

## The Science Has Evolved: Why It Is Time to Update Maryland's Statute Permitting Expert Testimony on Battered Spouse Syndrome

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### Recommended Citation

Tyler Fultz, *The Science Has Evolved: Why It Is Time to Update Maryland's Statute Permitting Expert Testimony on Battered Spouse Syndrome*, 83 Md. L. Rev. ()

Available at: <https://digitalcommons.law.umaryland.edu/mlr/vol83/iss4/8>

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# COMMENT

## THE SCIENCE HAS EVOLVED: WHY IT IS TIME TO UPDATE MARYLAND'S STATUTE PERMITTING EXPERT TESTIMONY ON BATTERED SPOUSE SYNDROME

TYLER FULTZ\*

The federal government determined that the concept known as “Battered Spouse Syndrome” was outdated in 1996.<sup>1</sup> In reaching this determination, field experts concluded that (1) the “Battered Spouse Syndrome” model was methodologically “imprecise” and “misleading” in analyzing intimate partner violence (“IPV”) survivors’ experiences<sup>2</sup> and (2) better research already existed that could help IPV survivors facing criminal prosecution explain how their behaviors were reasonable in light of the abuse they

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\* I am forever grateful to everyone in my community who has helped this Comment come to fruition. First and foremost, I have to shout out Professor Leigh Goodmark, whose advocacy for intimate partner violence survivors and consistent positive reinforcement have been instrumental in me being able to construct this piece. In that vein, I must thank Vassar College’s CARES alums, Colorado State University’s Victim Assistance Team members, and Professor Dee DePorto for stoking my passion for this work; it is because of my time with each of them that I continue to focus on survivor advocacy in legal scholarship. I also want to thank Adrian Kibuuka, Rosemary Ardman, Jack Newhouse, Mia Juliano, Thomas Kiley, and the rest of the *Maryland Law Review* team for the extra care and attention that they put toward this piece throughout the editing process. To my evening student cohort, thank you for the constant reminder that we evening students can work full time, go to law school, and still do big things. To my family, thank you for always unconditionally believing in me, which gave me the drive I needed to put this together. Finally, I must thank my amazing partner, Ryan Herrschaft, for supporting me throughout this process and consistently reminding me that boundary setting and taking time for joy are essential to writing my best work. I could not have put this together without every one of you.

1. Malcolm Gordon & Mary Ann Dutton, *Validity of “Battered Woman Syndrome” in Criminal Cases Involving Battered Women*, in THE VALIDITY AND USE OF EVIDENCE CONCERNING BATTERING AND ITS EFFECTS IN CRIMINAL TRIALS: REPORT RESPONDING TO SECTION 40507 OF THE VIOLENCE AGAINST WOMEN ACT 1, 17, 22 (U.S. Dep’t of Just. & U.S. Dep’t of Health & Hum. Servs. eds., 1996), <https://www.ojp.gov/pdffiles/batter.pdf>; *see also* S.B. 1385, 2003–2004 Leg., Reg. Sess. (Cal. 2004) (codified as amended at CAL. EVID. CODE § 1107 (West 2023)) (amending California’s statutory language from “battered women’s syndrome” to “battering and its effects” almost twenty years ago). Gordon and Dutton use the term “Battered Woman Syndrome,” though it will be referred to here as “Battered Spouse Syndrome” in line with Maryland law.

2. Gordon & Dutton, *supra* note 1, at 17.

experienced.<sup>3</sup> However, Maryland evidence law has not caught up, continuing to use language that reflects a model debunked by field experts for decades.<sup>4</sup> As such, Maryland should amend its statute permitting expert testimony on Battered Spouse Syndrome evidence in criminal defenses<sup>5</sup> to replace its current “Battered Spouse Syndrome” language with “battering and its effects.”<sup>6</sup>

The Supreme Court of Maryland recently adopted the *Daubert* standard<sup>7</sup> for admitting expert testimony on scientific research,<sup>8</sup> which emphasizes the need to evaluate the validity and reliability of scientific methods and conclusions when admitting scientific testimony.<sup>9</sup> Prior to *Daubert*’s adoption in *Rochkind v. Stevenson*,<sup>10</sup> Maryland courts analyzed scientific testimony on a test that hinged mainly on whether the information presented was “generally accepted.”<sup>11</sup> However, the new *Daubert-Rochkind* test does not currently apply to expert testimony on Battered Spouse Syndrome because Maryland provides, by statute, for the admission of such testimony. Nonetheless, the adoption of the new standard provides an occasion to reexamine the merits of the statute. This Comment will use the *Daubert-Rochkind* test to analyze the legitimacy of expert testimony on Battered Spouse Syndrome and a competing framework, battering and its effects.

This analysis shows that Battered Spouse Syndrome research has numerous methodological validity issues,<sup>12</sup> demonstrating that the General Assembly should follow the Supreme Court of Maryland’s lead and update the statute to ensure that valid testimony is admitted. Further, even the former “general acceptance” test, which remains one of ten factors under *Daubert-Rochkind*,<sup>13</sup> justifies the need for the General Assembly to update the statute in question. Battered Spouse Syndrome lacks acceptance in the psychological

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3. *Id.* at 20–22.

4. *See infra* note 17 and accompanying text.

5. MD. CODE ANN., CTS. & JUD. PROC. § 10-916 (West 1996).

6. *See infra* note 17 and accompanying text.

7. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 593–94 (1993).

8. 471 Md. 1, 26, 236 A.3d 630, 645 (2020).

9. *See infra* Section II.A.

10. *Rochkind*, 471 Md. at 26, 236 A.3d at 645.

11. *See Reed v. State*, 283 Md. 374, 391 A.2d 364 (1978) (adopting the “generally accepted” test for expert testimony), *overruled by Rochkind*, 471 Md. at 26, 236 A.3d at 645; *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) (setting out the “generally accepted” test adopted in *Reed*), *superseded by Daubert*, 509 U.S. at 587. Of note, in the twenty-five years prior to *Rochkind*, Maryland was in the process of making a slow move from *Frye-Reed* toward the *Daubert* standard, so recent pre-*Rochkind* cases began evaluating other issues alongside “general acceptance.” *See Rochkind*, 471 Md. at 16–26, 236 A.3d at 639–44, for a discussion of the “drifts” made by the Supreme Court of Maryland from the *Frye-Reed* standard toward the *Daubert* standard.

12. *See infra* Section II.B.

13. *See infra* notes 135, 141 and accompanying text.

community as its own “syndrome,”<sup>14</sup> and feminist scholars have long feared Battered Spouse Syndrome stigmatizes IPV survivors in front of juries by labeling IPV survivors as having a “syndrome.”<sup>15</sup> As such, Battered Spouse Syndrome has, at best, muddied acceptance from within key scholarly communities.

Because Battered Spouse Syndrome fails a *Daubert-Rochkind* analysis,<sup>16</sup> Maryland’s Battered Spouse Syndrome statute should now read as follows<sup>17</sup>:

### **Definitions**

(a)(1) In this section the following words have the meanings indicated.

(2) ~~“Battered Spouse Syndrome”~~ [“Battering and its effects”] means the psychological condition of a victim of repeated physical and psychological abuse by a spouse, former spouse, cohabitant, or former cohabitant ~~which is also recognized in the medical and scientific community as the “Battered Woman’s Syndrome”~~.

(3) “Defendant” means an individual charged with:

- (i) First degree murder, second degree murder, manslaughter, or attempt to commit any of these crimes; or
- (ii) Assault in the first degree.

### **Evidence and expert testimony**

(b) Notwithstanding evidence that the defendant was the first aggressor, used excessive force, or failed to retreat at the time of the alleged offense, when the defendant raises the issue that the defendant was, at the time of the alleged offense, suffering from ~~the Battered Spouse Syndrome~~ [battering and its effects] as a result of the past course of conduct of the individual who is the victim of the crime for which the defendant has been charged, the court may admit for the purpose of explaining the defendant’s motive or state of mind, or both, at the time of the commission of the alleged offense:

- (1) Evidence of repeated physical and psychological abuse of the defendant perpetrated by an individual who is the victim of a crime for which the defendant has been charged; and

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14. See generally AM. PSYCHIATRIC ASSOC., THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. 2013) (including no reference to Battered Spouse Syndrome).

15. See *infra* Section I.D.2.

16. See *infra* Section II.B.

17. See MD. CODE ANN., CTS. & JUD. PROC. § 10-916 (West 1996) (bolded text in original). Current language this Comment recommends removing from the statute is indicated by a strikethrough of that text. Updated language this Comment suggests adding to the statute is indicated by brackets.

(2) Expert testimony on ~~the Battered Spouse Syndrome~~ [battering and its effects].

This Comment begins by exploring the history of Battered Spouse Syndrome research, its introduction into Maryland criminal law, and critiques of its use in the criminal arena.<sup>18</sup> Next, this Comment explains recent changes to Maryland's judiciary standards for admitting expert testimony and subsequently analyzes how this new standard would disfavor admitting expert testimony on Battered Spouse Syndrome without Maryland's current statute.<sup>19</sup> Finally, this Comment discusses the greater favorability of admitting battering and its effects research under Maryland's new standard, showing that the statutory amendment proposed here would better support IPV survivors who defend themselves against their abusers.<sup>20</sup>

## I. BACKGROUND

This Part reviews laws and research pertaining to IPV survivor's self-defense actions in an effort to frame the universe in which the types of expert testimony at issue take place. In this Part, Section I.A describes the state of Maryland law regarding perfect and imperfect self-defense standards, which can dramatically impact how IPV survivors who are criminalized for defending themselves are sentenced for their actions.<sup>21</sup> Next, Section I.B provides an overview of psychological research on Battered Spouse Syndrome.<sup>22</sup> Thereafter, Section I.C explains the impact this research has had on Maryland criminal cases due to Battered Spouse Syndrome's state codification.<sup>23</sup> Lastly, Section I.D describes critiques of the research methodologies underpinning Battered Spouse Syndrome and scholarship arguing that laws based on this research may harm IPV survivors who are defendants in homicide cases.<sup>24</sup>

### *A. The Impact of Perfect and Imperfect Self-Defense on Maryland IPV Survivors*

When a Maryland defendant has allegedly committed homicide, the defendant can argue either that they should be acquitted because of "perfect self-defense" or that their charges only warrant voluntary manslaughter rather than murder due to "imperfect self-defense."<sup>25</sup> Perfect self-defense

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18. *See infra* Part I.

