell a different story of acceleration: the female prison population has grown by fifty-seven per cent since 2000, more than seven hundred and thirty thousand women and girls are imprisoned worldwide, and the rate of increase exceeds that of the male population. These two facts — the residual minority within national systems and the accelerating absolute scale — define the structural problem this paper invites the roundtable to address.

The eight per cent figure is not a curiosity of demography. It is the operative condition that has shaped, by quiet default, the architecture of the penal regime: its physical facilities, its disciplinary procedures, its rehabilitation programmes, its risk-assessment instruments, its staff training, its sentencing assumptions. When a population variable affects so small a minority, the cost of designing for that population is treated, by penal administration, as disproportionate. The result is a regime, gender-neutral in name, configured by default to the majority case. Women enter that regime as exceptions to be accommodated rather than as a population for whom anything has been designed.

The paths into that regime, however, are not equivalent to those of the majority. The dominant offence category for women in Portuguese prisons is drug trafficking, much of it courier activity rooted in coercion, debt, dependency and family pressure. Globally, thirty-five per cent of imprisoned women are serving sentences for drug-related offences, compared to nineteen per cent of men. Twenty-five per cent of women in Portuguese prisons are foreign nationals, against approximately sixteen per cent among men — an intersectional residuality where the gender minority is disproportionately composed of a nationality minority. The contextual features that drive women into the system are recognised in the international literature but seldom enter the sentencing record as mitigating circumstances of weight. The European procedural and sentencing frameworks — the Bangkok Rules of 2010, Article 4 of the European Convention on Human Rights, the Council of Europe Recommendation Rec(2006)2 — provide normative anchors. Their operationalisation, in Portugal as elsewhere, has not kept pace with the diagnosis the international literature has made repeatedly available.

The doubled penalty has, at this point, a name. Women face the consequences of an offence whose contextual features sentencing courts treat as background, and they face simultaneously the structural consequences of imprisonment in a regime not designed for them – separation from children for whom they were primary caregivers, treatment protocols calibrated to a male population, post-release pathways into homelessness that are themselves higher among formerly imprisoned women than formerly imprisoned men.

The paper proposes three observations for discussion. First, that statistical residuality is itself a procedural condition with constitutive effects on the regime, not a problem of inadequate attention to be remedied by minor adjustment. Second, that the gendered profile of pathways into imprisonment – particularly through drug courier offences whose coercive context the literature has documented for decades – requires that mitigating circumstances be operationalised at sentencing rather than left to administrative discretion at execution. Third, that the language of gender neutrality, in this domain, is the form the injustice takes. The regime cannot be reformed by neutral adjustment alone, because the neutrality was the configuration that produced the residuality in the first place.

The women the system declares it merely accommodates are not eight per cent of the problem. They are the test of whether the penal regime is capable of recognising the categorical pretensions of its own neutrality.

The Ideal Participant in Restorative Justice: Normative Expectations and Authenticity in Gender-Based Violence Cases

Tânia Nascimento

University of Strathclyde, Scotland

Restorative justice (RJ) has been promoted as an emotionally intelligent approach to crime (Sherman, 2003; King, 2009), capable of repairing harm (Strang, 2002) and reducing reoffending (Sherman et al., 2000; Robinson and Shapland, 2008). In contrast to conventional criminal justice, often criticised for its formality and scripted procedures, RJ is commonly presented as a more humanistic and participant-led process, particularly through its emphasis on communication.

The benefits of RJ have been widely discussed and debated, particularly in relation to gender-based violence, where formal justice processes have been criticised for limiting victims' voice and participation (Daly, 2008, 2016). RJ is often presented as addressing these limitations by enabling direct communication between participants, allowing victims to ask questions, express emotions, articulate the impact of harm, and receive acknowledgement and accountability from those responsible. Such encounters are often praised for creating a safe space in which participants can "freely" express themselves, fostering a climate of "authentic" and "genuine" communication (Retzinger & Scheff, 1996; Van Stokkom, 2019; Suzuki & Jenkins, 2022). In this paper, however, I question whether such communication can be understood as intrinsically spontaneous, authentic, or genuine.

Drawing on narrative interviews, focus groups, and ethnographic fieldnotes documenting the daily work of RJ facilitators, this paper argues that communication is actively cultivated prior to restorative meetings, during preparation. At this stage, facilitators shape participants' dispositions to align with RJ ideals, thereby influencing how they communicate, express emotion, and engage with the process.

Research on criminal justice demonstrates that participation is structured by implicit normative expectations. Victims are frequently understood and evaluated against the idea of the "ideal victim", originally developed as a heuristic within criminology (Christie, 1986; Walklate, 2011; Duggan, 2018), while defendants are assessed against an implicit model of the "ideal defendant", expected to admit guilt, accept responsibility, and display appropriate emotional dispositions (Tata, 2007; Field and Tata, 2023). Rather than standing apart from these dynamics, RJ may reproduce similar expectations in different ways, shaped by its own normative ideals (Maglione, 2017; 2023).