19. *See infra* Sections II.A–B.

20. *See infra* Sections II.C–D.

21. *See infra* Section I.A.

22. *See infra* Section I.B.

23. *See infra* Section I.C.

24. *See infra* Section I.D.

25. *Porter v. State*, 455 Md. 220, 235–36, 166 A.3d 1044, 1053 (2017).

exists when a homicide is objectively reasonable under the circumstances.<sup>26</sup> To successfully show a Maryland defendant's actions were within perfect self-defense, the defendant must meet the following elements:

- (1) The accused must have had reasonable grounds to believe [the]mself in apparent imminent or immediate danger of death or serious bodily harm from [their] assailant or potential assailant;
- (2) The accused must have in fact believed [the]mself in this danger;
- (3) The accused claiming the right of self defense must not have been the aggressor or provoked the conflict; and
- (4) The force used must have not been unreasonable and excessive, that is, the force must not have been more force than the exigency demanded.<sup>27</sup>

Additionally, if the deadly force occurred outside the home, the defendant must overcome Maryland's duty "to retreat or avoid danger if such means were within [their] power and consistent with [their] safety."<sup>28</sup> If each of these elements is met successfully, the trial should result in acquittal.<sup>29</sup>

In contrast, imperfect self-defense is an incomplete defense in which the defendant shows no malice in the homicide even if it was only subjectively, rather than objectively, reasonable.<sup>30</sup> In Maryland, a defendant may successfully meet imperfect self-defense if a jury concludes "that the defendant honestly believed that the use of force was necessary but that this subjective belief was unreasonable under the circumstances."<sup>31</sup> This requires the defendant to show they actually believed they were in danger, actually believed the amount of force used was necessary, and actually believed that retreat was unsafe, even if any of those actual beliefs were not reasonable.<sup>32</sup>

Additionally, Maryland homicide defendants who are IPV survivors and who acted as the first aggressor in killing their abuser may warrant imperfect self-defense if they can show a subjective belief of being in imminent danger.<sup>33</sup> If a defendant successfully shows imperfect self-defense but not perfect self-defense, the defendant lacks the malice required for murder but

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26. *Id.* at 235, 166 A.3d at 1053.

27. *State v. Faulkner*, 301 Md. 482, 485–86, 483 A.2d 759, 761 (1984).

28. *Burch v. State*, 346 Md. 253, 283, 696 A.2d 443, 458 (1997) (citations omitted).

29. *State v. Smullen*, 380 Md. 233, 251, 844 A.2d 429, 439–40 (2004).

30. *Porter*, 455 Md. at 235, 166 A.3d at 1053.

31. *Faulkner*, 301 Md. at 501, 483 A.2d at 769.

32. *Porter*, 455 Md. at 235, 166 A.3d at 1053; *see also Holt v. State*, 236 Md. App. 604, 620–21, 182 A.3d 322, 332 (2018) (stating that a defendant only needs to present "some evidence" supporting each element of imperfect self-defense to get a jury instruction on imperfect self-defense (citations omitted)).

33. *Porter*, 455 Md. at 252, 166 A.3d at 1063.

remains responsible for the homicide, making the defendant guilty of voluntary manslaughter.<sup>34</sup>

When IPV survivors commit homicide against their abusers, their reasonableness is at issue in deciding whether they should be acquitted, convicted of manslaughter, or convicted of murder.<sup>35</sup> Without proper instruction on IPV survivors' heightened sensitivity to impending violence escalation, juries are left to wonder whether IPV survivors were reasonable in using deadly force.<sup>36</sup> Furthermore, these IPV survivors may be barred, without proper statutory intervention, from successfully asserting perfect self-defense if they were the first aggressor, despite sensing impending violence.<sup>37</sup> Thus, when they defend themselves from violence, they risk overly severe sentencing if they cannot convince a jury that their actions were in perfect self-defense,<sup>38</sup> necessitating a framework (like Battered Spouse Syndrome or battering and its effects) to convince juries why their actions were reasonable.

### *B. Origins and Elements of Battered Spouse Syndrome*

Battered Spouse Syndrome is founded upon Dr. Lenore Walker's 1984 research on "Battered Woman Syndrome" in IPV survivors.<sup>39</sup> Categorizing Battered Woman Syndrome as a mental health disorder within a subcategory

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34. *Faulkner*, 301 Md. at 501, 483 A.2d at 769.

35. *State v. Smullen*, 380 Md. 233, 252–53, 844 A.2d 429, 440 (2004).

36. *See, e.g., State v. Elzey*, 472 Md. 84, 127–28, 244 A.3d 1068, 1093–94 (2021) (analyzing whether the defendant's three prior abusive relationships helped the defendant develop a heightened sensitivity to impending violence, and explaining that the improper instructions on the nature of IPV may have erroneously impacted the jury's conclusion that the defendant acted in imperfect self-defense).

37. *See id.* at 127, 244 A.3d at 1093 ("If the jury had been properly instructed, it might have . . . concluded that Elzey had a heightened ability to sense that the confrontation . . . was escalating and, therefore, that she reasonably believed that 'things [were about] to happen.' If it so concluded, the jury might have determined that Elzey's belief . . . was reasonable.").

38. *See* Leigh Goodmark, *Gender-Based Violence, Law Reform, and the Criminalization of Survivors of Violence*, 10 INT'L J. CRIME, JUST. & SOC. DEMOCRACY 13, 19 (2021) (stating that incarcerated women in the United States tend to be IPV survivors). *See infra* Section I.C regarding how Maryland has attempted to remedy this issue statutorily.

39. *See generally* LENORE E.A. WALKER, *THE BATTERED WOMAN SYNDROME* (4th ed. 2017) (detailing Walker's research findings and conclusions that led to her theorization of Battered Woman Syndrome). Importantly, this text bases much of its theory on the impact patriarchy has on IPV, a concept that goes away when the theory is degendered as Maryland did by codifying "Battered Spouse Syndrome" instead of "Battered Woman Syndrome." *See id.*; MD. CODE ANN., CTS. & JUD. PROC. § 10-916(a)(2) (West 1996). However, Walker's research is based in analyzing heterosexual relationships in which cisgender women were victimized by cisgender men, so by degendering her theory, Maryland created greater opportunities for other abuse survivors to benefit from the statute. CTS. & JUD. PROC. § 10-916(a)(2). *See generally* WALKER, *supra*.

of Post-Traumatic Stress Disorder,<sup>40</sup> Walker describes Battered Woman Syndrome as the “measurable psychological changes that occur after exposure to repeated abuse.”<sup>41</sup> In developing her research design, Walker leaned heavily on Martin Seligman et al.’s research on learned helplessness in dogs,<sup>42</sup> drawing parallels to explain why IPV survivors often endure battery over long periods of time.<sup>43</sup> As a result of this design, Walker concluded that IPV survivors are often stuck in a repeating Cycle of Violence characterized by three distinct phases: “(a) tension-building accompanied [by a] rising sense of danger, (b) the acute battering incident, and (c) loving contrition.”<sup>44</sup>

According to Walker, after an initial “courtship period,” the tension-building phase is characterized by rising hostility from “discrete acts causing increased friction,” resulting in the IPV survivor responding by trying to “placate the batterer.”<sup>45</sup> Walker claims this phase concludes with an acute battering incident, characterized by the batterer’s aggression and violence resulting from the building tension in the previous phase.<sup>46</sup> Following the acute battering incident, Walker describes a loving contrition phase, during which the batterer expresses remorse, gives gifts, and promises the IPV survivor never to conduct the acute battering incident again.<sup>47</sup> According to Walker, loving contrition gives many IPV survivors hope that causes them to remain in the relationship, setting up the next round of this Cycle of Violence.<sup>48</sup>

Furthermore, Walker concluded that this Cycle of Violence leads to two psychological effects of Battered Spouse Syndrome that are relevant in self-defense cases: learned helplessness and a heightened sensitivity to escalation.<sup>49</sup> Walker defines learned helplessness as “having lost the ability

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40. Lenore E.A. Walker, *Battered Women Syndrome and Self-Defense*, 6 NOTRE DAME J.L. ETHICS & PUB. POL’Y 321, 327 (1992).

41. *Id.* at 326.

42. See Martin E.P. Seligman et al., *Alleviation of Learned Helplessness in the Dog*, 73 J. ABNORMAL PSYCH. 256, 260–61 (1968) (finding dogs that are psychologically trained to be unable to change their circumstances are unlikely to reassert control over their environments).

43. See Walker, *supra* note 40, at 331–32 (noting factors that she found correlate with learned helplessness in IPV survivors and strategies for reversing learned helplessness for this population).

44. WALKER, *supra* note 39, at 94.

45. *Id.* at 94, 96–97.

46. *Id.* at 97.

47. *Id.* at 98.

48. *Id.*

49. *State v. Smullen*, 380 Md. 233, 254–55, 844 A.2d 429, 441–42 (2004); see also *Wallace-Bey v. State*, 234 Md. App. 501, 550, 172 A.3d 1006, 1034 (2017) (“[T]wo aspects of battered spouse syndrome (learned helplessness and heightened sensitivity) . . . are most probative to the elements of perfect and imperfect self-defense.”).



to predict that what you do will make a particular outcome occur.”<sup>50</sup> In IPV relationships, Walker notes that learned helplessness appears as depression or self-blame as a survival response—rather than anger or flight—in the face of battery.<sup>51</sup> Walker theorizes that learned helplessness must be overcome for an individual to escape a violent relationship.<sup>52</sup>

According to Walker, heightened sensitivity to escalation occurs when IPV survivors notice patterns in their abusers that allow survivors to sense when the tension-building phase is moving into an acute battering incident.<sup>53</sup> Walker’s research shows that, over time, some survivors learn to predict the “period of inevitability” of an acute battering incident, allowing them to precede a battering incident by preparing to minimize injury.<sup>54</sup> Importantly, the survivor’s repeated experience of the Cycle of Violence uniquely positions them to identify this period of inevitability in ways that a person outside the relationship (like a juror) may not.<sup>55</sup>

### *C. Adding Battered Spouse Syndrome to the Maryland Code*

In response to Walker’s research, most courts across the United States now allow evidence of Battered Spouse Syndrome to be introduced in support of a self-defense claim.<sup>56</sup> In the early 1990s, Battered Spouse Syndrome was already being used in self-defense claims in Maryland, but the Maryland General Assembly observed discrepancies in state trial courts regarding whether judges would admit evidence on Battered Spouse Syndrome.<sup>57</sup> As a result, the 1991 Maryland General Assembly introduced House Bill 49 to clarify the court’s discretion to admit and allow expert testimony on Battered Spouse Syndrome.<sup>58</sup> Later that year, Maryland codified House Bill 49.<sup>59</sup>

Maryland’s official statute concerning expert testimony on Battered Spouse Syndrome defines “Battered Spouse Syndrome” under state law,

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50. WALKER, *supra* note 39, at 75 (emphasis omitted).

51. *Id.* at 77.

52. *Id.*

53. *Id.* at 97.

54. *Id.*

55. *See* State v. Smullen, 380 Md. 233, 264, 844 A.2d 429, 447 (2004) (stating people with Battered Spouse Syndrome have a “heightened vigilance and sensitivity to . . . impending violence” from their abusers that may “not likely be [readily] apparent to anyone else”).

56. *Battered Woman Syndrome*, 10 GEO. J. GENDER & L. 333, 335–36 (2009) [hereinafter *BWS Overview*]. Yet, “most incarcerated women [today] are criminalized [IPV] survivors.” Goodmark, *supra* note 38, at 19.

57. S. JUD. PROCEEDINGS COMM., FLOOR REP. H.B. 49, 401st Sess., at 2 (Md. 1991), <https://mdlaw.ptfs.com/awweb/pdfopener?md=1&did=30493>.

58. *Id.*; *see also* H.B. 49, 1991 Leg., 401st Sess. (Md. 1991) (stating one of the purposes of the bill is to clarify the admissibility of “certain evidence”).

59. MD. CODE ANN., CTS. & JUD. PROC. § 10-916 (West 1991) (amended 1996).

restricts traditional exclusions to self-defense, and dictates types of evidence that are admissible under the statute.<sup>60</sup> First, Maryland defines Battered Spouse Syndrome as “the psychological condition of a victim of repeated physical and psychological abuse by a spouse, former spouse, cohabitant, or former cohabitant.”<sup>61</sup> While focusing on one’s overall psychological “condition” rather than one’s particular psychological changes after abuse,<sup>62</sup> this definition closely resembles Walker’s definition of Battered Spouse Syndrome: “psychological changes that occur after exposure to repeated abuse.”<sup>63</sup>

Next, the statute outlines that self-defense arguments concerning Battered Spouse Syndrome may be introduced “[n]otwithstanding evidence that the defendant was the first aggressor, used excessive force, or failed to retreat at the time of the alleged offense.”<sup>64</sup> Significantly, this part of the statute overrides Maryland’s perfect self-defense standard and that of common law, as these standards require that a defendant was not the first aggressor, did not use excessive force, and retreated if outside the defendant’s home.<sup>65</sup> As a result, defendants found to have Battered Spouse Syndrome should have an easier path to proving perfect self-defense, making acquittal a greater possibility.<sup>66</sup>

Lastly, the statute permits trial courts to admit evidence of past abuse inflicted on the defendant by the victim and expert testimony on Battered Spouse Syndrome.<sup>67</sup> Rather than creating an independent defense to homicide or assault by invoking Battered Spouse Syndrome, this statute instead focuses on allowing more evidence to be admitted in favor of a traditional self-defense argument when Battered Spouse Syndrome may have impacted the defendant.<sup>68</sup>

Since passing Section 10-916 of the Maryland Code, Courts and Judicial Proceedings, state case law has further expanded the scope of evidence

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60. *Id.*

61. *Id.* § 10-916(a)(2).

62. *Id.*

63. Walker, *supra* note 40, at 326.

64. CTS. & JUD. PROC. § 10-916(b).

65. *See supra* Section I.A.; *see also* State v. Elzey, 472 Md. 84, 102, 244 A.3d 1068, 1079 (2021) (highlighting that common law perfect self-defense is inaccessible to defendants who were the first aggressor or used excessive force); Porter v. State, 455 Md. 220, 235, 166 A.3d 1044, 1053 (2017) (stating that common law perfect self-defense is inaccessible to defendants who failed to retreat if they were outside of their homes and had means to do so (citing Burch v. State, 346 Md. 253, 283, 696 A.2d 443, 458 (1997))).

66. *See Elzey*, 472 Md. at 102, 244 A.3d at 1079 (highlighting the case’s trial court judge informing the jury that they must find the defendant not guilty if they find the defendant proved perfect self-defense).

67. CTS. & JUD. PROC. § 10-916(b).

68. State v. Smullen, 380 Md. 233, 251, 844 A.2d 429, 439 (2004).

admissibility when Battered Spouse Syndrome is raised beyond the statute's plain language.<sup>69</sup> For instance, the statute has been expanded by the Maryland Court of Appeals (now the Supreme Court of Maryland) to allow children who have experienced abuse to invoke the statute if these children are arrested after defending themselves against their abusive parent.<sup>70</sup> Additionally, the Supreme Court of Maryland clarified that juries cannot be precluded from considering whether a defendant had Battered Spouse Syndrome before the jury makes a prerequisite finding that a homicide or assault victim repeatedly abused the defendant, as a trial court previously suggested.<sup>71</sup> As such, Section 10-916 has largely created a friendlier environment for defendants arguing that their self-defense claims should be considered in light of the impact abuse had on their psychological conditions at the times of the charged crimes.<sup>72</sup>

#### *D. Critiques of Battered Spouse Syndrome Statutes*

While statutes concerning Battered Spouse Syndrome have proliferated in Maryland and across the country,<sup>73</sup> legal scholars and advocates for IPV survivors have criticized both the research behind Battered Spouse Syndrome and its use in statutes since the 1980s.<sup>74</sup> David Faigman has been central among critics of Walker's research, questioning both the validity of her methods and her ability to reach the conclusions to which she came from the

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69. See *Porter*, 455 Md. at 250–51, 255–56, 166 A.3d at 1061–62, 1065 (holding that a murder defendant did not need to show that they acted spontaneously under Section 10-916—only that they believed they were in imminent danger—to warrant a self-defense jury instruction); see also *Wallace-Bey v. State*, 234 Md. App. 501, 549, 172 A.3d 1006, 1033–34 (2017) (holding testimony regarding past abuse the defendant experienced from people other than the homicide victim is admissible for establishing *mens rea* impacted by Battered Spouse Syndrome).

70. *Smullen*, 380 Md. at 268, 844 A.2d at 449.

71. See *Elzey*, 472 Md. at 121–22, 129, 244 A.3d at 1090, 1094 (holding that instructing a jury to make a predicate finding regarding the victim's history of abuse before considering whether the defendant had Battered Spouse Syndrome was both erroneous and “not harmless beyond a reasonable doubt”).

72. See *id.* at 125, 244 A.3d at 1092 (admitting expert testimony regarding past abuse the defendant experienced from people other than the murder victim as evidence of her Battered Spouse Syndrome). But see *Smullen*, 380 Md. at 273–74, 844 A.2d at 453 (holding that “random and undefined acts of abuse” which did not seriously injure the defendant prevented the defendant from showing he had Battered Child Syndrome under Section 10-916).

73. MD. CODE ANN., CTS. & JUD. PROC. § 10-916 (West 1996); see also *BWS Overview*, *supra* note 56, at 335–41 (detailing the use of Battered Spouse Syndrome in cases in New Jersey, Washington State, Connecticut, California, and the Eighth Circuit).

74. See *BWS Overview*, *supra* note 56, at 345–49 (outlining numerous critiques from opponents of Battered Spouse Syndrome statutes regarding the potential legal and social harm such statutes may have on defendants who survived IPV). See generally David L. Faigman, Note, *The Battered Woman Syndrome and Self-Defense: A Legal and Empirical Dissent*, 72 VA. L. REV. 619 (1986) (critiquing five elements of Walker's research design and conclusions regarding learned helplessness).

methods she used.<sup>75</sup> Furthermore, despite including the word “syndrome” in its name, Battered Spouse Syndrome continues to be excluded from the Diagnostic and Statistical Manual of Mental Disorders,<sup>76</sup> creating further contrast between the syndrome’s lack of recognition in the medical community and its legitimization in the legal arena.<sup>77</sup> The Sections below discuss Faigman’s critiques of Walker’s research<sup>78</sup> and survivor advocates’ critiques of Battered Spouse Syndrome’s limitations in self-defense arguments.<sup>79</sup>

### *1. Critiques of Walker’s Research*

Faigman’s analysis of Walker’s research compiles numerous critiques regarding how issues in Walker’s research design may invalidate her results.<sup>80</sup> In doing so, Faigman outlines five flaws diminishing Walker’s research’s validity.<sup>81</sup>

First, Faigman notes that Walker used leading questions in her interviews with study participants, possibly nudging participants toward results that Walker hypothesized rather than truly discerning evidence of a Cycle of Violence from participant statements.<sup>82</sup> Second, Faigman identifies that Walker based her conclusions on evaluator interpretations of participant responses rather than the responses themselves, creating questions as to whether evaluator expectancies influenced the results.<sup>83</sup> Third, Faigman criticizes Walker for not attributing timelines to each Cycle of Violence phase, as repeated long periods of tension-building leading to a severe battering incident may be more legally significant than a tension-building

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75. See Faigman, *supra* note 74, at 622 (arguing that IPV survivors should be permitted to introduce evidence from “valid social science research” rather than Walker’s research).