In cases involving gender-based violence, these expectations become particularly visible. For example, victims of domestic abuse may be considered "ready" to participate only where they demonstrate particular dispositions, such as

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not seeking to rekindle the relationship with the perpetrator or expressing anger in a “respectful” manner.

The paper offers a critical reconsideration of how RJ communication has been idealised and contributes to broader debates on penal decision-making, highlighting how different systems structure participation in distinct but comparable ways.

'You're not supposed to talk': Opportunities, limits and potential for defendant 'voice' in sentencing in England and Wales.

Dr Amy Kirby, Senior Lecturer in Criminology

Birkbeck, University of London

Email: al.kirby@bbk.ac.uk

The concept of 'voice' has become increasingly common in discussions of 'participation' in the criminal courts, including debates about the extent to which Victim Personal (or Impact) Statements facilitate 'voice' for victims and survivors at the point of sentencing. Opportunities for defendants' participation and voice has received less attention, with recent media and politicised debates – citing high profile examples of defendants refusing to attend sentencing hearings – suggesting a lack of appetite for this. However, findings from a three-year qualitative study of ['Lived Experiences of the Law'](#) – which involved narrative interviews with 79 defendants in England and Wales – indicate that defendants would often like to participate more actively in their sentencing hearing but feel stymied in doing so. Participants in our study cited a range of reasons for wanting more 'voice' in proceedings which related both to procedural justice (e.g. wanting an opportunity to tell 'their side of the story') and outcome related justice (e.g. intervening to correct inaccuracies that may impact on sentencing decisions).

This paper will examine the opportunities that defendants have for 'participation' and 'voice' in sentencing (e.g. via letters to the judge, humane interactions with justice professionals) and the limits to this (e.g. rushed mitigation or pre-sentence reports; 'robotic' or impersonal interactions with justice professionals). It will also reflect upon the gendered dimensions of 'participation' and 'voice' in sentencing. This includes the gulf between idealised expectations and the stark reality of how the system operates for men with high social and cultural capital but little prior system contact; and gendered constraints in participation and 'voice' for women, such as the use of patriarchal language or feeling silenced in a male-dominated environment. The paper will conclude by reflecting upon what 'voice' in sentencing could look like in future.

Engendering the Assumed Categories of Sentencing & Penal Decision-Making: Towards a Relational Theory

Cyrus Tata
University of Strathclyde, Scotland

How can we best make sense of the daily practices of sentencing and penal decision-making? I argue that the empirical study of sentencing and penal decision-making is dominated by a series of taken-for-granted epistemic categories (ways of knowing). These include categories so familiar that they are rarely questioned, for example: a primary focus on the individual formal decision-maker; rules versus discretion; individual case factors; step-by-step discrete decision points; autonomous professional work.

Yet when we study decision-making more closely the separation of these categories begins to make less sense. It becomes increasingly apparent that no category can be understood in isolation from other categories: no 'thing' is meaningful in itself. Instead, a richer understanding of decision-making emerges which underlines that it is *relationships between* categories (and people) which make meaning.

Where do the taken-for-granted categories come from? I suggest that these categories are a legacy of normative liberal political ideals (and the rise of capitalism) which sought to emancipate the individual from tyranny. These normative ideals have become the focus not only of what ought to happen but the prevailing study of empirical study too, which is dominated by the trope of autonomous individualism. This trope is projected not only onto how professionals are studied as competing individuals, but even the idea of each case as comprised of supposedly autonomous, competing individual factors.

Gender scholars have pointed out how certain ideas of the subject of law (e.g. the mythical 'rational man of law') carries a set of assumptions which are, in fact, not neutral, but aligned with the experience of property-owning men. Inspired by these writings, I will explain how the taken-for-granted categories of studying sentencing and penal decision-making correspond with and perpetuate masculine notions of freedom, restriction, competition, property, linear experience, sequential reasoning, and autonomous individualism. This in turn enables us to begin to think about how to develop a more relational empirical theory of sentencing and penal decision-making.

From Domestic Violence to Intimate Homicide: Judicial Narratives and Sentencing Trajectories from a case study in Portugal

Cátia Pontedeira, University of Maia

This paper examines how Portuguese courts construct and respond to recurrent violence within intimate relationships through a qualitative criminological analysis of judicial decisions involving the same offender across multiple proceedings and different victims. Sentencing and penal decision-making are often presented as legally objective and gender-neutral processes. However, feminist criminology have long questioned whether judicial responses to intimate violence can ever be fully detached from broader social understandings of gender, intimacy, dangerousness and victimisation. While some attention has been devoted to sentencing in intimate partner homicide, less is known about how courts interpret and narratively frame recurrent violence across distinct proceedings and escalating forms of offending. This paper addresses that gap through a qualitative judicial discourse analysis of Portuguese criminal decisions concerning the same offender across separate intimate relationships and multiple judicial instances. The corpus includes first-instance, appellate and Supreme Court decisions relating to two intimate homicides involving different victims, together with domestic violence proceedings concerning another intimate relationship, including a first-instance conviction later overturned on appeal. Rather than focusing solely on sentence severity or doctrinal outcomes, the paper examines how courts construct the meaning of violence, the identity of the offender, and the significance of intimacy across different procedural and factual contexts. Particular attention is paid to judicial interpretations of intent, dangerousness, prevention, credibility, and relational dynamics, as well as to the extent to which violence is recognised as isolated offending or as part of a broader trajectory of recurrent intimate violence. The analysis is guided by three questions: (1) how do courts narratively frame violence across different intimate relationships and judicial proceedings; (2) to what extent do judicial decisions recognise escalation, continuity, or patterns of violence across cases; and (3) what penal rationalities emerge when courts respond to non-lethal and lethal forms of intimate violence?