76. See generally AM. PSYCHIATRIC ASSOC., *supra* note 14 (including no reference to Battered Spouse Syndrome).

77. See Jessica R. Holliday et al., *The Use of Battered Woman Syndrome in U.S. Criminal Courts*, 50 J. AM. ACAD. PSYCHIATRY & L. 1, 2, 6–7 (2022) (arguing that, due to the DSM-5’s exclusion of Battered Spouse Syndrome, courts should instead allow defendants to introduce evidence regarding the impact of IPV on developing Post-Traumatic Stress Disorder); see also Darrel Reiger et al., *The DSM-5: Classification and Criteria Changes*, 12 WORLD PSYCHIATRY 92, 92 (2013) (“The [DSM-5] provides the standard language by which clinicians, researchers, and public health officials in the United States communicate about mental disorders.”).

78. See *infra* Section I.D.1.

79. See *infra* Section I.D.2.

80. See Faigman, *supra* note 74, at 636 (“Close analysis . . . reveals that Walker’s research actually provides little empirical support for the cycle theory.”).

81. *Id.* at 637.

82. See *id.* (showing Walker directed five Likert scale questions at participants phrased as “[w]ould you call it . . . irritable, provocative, aggressive, hostile, [or] threatening,” possibly influencing participant responses (omission in original) (quoting WALKER, *supra* note 39, at 96)).

83. *Id.* at 637–38.

phase of less than fifteen minutes.<sup>84</sup> Fourth, Faigman questions Walker's conclusion that IPV survivors experience cumulative fear as a general rule, as less than half of the participants in Walker's study unequivocally believed their abuser could kill them.<sup>85</sup> Finally, Faigman states that Walker's data does not show evidence that the three Cycle of Violence phases occur in a cycle, as less than half of participants likely experienced all three phases according to the data produced.<sup>86</sup> Due to these critiques, Faigman believes Walker cannot validly conclude the Cycle of Violence she theorized from her data.<sup>87</sup>

In addition to his critiques concerning Walker's Cycle of Violence theory, Faigman similarly takes issue with Walker applying learned helplessness to IPV survivors.<sup>88</sup> While Walker names depression and self-blame as characteristics of learned helplessness in her participant group,<sup>89</sup> Faigman argues Walker's conclusions do not align with Seligman et al.'s prior learned helplessness research.<sup>90</sup> In Seligman et al.'s study, dogs trained to be helpless had extreme difficulty reasserting control over their environments,<sup>91</sup> yet, Faigman posits that Seligman et al.'s results contrast with human behavior regarding IPV survivors killing their abusers.<sup>92</sup> Additionally, Faigman points out that Walker failed to include a control group of people who had never experienced battery in her study and conducted no statistical significance tests to substantiate her conclusions concerning learned helplessness.<sup>93</sup> Based on these methodological flaws, Faigman argues that juries should not be allowed to consider evidence of Battered Spouse Syndrome based on Walker's research.<sup>94</sup>

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84. *Id.* at 638.

85. *Id.* at 638–39 (citing WALKER, *supra* note 39, at 177). Faigman is further concerned on this point because Walker's study only includes "battered women" and involves no control or comparison group, leading him to question whether Walker can claim her findings are statistically significant. *Id.* However, it is highly unlikely that anywhere close to half of people who have not experienced IPV believe unequivocally that their partner could kill them.

86. *See id.* at 639–40, 640 n.108 (describing probabilistic methods for estimating that only thirty-eight percent of study participants experienced all three phases of Walker's proposed cycle and explaining that such estimations are necessary because all three phases were presented independently rather than in relation to each other).

87. *Id.* at 640.

88. *Id.*

89. WALKER, *supra* note 39, at 77.

90. Faigman, *supra* note 74, at 640.

91. Seligman et al., *supra* note 42, at 260–61.

92. Faigman, *supra* note 74, at 641.

93. *Id.* at 642.

94. *Id.* at 647.

## 2. Critiques of Battered Spouse Syndrome's Legal Consequences

Beyond Battered Spouse Syndrome's methodological flaws, critics of related statutes cite numerous concerns regarding how a statutory focus on Battered Spouse Syndrome may hinder IPV survivors' self-defense claims.<sup>95</sup> At face value, critics often worry that the name "Battered Spouse Syndrome" inaccurately connotes a mental disorder, which may encourage jurors to believe that a defendant with this "syndrome" was unable to use logic similar to a "reasonable person" under a self-defense standard.<sup>96</sup> Additionally, critics suggest that jurisdictions using Walker's "Battered Woman's Syndrome" terminology<sup>97</sup> imply that men and nonbinary people are excluded from invoking the "syndrome," reinforcing a male abuser/female victim stereotype that hinders defendants whose relationships do not resemble such a gendered dynamic.<sup>98</sup> As such, the Battered Spouse Syndrome label may create a bias, hindering self-defense cases after IPV survivors kill or assault their abusers.<sup>99</sup>

Moreover, critics point out that Battered Spouse Syndrome paints a harmfully oversimplistic image of what an IPV survivor is like, making it more difficult to understand why someone with this "syndrome" would kill.<sup>100</sup> Scholars criticize Walker's focus on "learned helplessness" for portraying IPV survivors as broken and passive, as this framework is incongruent with the agency demonstrated by IPV survivors charged with homicide.<sup>101</sup> Professor Katharine Baker, a scholar in gender-based critical studies, argues jurors may not believe a defendant who fought back was experiencing Battered Spouse Syndrome, jeopardizing defendants' potential self-defense arguments under this framework.<sup>102</sup> Instead, Baker argues for

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95. *BWS Overview*, *supra* note 56, at 345–49. Since the majority of incarcerated women are IPV survivors, Goodmark, *supra* note 38, at 19, these flaws may have a large impact.

96. Jill E. Adams, *Unlocking Liberty: Is California's Habeas Law the Key to Freeing Unjustly Imprisoned Battered Women?*, 19 BERKELEY WOMEN'S L.J. 217, 224 (2004); *see also* Elizabeth M. Schneider, *Battered Women and Feminist Lawmaking*, 23 WOMEN'S RTS. L. REP. 243, 244 (2002) (critiquing Battered Spouse Syndrome from a feminist perspective for pathologizing survivors, explaining that "it is much easier for judges and psychologists to see the notion of 'battered women syndrome' as a convenient and default frame for interpreting battered women's experiences, rather than to see the complexity of battered women's experiences"); *supra* Section I.A.

97. *See generally* WALKER, *supra* note 39.

98. *BWS Overview*, *supra* note 56, at 346 (citing Adams, *supra* note 96, at 224).

99. Adams, *supra* note 96, at 224.

100. *See BWS Overview*, *supra* note 56, at 346 ("The law sets out an assumption that 'normal' battered women run instead of fight.").

101. *See, e.g.*, Katharine K. Baker, *Gender and Emotion in Criminal Law*, 28 HARV. J.L. & GENDER 447, 459–60 (2005) ("When the [survivor] fails to choose the emotionally simplistic background option—leave—or conform to the emotionally simplistic alternative—give up completely—the law has no place for [them] and thus assumes that [they] must be culpable when [they] finally fight[] back.").

102. *Id.*

legal avenues that account for the emotional complexity experienced by IPV survivors.<sup>103</sup>

Furthermore, critics worry that Battered Spouse Syndrome can be used by opposing parties to attack defendants' credibility.<sup>104</sup> For instance, in *People v. Dillard*,<sup>105</sup> the California Court of Appeal admitted evidence that people with Battered Spouse Syndrome often recant their abuse allegations.<sup>106</sup> Defendants who raise Battered Spouse Syndrome risk being perceived as irrational decision makers, and "[i]f the [defendant] is perceived as irrational, a jury is less likely to determine that [they have] a perfect self-defense claim."<sup>107</sup> As a result, some have recommended distancing from the Battered Spouse Syndrome theory in favor of presenting evidence about "battering and its effects."<sup>108</sup>

Theories and models that have proliferated under battering and its effects research since the late 1980s focus on responses to coercive control<sup>109</sup> and how the individualized nature of IPV relationships yields individualized responses to violence.<sup>110</sup> Some researchers, like Mary Ann Dutton and Lisa A. Goodman, have developed new coercive control diagrams that consider how vulnerability to coercion is created, what behaviors tend to exemplify responses to coercion, the impact of surveillance on coercive control, and the quality of life and cognitive outcomes to which such control leads.<sup>111</sup> Battering and its effects researchers also developed scales detailing non-

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103. *Id.*

104. *BWS Overview*, *supra* note 56, at 348.

105. 53 Cal. Rptr. 2d 456 (Cal. Ct. App. 1996).

106. *Id.* at 461–62, 464; *see also* Rebecca D. Cornia, *Current Use of Battered Woman Syndrome: Institutionalization of Negative Stereotypes About Women*, 8 UCLA WOMEN'S L.J. 99, 112–14 (1997) (claiming that the court's holding in *Dillard* allows prosecutors to impeach defendants' or witnesses' testimonies when Battered Spouse Syndrome is raised by the defense).