Preliminary reflections suggest that judicial responses may vary significantly according to offence type and procedural stage, revealing

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important tensions between legal neutrality and broader socio-cultural understandings of intimate violence. While lethal violence often preventive reasoning, in intimate partner relationships, these prevention of escalations are not always considered appropriately. Judicial approaches to earlier or non-lethal violence reveal lighter considerations about violence and inconsistent patterns of recognition and penal response. By examining judicial reasoning across interconnected decisions involving the same offender, this paper contributes to debates on gender and penal decision-making, judicial narratives of intimate violence, and the relationship between domestic violence and lethal offending.

Different to ordinary crime? How judges approach the sentencing of breaches of domestic violence protection orders in the District Court in Ireland.

Dr. Niamh Maguire, Senior Lecturer in Law, Department of Law and Criminal Justice, South East Technological University, Ireland.

Recent years have seen progressive shifts in how western legal democracies respond to domestic violence. Recent positive developments in Ireland include the ratification of the Istanbul Convention in 2019, the adoption of the Third National Strategy on Domestic, Sexual and Gender Based Violence 2022-2026 which set out a zero-tolerance approach to domestic violence and recent legislative updates in the Domestic Violence Act 2018, such as the introduction of a new offence of coercive control.

Notwithstanding these advances, in 2023 the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO, 2023) baseline evaluation report on Ireland noted concerns in relation to certain judicial and sentencing practices in the area of violence against women, particularly the frequent application of lenient sentences, including suspended and conditional sentences, which in its view indicated that criminal acts of violence against women appear to be viewed as less dangerous than other criminal acts.

Ireland does have an offence of domestic violence so the main form of criminalisation for domestic violence is breach the terms of a domestic violence protective order under section 33 of the 2018 Act. Section 33 offences are usually deal with as minor offences and tried by way of summary trial in the District Court. On conviction perpetrators are liable to a fine and/or a maximum period of 12-month imprisonment. Statistics are not routinely published in Ireland on the numbers of breaches prosecuted, on the outcomes of prosecutions that are begun, nor on the sentencing outcomes of those cases that are sentenced. In 2022, in the absence of any statistical data on sentencing in domestic violence cases in Ireland, the Judicial Council, newly established in late 2019, commissioned research to explore the perspectives of District Court judges towards the sentencing of relationship violence, particularly the sentencing of section 33 offences.

Drawing on theoretical frameworks developed by Galtung (1969) and others on structural violence and Applin et al (2023) on patriarchy-facilitated violence, this paper analyses judicial perspectives on sentencing domestic violence offences. It highlights the disjuncture between

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government policy of zero tolerance towards domestic violence and the reality that sentencing judges approach domestic violence offences differently to ordinary crime often adopting family law solutions rather than sentencing principles based on proportionality.

French soil batterers: Risk, Needs and Dangerousness

Martine Evans (University of Reims, France)

This study examines the allocation and effectiveness of protective technologies—geolocation bracelets (BAR) and tele-protection devices (TGD) — in cases of domestic violence (DV) adjudicated by a semi-rural French court. Against the backdrop of recent national reforms prioritising victim protection, the research explores how these devices were deployed, whether they reached the highest-risk domestic violence aggressors (DVAs), and how they shaped victims' experiences of safety.

Drawing on case records for 102 DVAs and qualitative interviews with victims, the study analyses both judicial decision-making and lived experiences of protection. Allocation patterns aligned closely with offender risk profiles, with BAR/TGD recipients presenting extensive coercive control histories and elevated dangerousness indicators. Victims consistently described feeling safer when the devices were in use, yet their implementation was constrained by technical and legal limitations. Importantly, court procedures sometimes reflected partial or inconsistent understandings of offender dangerousness, with borderline personality traits perceived as more threatening than antisocial traits despite comparable risk levels.

The findings underscore both the promise and the limitations of protective technologies in safeguarding victims. They highlight the need for technological improvements, streamlined allocation processes, and expanded access to evidence-based offender interventions. More broadly, the study points to systemic challenges in resource distribution and in the integration of criminological evidence into judicial practice. Despite limitations in scope and sample size, the research offers critical insights into strengthening victim protection frameworks and addressing persistent gaps in responses to domestic violence.