107. *BWS Overview*, *supra* note 56, at 348.

108. *See* Adams, *supra* note 96, at 224–25 (stating that the National Institute of Justice recommended replacing "Battered Women Syndrome" with "battering and its effects" in 1996 to "abate misunderstandings"). Within Maryland's current evidence rules, courts have begun shifting to admit "battering and its effects" evidence, though they currently do so under the guise of clarifying testimony on Battered Spouse Syndrome. *See infra* Section II.D.

109. *See, e.g.*, Mary Ann Dutton & Lisa A. Goodman, *Coercion in Intimate Partner Violence: Toward a New Conceptualization*, 52 SEX ROLES 743, 746 (2005) (proposing a model for how people are impacted by and respond to coercive control).

110. *See* Martha R. Mahoney, *Misunderstanding Judy Norman: Theory as Cause and Consequence*, 51 CONN. L. REV. 671, 706 (2019) (describing abusers' behaviors as informed by "intimate knowledge of their partners" and as differing between relationships because "coercive control [is] an evolving experiment performed on a living target," leading to vastly different responses from IPV survivors (citation omitted)).

111. Dutton & Goodman, *supra* note 109, at 746 fig.1; MARY ANN DUTTON ET AL., DEVELOPMENT AND VALIDATION OF A COERCIVE CONTROL MEASURE FOR INTIMATE PARTNER VIOLENCE: FINAL TECHNICAL REPORT 3–7 (executive summary) (2005), <https://www.ojp.gov/pdffiles1/nij/grants/214438.pdf>.

exhaustive lists of the many tactics abusers use, which aid researchers in explaining how each abusive relationship consists of different individualized and contextualized behavioral and emotional reactions to abuse.<sup>112</sup> As such, a statute that allows this research would permit experts to introduce more expansive and validated evidence that may help IPV survivors justify why their reactions to violence are reasonable.<sup>113</sup>

## II. ANALYSIS

The Maryland General Assembly should alter Section 10-916<sup>114</sup> to replace “Battered Spouse Syndrome” with “battering and its effects”<sup>115</sup> because such an update would make the statute more methodologically sound, bringing such evidence in line with Maryland’s legislative and judicial standards for expert testimony.<sup>116</sup> Expert testimony is critical toward assessing the reasonableness of an IPV survivor who kills their abuser, and this statutory language update will also create greater opportunities for people in this position to use expert testimony to demonstrate reasonableness.<sup>117</sup> Section II.A first discusses Maryland’s general standards for admitting expert testimony<sup>118</sup> via the *Daubert-Rochkind* test.<sup>119</sup> Second, Section II.B reviews Battered Spouse Syndrome evidence<sup>120</sup> under the *Daubert-Rochkind* test to show that, absent Section 10-916,<sup>121</sup> Maryland courts would not permit expert testimony on Battered Spouse Syndrome due to scientific validity deficiencies.<sup>122</sup> Third, Section II.C shows that expert testimony on “battering and its effects” would survive *Daubert-Rochkind* because of its scientifically valid backing.<sup>123</sup> Finally, Section II.D argues that precedent would be minimally impacted by updating the statute because defendants have already

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112. DUTTON ET AL., *supra* note 111, at 5–6 (executive summary), 6–7 (report).

113. *See infra* Section II.C.

114. MD. CODE ANN., CTS. & JUD. PROC. § 10-916 (West 2024).

115. California provides a model for the statutory change needed in Maryland. *See* S.B. 1385, 2003–2004 Leg., 2004 Sess. (Cal. 2004) (codified as amended at CAL. EVID. CODE § 1107 (West 2023)) (amending statutory language from “Battered Women’s Syndrome” to “intimate partner battering and its effects” because of emerging research); *see also supra* note 17 and accompanying text.

116. *See infra* Section II.A.

117. *See infra* Section II.D.

118. MD. R. 5-702.

119. *Rochkind v. Stevenson*, 471 Md. 1, 26, 35–36, 236 A.3d 630, 645, 650 (2020) (citing *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 592–94 (1993)); *see infra* Section II.A.

120. CTS. & JUD. PROC. § 10-916.

121. *Id.*

122. *See infra* Section II.B.

123. *See infra* Section II.C.



begun relying on expert testimony on modern “effects” research rather than “Syndrome” research.<sup>124</sup>

*A. Overview of Rule 5-702 and the Daubert-Rochkind Test*

Maryland Rule 5-702 sets Maryland’s evidentiary standard for admitting expert testimony.<sup>125</sup> Existing as the state’s parallel for Federal Rule of Evidence 702,<sup>126</sup> Maryland Rule 5-702 states:

Expert testimony may be admitted . . . if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine

- (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education,
- (2) the appropriateness of the expert testimony on the particular subject, and
- (3) whether a sufficient factual basis exists to support the expert testimony.<sup>127</sup>

Notably, this rule does not perfectly mirror Federal Rule of Evidence 702’s language, which requires that “the expert’s scientific, technical, or other specialized knowledge will help the trier of fact”<sup>128</sup> and that “the testimony is the product of reliable principles and methods.”<sup>129</sup> Since Maryland Rule 5-702 makes no mention of how scientific evidence should be treated,<sup>130</sup> Maryland turns to case law to fill this gap.<sup>131</sup>

The Supreme Court elaborated on how to assess scientific expert testimony under this parallel federal evidentiary rule in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*<sup>132</sup> In this 1993 case, the U.S. Supreme Court held that proposed expert testimony must be supported by “appropriate validation” to be admissible, which requires the scientific methodology

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124. See *infra* Section II.D.

125. MD. R. 5-702.

126. FED. R. EVID. 702.

127. MD. R. 5-702.

128. FED. R. EVID. 702(a).

129. FED. R. EVID. 702(c).

130. See generally MD. R. 5-702 (making no mention of a reliable scientific methodology requirement behind expert testimony on scientific evidence). The original Committee Note for this rule elaborated on this omission by stating “[t]he required scientific foundation for the admission of novel scientific techniques or principles is *left to development through case law.*” Rochkind v. Stevenson, 471 Md. 1, 28, 236 A.3d 630, 646 (2020).

131. See *Rochkind*, 471 Md. at 26, 35–36, 236 A.3d at 645, 650 (outlining factors Maryland courts should weigh in determining whether expert testimony is admissible).

132. 509 U.S. 579 (1993). While this case contemplates Federal Rule of Evidence 702, rather than the Maryland Rules, *Daubert*’s holdings have been fully adopted by Maryland caselaw to apply to Maryland Rule 5-702. *Rochkind*, 471 Md. at 26, 236 A.3d at 644–45.

underlying the testimony to be valid based on a preliminary assessment.<sup>133</sup> *Daubert* established a flexible five-factor test to help the Court analyze whether testimony is supported by “appropriate validation”<sup>134</sup>:

- (1) whether a theory or technique can be (and has been) tested;
- (2) whether a theory or technique has been subjected to peer review and publication;
- (3) whether a particular scientific technique has a known or potential rate of error;
- (4) the existence and maintenance of standards and controls; and
- (5) whether a theory or technique is generally accepted.<sup>135</sup>

Further Supreme Court case law added onto these *Daubert* factors.<sup>136</sup> In *General Electric Co. v. Joiner*,<sup>137</sup> the Court held that expert testimony on scientific evidence may be inadmissible even if proper methodologies were used if there is too large of an “analytical gap” between the data and the expert’s conclusions.<sup>138</sup> Additionally, in *Kumho Tire Co. v. Carmichael*,<sup>139</sup> the Court held *Daubert* applies to “technical” and “other specialized” knowledge in addition to expert testimony based on “scientific knowledge.”<sup>140</sup>

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133. *Daubert*, 509 U.S. at 590, 592–93. The *Daubert* Court further emphasized that “[i]n a case involving scientific evidence, *evidentiary reliability* will be based upon *scientific validity*.” *Id.* at 590–91 n.9; see also PRESIDENT’S COUNCIL OF ADVISORS ON SCI. & TECH., FORENSIC SCIENCE IN CRIMINAL COURTS: ENSURING SCIENTIFIC VALIDITY OF FEATURE-COMPARISON METHODS 4–5 (2016), [https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/PCAST/pcast\\_for\\_ensic\\_science\\_report\\_final.pdf](https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/PCAST/pcast_for_ensic_science_report_final.pdf) (defining “scientific validity” under FED. R. EVID. 702 as requiring both “*foundational validity*”—requiring the associated empirical studies to be measurably “*repeatable, reproducible, and accurate*”—and “*validity as applied*”—in which the stated methods can be reliably applied to the case at hand).

134. *Daubert*, 509 U.S. at 590.

135. *Rochkind*, 471 Md. at 35, 236 A.3d at 650 (citing *Daubert*, 509 U.S. at 593–94 (cleaned up)); see also *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 141–42 (1999) (explaining that the flexible approach used by *Daubert* means its specific list of factors may not apply to all expert testimonies, giving courts discretion on how those factors are applied).

136. See generally *Gen. Elec. Co. v. Joiner*, 522 U.S. 136 (1997) (adding the “analytical gap” analysis to *Daubert*); *Kumho Tire Co.*, 526 U.S. 137 (expanding *Daubert* beyond purely scientific knowledge). Collectively, *Daubert*, *Joiner*, and *Kumho Tire* are regularly referred to as the “*Daubert trilogy*” because of how these three cases collectively established standards for expert testimony admissibility. *Rochkind*, 471 Md. at 14, 236 A.3d at 638 (citations omitted). Since *Rochkind* solely discusses mandatory authority established by the U.S. Supreme Court and the State of Maryland and does not consider persuasive authority from other circuits, I do not discuss factors adopted in other circuits or states in this analysis.

137. 522 U.S. 136 (1997).

138. *Id.* at 146 (citing FED. R. EVID. 702).

139. 526 U.S. 137 (1999).

140. *Id.* at 141 (citing FED. R. EVID. 702).

In 2020, Maryland fully adopted and expanded on *Daubert* and its successors as it pertains to Maryland Rule 5-702.<sup>141</sup> In *Rochkind v. Stevenson*, Maryland added five additional factors for consideration to the five *Daubert* factors<sup>142</sup>:

- (6) whether experts are proposing to testify about matters growing naturally and directly out of research they have conducted independent of the litigation, or whether they have developed their opinions expressly for purposes of testifying;
- (7) whether the expert has unjustifiably extrapolated from an accepted premise to an unfounded conclusion;
- (8) whether the expert has adequately accounted for obvious alternative explanations;
- (9) whether the expert is being as careful as [they] would be in [their] regular professional work outside [their] paid litigation consulting; and
- (10) whether the field of expertise claimed by the expert is known to reach reliable results for the type of opinion the expert would give.<sup>143</sup>

*Rochkind* further clarified that Maryland adopted *Joiner* and *Kumho Tire* in adopting the *Daubert* standard.<sup>144</sup>

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141. *Rochkind*, 471 Md. at 26, 236 A.3d at 644–45. Prior to fully adopting *Daubert*, Maryland used a hybrid standard in which courts combined a *Daubert* analysis with previous standards under *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), *superseded by Daubert*, 509 U.S. at 587. *See, e.g., Savage v. State*, 455 Md. 138, 174, 166 A.3d 183, 204 (2017) (Adkins, J., concurring) (highlighting that the majority considered expert testimony under both a *Frye-Reed* and *Daubert* analysis rather than adopting solely a *Daubert* analysis). These tests heavily weigh the “general acceptance” of scientific evidence by the relevant scientific community for determining whether expert testimony based on that scientific knowledge is valid. *Frye*, 293 F. at 1014; *see also Daubert*, 509 U.S. at 594 (maintaining “general acceptance” as one of several factors to weigh when considering expert testimony based on scientific evidence). Importantly, since 1993, Maryland has analyzed Battered Spouse/Battered Child Syndrome under the *Frye-Reed* test but, despite mentioning *Daubert*, has not yet had the opportunity to analyze Battered Spouse Syndrome under *Daubert-Rochkind*. *See, e.g., State v. Smullen*, 380 Md. 233, 266–68, 844 A.2d 429, 448–50 (2004) (recognizing Battered Child Syndrome under the *Frye-Reed* test while avoiding a *Daubert* analysis).

142. *Daubert*, 509 U.S. at 593–94.

143. *Rochkind*, 471 Md. at 35–36, 236 A.3d at 650 (citing FED. R. EVID. 702 advisory committee’s note). Importantly, regarding factor seven, *Rochkind* states that courts must focus “solely on principles and methodology, not on the conclusions that they generate.” *Id.* at 36, 236 A.3d at 651 (quoting *Daubert*, 509 U.S. at 595). However, since “conclusions and methodology are not entirely distinct from one another,” *Joiner*, 522 U.S. at 146 (internal quotation marks omitted), “[a] trial court must . . . consider the relationship between the methodology applied and [the] conclusion reached,” *Rochkind*, 471 Md. at 36, 236 A.3d at 651.

144. *Rochkind*, 471 Md. at 36–37, 236 A.3d at 650–51; *see also State v. Matthews*, 479 Md. 278, 317–19, 277 A.3d 991, 1014–15 (2022) (applying *Joiner*’s “analytical gap” reasoning post-*Rochkind* to determine there was no gap between an expert’s photogrammetry analysis and their testimony regarding the suspect’s height). Additionally, prior to *Rochkind*, Maryland began incorporating the “analytical gap” analysis offered by *Joiner*. *See, e.g., Savage*, 455 Md. at 158, 166

In the three years since *Rochkind*, Maryland courts have focused on analyzing the new *Daubert-Rochkind* factors when evaluating expert testimony.<sup>145</sup> The Supreme Court of Maryland has taken two different approaches to *Daubert-Rochkind* decisions: analyzing either all ten factors<sup>146</sup> or only the most relevant of the ten factors to the case.<sup>147</sup> This shows that, in some cases, certain factors may be deemphasized if others are more at issue.<sup>148</sup>

*Abruquah v. State* is a recent example in which the Supreme Court of Maryland analyzed each of the ten factors.<sup>149</sup> In that case, the court considered whether to admit expert testimony on firearms identification technology.<sup>150</sup>

In *Abruquah*, the court first found the technology's strong potential for testability—even if inadequate thus far—weighed in favor of admission.<sup>151</sup> Second, the court disliked that the major studies on the evidence in question were either not peer-reviewed or were published in a peer-reviewed but biased publication, but the court decided that published external criticism of that evidence may substitute for peer-review and favor admissibility.<sup>152</sup> Third, the court noted that a known error rate favors admission,<sup>153</sup> but error rates that are unreliable due to stemming from improperly designed studies,

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A.3d at 195 (finding expert testimony regarding traumatic brain injuries did not survive the “analytical gap” test).

145. See, e.g., *Abruquah v. State*, 483 Md. 637, 681–97, 296 A.3d 961, 988–97 (2023) (reviewing each of the ten factors to determine that expert testimony concerning firearms identification was not sufficiently reliable to be admissible). For a reiteration that these factors are non-exhaustive and that no one factor will likely outweigh all others, see *Matthews*, 479 Md. at 313–15, 277 A.3d at 1012–13, in which the court held that an unknown error rate did not, by itself, make expert testimony inadmissible.

146. See *Abruquah*, 483 Md. at 681–97, 296 A.3d at 988–97 (analyzing ten *Daubert-Rochkind* factors).

147. See *Katz, Abosch, Windesheim, Gershman & Freedman, P.A. v. Parkway Neurosci. & Spine Inst., LLC*, 485 Md. 335, 368–78, 301 A.3d 42, 62–68 (2023) (focusing on factors one, two, three, four, nine, and ten in issuing a limited remand concerning the trial court's exclusion of scientific expert testimony).

148. See *Matthews*, 479 Md. at 314, 277 A.3d at 1012 (stating that the *Daubert-Rochkind* factors “are neither exhaustive nor mandatory”).

149. See *Abruquah*, 483 Md. at 691–97, 296 A.3d at 988–97 (covering all factors mentioned in *Rochkind*).

150. *Id.* at 680–81, 296 A.3d at 987.

151. *Id.* at 681, 296 A.3d at 988.

152. *Id.* at 681–82, 296 A.3d at 988; see also *United States v. Shipp*, 422 F. Supp. 3d 762, 777 (E.D.N.Y. 2019) (finding evidence was “sufficiently subjected to peer review” to favor admissibility despite publication in a non-peer-reviewed publication because other publications had criticized that evidence (internal quotations omitted)).

153. *Abruquah*, 483 Md. at 682–83, 296 A.3d at 989. For example, a known error rate of one percent is much more reliable than an error rate of fifty percent, where the error is equivalent to a coin toss. However, with no error rate, it is harder to determine how probative the evidence is.

as occurred here, weigh against admission.<sup>154</sup> Fourth, the court weighed research standards and controls against evidence admissibility because the inadequate controls in place undermined their reliability.<sup>155</sup> Fifth, the court held that the general acceptance factor depends on what community the court determines is the one from which “general acceptance” must stem, and particularly when there are strong supporters and critics, as occurred here, the court can find this factor to be neutral.<sup>156</sup>

Sixth, the court explained that scientific expert testimony weighs against admissibility if there is reason to be skeptical that the conclusions reached were developed for a preferred result at litigation rather than a “considered, independent conclusion.”<sup>157</sup> Seventh, the court identified that an “analytical gap,” as explained by *Joiner*, between the methodology and proffered opinion weighs against admissibility of the evidence for that specific proffered opinion, a significant concern for the *Abruquah* court.<sup>158</sup> Eighth, the court stated that the research offered should “reliably eliminate all alternative[s],” or said research may weigh against admissibility.<sup>159</sup> Ninth, the court found that an expert being a “consummate professional in his field” would weigh toward admissibility for the level of care factor.<sup>160</sup> Lastly, the court explained consistency in results from repeated testing would weigh toward admissibility.<sup>161</sup>

Based on its application of these factors to the facts in *Abruquah*, the Supreme Court of Maryland heavily weighed the presence of an analytical gap in finding that a trial court abused its discretion by admitting evidence for the expert’s proffered opinion with such reliability concerns.<sup>162</sup>

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154. *Id.* at 686, 296 A.3d at 991.

155. *Id.* at 686–87, 296 A.3d at 991. Notably, there is distinct similarity between critiques of Walker’s Battered Spouse Syndrome research and the research controls critiqued in *Abruquah*, particularly as it pertains to failing to maintain expected control standards within their respective industries. *See id.* at 687, 296 A.3d at 991 (stating that industry standards required independent second reviewer confirmation, though that was not present in referenced studies by experts (citing *United States v. Taylor*, 633 F. Supp. 2d 1170, 1176 (D.N.M. 2009))); Faigman, *supra* note 74, at 637–38, 642 (critiquing Walker’s leading questions, evaluator interpretations of participant responses, and inadequate selection of a control group).

156. *Abruquah*, 483 Md. at 692, 296 A.3d at 994.

157. *Id.* at 693, 296 A.3d at 995.

158. *Id.* at 694–95, 296 A.3d at 995–96 (citing *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997)). Importantly, in this case, the court held that expert testimony on firearms identification could be admissible for certain purposes but not for directly linking a specific bullet to a specific firearm. *Id.*

159. *Id.* at 695, 296 A.3d at 996.

160. *Id.*

161. *Id.* at 695–96, 296 A.3d at 996–97.

162. *Id.* at 696–97, 296 A.3d at 997.

*B. Applying Daubert-Rochkind to Battered Spouse Syndrome*

Currently, Maryland's statute on Battered Spouse Syndrome evidence supersedes the general judicial test for the admission of expert testimony.<sup>163</sup> However, a *Daubert-Rochkind* analysis of the science underlying this statute—which has not been amended in nearly thirty years<sup>164</sup>—reveals that the legislature should update this statute for such evidence to be ethically admissible.<sup>165</sup> This Section applies the ten-factor *Daubert-Rochkind* test<sup>166</sup> to analyze how Maryland should treat the admissibility of Battered Spouse Syndrome research. This Section will first focus on factors weighing toward admissibility,<sup>167</sup> subsequently discuss factors weighing against admissibility,<sup>168</sup> and thereafter explain why certain factors are fact-dependent.<sup>169</sup> This Section will conclude by explaining how Battered Spouse Syndrome, analyzed through the *Daubert-Rochkind* factors, would weigh against admissibility.<sup>170</sup>

*1. Daubert-Rochkind Factors Weighing Toward Admitting Expert Testimony on Battered Spouse Syndrome*

Only two *Daubert-Rochkind* factors, in considering Battered Spouse Syndrome research, expressly weigh toward admissibility.<sup>171</sup> The first factor, testability,<sup>172</sup> hinges on whether the expert testimony in question can be or has been tested using scientific methods.<sup>173</sup> Here, Lenore Walker's research—in which she concluded the existence of Battered Spouse Syndrome—followed traditional scientific methods, using participant interviews and quantitative data analysis to reach conclusions.<sup>174</sup> Even

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163. MD. CODE ANN., CTS. & JUD. PROC. § 10-916 (West 2023).

164. *Id.*

165. See *supra* note 17 and accompanying text. Should the statute not be updated, the statutory standard governs even though courts using a *Daubert-Rochkind* analysis would otherwise find Battered Spouse Syndrome too unreliable to permit expert testimony on the subject.

166. *Rochkind v. Stevenson*, 471 Md. 1, 26, 35–36, 236 A.3d 630, 645, 650 (2020) (citing *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 592–94 (1993)).

167. See *infra* Section II.B.1.

168. See *infra* Section II.B.2.

169. See *infra* Section II.B.3.

170. See *infra* Section II.B.4.

171. See *infra* notes 172–184.

172. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 593 (1993); *Rochkind v. Stevenson*, 471 Md. 1, 26, 35–36, 236 A.3d 630, 650 (2020) (adopting *Daubert's* “testability” factor).

173. See *Abruquah v. State*, 483 Md. 637, 681, 296 A.3d 961, 988 (2023) (finding that inadequate research did not change the testability calculus as long as the potential for testability was present).

174. See generally WALKER, *supra* note 39 (detailing the methodology and various statistical analyses conducted in creating Battered Spouse Syndrome theory).

though there are critiques of her research methodology,<sup>175</sup> Walker's research demonstrates testability,<sup>176</sup> so this factor should weigh in favor of admitting expert testimony on Battered Spouse Syndrome.<sup>177</sup>

The second factor, peer review and publication,<sup>178</sup> is perhaps the strongest factor favoring admitting expert testimony on Battered Spouse Syndrome. This factor favors admissibility when research is published in peer-reviewed texts or has been subjected to critique from published works by other scholars over time.<sup>179</sup> Here, Walker has repeatedly published on Battered Spouse Syndrome, and has continued to publish new editions considering legal and research updates since the 1970s.<sup>180</sup> These publications have also spanned from books<sup>181</sup> to several peer-reviewed journals.<sup>182</sup> Additionally, critiques concerning research on Battered Spouse Syndrome has proliferated within the legal and psychological scholar communities since Walker's early publications.<sup>183</sup> As such, the peer review and publication

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175. See, e.g., Faigman, *supra* note 74, at 622 (arguing more valid research on the cognitive experiences of IPV survivors should be used instead of Walker's research); see also *infra* notes 191–199, 211–227 and accompanying text (emphasizing errors in Walker's standards and controls and analytical gaps in her conclusions).

176. See generally WALKER, *supra* note 39. Notably, however, while Walker's methods indicate testability, researchers attempting to replicate Walker's results, have often failed to do so or even found contradictory results, creating dissatisfaction with Walker's methods among social scientists. See, e.g., CHRISTOPHER PETERSON ET AL., LEARNED HELPLESSNESS: A THEORY FOR THE AGE OF PERSONAL CONTROL 239 (1993) (“[P]assivity observed among victims of domestic violence is a middling example of learned helplessness . . . . [T]hese results do not constitute the best possible support for concluding that these women show learned helplessness.”); see also *infra* notes 259, 276.

177. See *Abruquah*, 483 Md. at 681, 296 A.3d at 988 (stating potential for testability weighs in favor of admissibility).

178. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 593 (1993); see also *Rochkind v. Stevenson*, 471 Md. 1, 35, 236 A.3d 630, 650 (2020) (adopting *Daubert*'s “peer review and publication” factor).

179. See *Abruquah*, 483 Md. at 681–82, 296 A.3d at 988 (showing that the Supreme Court of Maryland will consider published critiques of research as part of the peer review process).

180. See, e.g., WALKER, *supra* note 39, at 463 (considering how *Daubert* has impacted challenges to expert testimony on the intersection of Battered Spouse Syndrome and false confessions, which, due to the *Daubert* ruling being in 1993, could not have been discussed in her original research in the late 1970s and 1980s). However, despite updates to her research since the *Daubert* ruling, Walker has continued to avoid analyzing critiques of her methodology, weakening her research's validity. See *infra* note 196 and accompanying text.

181. LENORE E. WALKER, *THE BATTERED WOMAN* (1979); WALKER, *supra* note 39.

182. Walker, *supra* note 40; Lenore E.A. Walker, *Psychology and Violence Against Women*, 44 AM. PSYCHS. 695 (1989); Lenore E.A. Walker, *Inadequacies of the Masochistic Personality Disorder Diagnosis for Women*, 1 J. PERSONALITY DISORDERS 183 (1987).

183. See Faigman, *supra* note 74, at 637–43 (critiquing Walker's research design); Adams, *supra* note 96, at 228 (arguing Walker's research may lead jurors to be biased against people labeled as having “Battered Spouse Syndrome”); Baker, *supra* note 101, at 459–60 (explaining that Walker's conclusion that people with Battered Spouse Syndrome have “learned helplessness” may damage survivors' self-defense arguments if survivors kill their abusers).

factor weighs more in favor of admitting expert testimony on Battered Spouse Syndrome than this factor did in admitting expert testimony in *Abruquah*.<sup>184</sup>

## 2. *Daubert-Rochkind Factors Weighing Against Admitting Expert Testimony on Battered Spouse Syndrome*

However, the next six factors all weigh against admitting expert testimony on Battered Spouse Syndrome under a *Daubert-Rochkind* analysis.<sup>185</sup> The third factor, the knowability of potential error rates,<sup>186</sup> weighs against admitting expert testimony on Battered Spouse Syndrome. This factor weighs in favor of admission if the potential error rates of scientific research are reliably known.<sup>187</sup> In *The Battered Woman Syndrome*, Walker mentions error rates only in reference to other related studies or aspects of her research focused solely on acute battering.<sup>188</sup> However, Walker does not speak to the potential error rates of her own research on the Cycle of Violence or learned helplessness.<sup>189</sup> Thus, the lack of published error rates weighs against Battered Spouse Syndrome's admissibility.<sup>190</sup>

Additionally, the fourth factor, research standards and controls,<sup>191</sup> also weighs against admitting expert testimony on Battered Spouse Syndrome. This factor weighs in favor of admissibility if the research underlying

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184. See *Abruquah*, 483 Md. at 681–82, 296 A.3d at 988 (finding the peer review and publication factor weighed in favor of admission even though the initial research was published in a “publication of the primary trade group dedicated to advancing firearms identification,” creating questions as to the journal’s bias).

185. See *infra* notes 186–227 and accompanying text.

186. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 594 (1993); see also *Rochkind v. Stevenson*, 471 Md. 1, 35, 236 A.3d 630, 650 (2020) (adopting *Daubert*’s “error rates” factor).

187. But see *Abruquah*, 483 Md. at 685–86, 296 A.3d at 990–91 (holding this factor weighed against admission because stated potential error rates showed little consistency between studies).

188. See WALKER, *supra* note 39, at 60, 95 (discussing (1) error rates regarding IPV survivors experiencing symptoms of Post-Traumatic Stress Disorder and (2) the relationship between surviving abuse as a child and as an adult).

189. Interestingly, however, Walker mentions that courts have critiqued research on the intersection of Battered Spouse Syndrome and false confessions because, in her view, “[o]bviously the courts are inappropriately applying *Daubert* or Federal Rules of Evidence standards rather than . . . accepting the APA amicus briefs that describe the scientific reliability and validity of the research to date.” *Id.* at 463 (italics added). However, the only amicus brief Walker cites focuses solely on analyzing the reliability of false confession research, never mentioning Battered Spouse Syndrome or any related terms. Brief for Amicus Curiae American Psychological Ass’n in Support of Appellant at 3–4, *People v. Thomas*, 8 N.E.3d 308 (N.Y. 2014) (No. APL 2012-00306), <https://www.apa.org/about/offices/ogc/amicus/thomas.pdf>.

190. See *Abruquah*, 483 Md. at 686, 296 A.3d at 991 (showing that, even with greater publication of error rates in firearms identification research than Walker has published, the court still found the error rates published were not reliable enough for this factor to weigh toward admissibility).

191. *Daubert*, 509 U.S. at 594; see also *Rochkind*, 471 Md. at 35, 236 A.3d at 650 (adopting *Daubert*’s “research standards and controls” factor).



proposed expert testimony followed industry standards for proper methodologies and controls.<sup>192</sup> Scholars have repeatedly pointed out methodological flaws within Walker's research, including her failure to interview women who have never experienced IPV as a control group;<sup>193</sup> her use of leading questions in interviews;<sup>194</sup> and her evaluation only of interviewer's interpretations of participant responses while not recording the participants' actual responses.<sup>195</sup> Walker has largely not addressed these critiques, instead pushing forward with her initial research design.<sup>196</sup> As a result, these unaddressed flaws "call[] into question the validity of" Walker's research.<sup>197</sup> Since the rigor adopted by the scientific method is the industry standard in psychological research,<sup>198</sup> Walker's flaws in implementing the scientific method weigh the research standards and controls factor against admissibility.<sup>199</sup>

Likewise, the fifth factor, general acceptance,<sup>200</sup> does not support admitting expert testimony on Battered Spouse Syndrome. This factor weighs toward admissibility if the research in question is "generally accepted" by industries relevant to the research.<sup>201</sup> Battered Spouse Syndrome research has its supporters,<sup>202</sup> but the federal government, legal scholars, and feminist scholars specializing in research on IPV survivors who kill their abusers have

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192. See *Abruquah*, 483 Md. at 687, 296 A.3d at 991 (weighing this factor against admissibility because the industry's "second independent reviewer" standard was not consistently followed in research methodologies).

193. Faigman, *supra* note 74, at 642 n.122 (noting that, in her original book, Walker admitted that she did not use a control group for expense purposes (citing LENORE E.A. WALKER, *THE BATTERED WOMAN SYNDROME* 203 (1st ed. 1984))).

194. *Id.* at 637.

195. David L. Faigman & Amy J. Wright, *The Battered Woman Syndrome in the Age of Science*, 39 ARIZ. L. REV. 67, 77 (1997).

196. See, e.g., WALKER, *supra* note 39, at 77 (reinforcing studying learned helplessness by comparing "women in a battering relationship" with "women who had managed to escape such a relationship" rather than including a control group).

197. Faigman, *supra* note 74, at 637.

198. Faigman & Wright, *supra* note 195, at 76.

199. See *Abruquah v. State*, 483 Md. 637, 687, 296 A.3d 961, 991 (2023) (weighing the research standards and controls factor toward inadmissibility because of flaws in the research design as compared to industry standard).

200. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 594 (1993); see also *Rochkind v. Stevenson*, 471 Md. 1, 35, 236 A.3d 630, 650 (2020) (adopting *Daubert's* "general acceptance" factor).

201. See *Abruquah*, 483 Md. at 691–92, 296 A.3d at 994 (weighing the factor neutrally after noting that the community of firearms examiners, which based their employment on the research in question, overwhelmingly accepted the firearms identification theory, but scientists and academics tended not to accept the theory).

202. See *BWS Overview*, *supra* note 56, at 337, 345 (noting that both defendants and prosecutors generally accept Battered Spouse Syndrome within the legal context).

disfavored Walker's research for over thirty years.<sup>203</sup> As such, there is not "general acceptance" of Battered Spouse Syndrome within industries relevant to supporting IPV survivors, making the "general acceptance" factor weigh against admitting Battered Spouse Syndrome testimony.<sup>204</sup>

Furthermore, the sixth factor, the purpose of the expert's research and testimony,<sup>205</sup> again weighs against admitting expert testimony on Battered Spouse Syndrome. The Supreme Court of Maryland has stated this factor weighs against admissibility if the research in question was developed to reach preferred litigation results rather than independent and reasoned results.<sup>206</sup> While individual experts vary between cases, Walker has not been shy, even in her research texts, to discuss how her research can be used in self-defense testimonies.<sup>207</sup> Walker's critics have labeled this connection improper "[s]cientific [a]dvocacy,"<sup>208</sup> worrying that Walker's conclusions—particularly in light of her methodological issues—were preconceived, at least partially, because of her scientific advocacy goals.<sup>209</sup> As such, factor six may also push expert testimony on Battered Spouse Syndrome against admissibility.<sup>210</sup>

Moreover, the seventh factor, the justifiability of extrapolated conclusions,<sup>211</sup> is, alongside factor four, the factor that most heavily weighs against admitting expert testimony on Battered Spouse Syndrome. This factor

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203. See, e.g., Gordon & Dutton, *supra* note 1, at 17, 22 (showing that researchers endorsed by the federal government in 1996 concluded that the term "[B]attered [Spouse] [S]yndrome" was already inadequate based on the "scientific and clinical knowledge concerning battering and its effects" at that time); Elizabeth M. Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering*, 9 WOMEN'S RTS. L. REP. 195, 198–200 (1986) (providing a feminist theory critique of Battered Spouse Syndrome by claiming it inaccurately presents women who are abused as having "learned helplessness" rather than making "necessary choice[s] to save [their] own li[ves]"). See generally Faigman, *supra* note 74 (cautioning against using Walker's research in legal proceedings).

204. See *Abruquah*, 483 Md. at 691–92, 296 A.3d at 994 (stating non-acceptance from legal and scholarly experts pushed the "general acceptance" factor toward inadmissibility). *But see BWS Overview*, *supra* note 56, at 335–36 ("Courts in every jurisdiction have now approved the use of expert testimony on [Battered Spouse Syndrome] to support a self-defense claim.").

205. *Rochkind*, 471 Md. at 35, 236 A.3d at 650.

206. *Abruquah*, 483 Md. at 693, 296 A.3d at 995.

207. WALKER, *supra* note 39, at 527–33.

208. Faigman, *supra* note 74, at 631. Faigman highlights Walker's willingness to testify as an expert "in extremely implausible cases" as evidence of scientific advocacy, using a case study in which Walker sought to testify despite the court determining that little evidence of self-defense existed. *Id.* at 631–32 (citing *State v. Martin*, 666 S.W.2d 895, 897–901 (Mo. Ct. App. 1984)).

209. See Faigman & Wright, *supra* note 195, at 77 (noting that Walker's leading questions ensured interviewers knew the "correct" answers and based her conclusions on how interviewers believed participants substantiated those outcomes, assessing that "it would be difficult to imagine a research design more conducive to experimenter expectancies than Walker's").

210. See *Abruquah*, 483 Md. at 693, 296 A.3d at 995 (explaining research developed primarily for testimony in court rather than for objective purposes weighs toward inadmissibility).

211. *Rochkind v. Stevenson*, 471 Md. 1, 36, 236 A.3d 630, 650 (2020).

weighs toward inadmissibility if an “analytical gap”<sup>212</sup> between the research methodology and its conclusions makes those conclusions unjustifiable.<sup>213</sup> This has been a main area of criticism toward Walker’s research, particularly as it relates to Walker’s Cycle of Violence theory.<sup>214</sup> Faigman and Wright note that Walker’s “tension-building” and “loving contrition” phases are presented separately rather than in relationship with each other, as Walker never assessed how often “loving contrition” preceded “tension-building” in her sample.<sup>215</sup> Walker estimated that sixty-five percent of all subjects experienced “tension-building” before “acute battering” and that fifty-eight percent of all subjects experienced “acute battering” before “loving contrition,”<sup>216</sup> leading Walker to argue that a majority of her participants thus experienced the Cycle.<sup>217</sup> However, since two of the phases are presented independently, Faigman and Wright use a probability analysis on the joint occurrence of independent events to show that Walker can only estimate that thirty-eight percent of her participants experienced both “loving contrition” and “tension-building” within her methodology.<sup>218</sup> Since Walker cannot attribute a majority of her participants to experiencing both of these two phases,<sup>219</sup> there is an “analytical gap” between Walker’s methodology and the Cycle of Violence she concluded.<sup>220</sup> As such, this “analytical gap” weighs against the admissibility of expert testimony on Battered Spouse Syndrome.<sup>221</sup>

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212. Gen. Elec. Co. v. Joiner, 522 U.S. 136, 146 (1997).

213. See *Abruquah*, 483 Md. at 694–95, 296 A.3d at 995–96 (noting that the issue is the gap between the methodology and the possible conclusions one could reach, not the accuracy of the conclusions).

214. See Faigman & Wright, *supra* note 195, at 76–78 (taking aim at the link between Walker’s methodology and her conclusions regarding the Cycle); WALKER, *supra* note 39, at 94–99 (outlining a cyclical relationship involving, in sequence, a “tension-building” phase, an “acute battering incident,” and “loving contrition”). See *supra* notes 44–55 and accompanying text (describing Walker’s Cycle of Violence theory).

215. Faigman & Wright, *supra* note 195, at 77–78.

216. WALKER, *supra* note 39, at 98.

217. *Id.*

218. Faigman & Wright, *supra* note 195, at 78 (citing WILLIAM HAYS, STATISTICS 42 (3d ed. 1981)).

219. *Id.*

220. See *General Electric Co. v. Joiner*, 522 U.S. 136, 146 (1997) (defining an “analytical gap” as existing when there is too large a gap between the data and the conclusions reached).

221. See *Abruquah v. State*, 483 Md. 637, 694–95, 296 A.3d 961, 995–96 (2023) (reinforcing that a gap between the methodology and the conclusions proposed as testimony would weigh against admissibility). Notably, *Abruquah* clarifies that problematic elements of a particular theory, under an “analytical gap” analysis, may be held inadmissible, while validated parts of the same theory may be admissible in the right circumstances. See *id.* at 695–96, 296 A.3d at 996–97 (stating that Association of Firearms and Tool Mark Examiners research is generally reliable at linking markings on an “unknown” bullet to a particular firearm but cannot be used to link particular bullets to particular known firearms). Walker risks this “analytical gap” by attempting to attribute one model to IPV survivors generally. WALKER, *supra* note 39, at 94–99. However, an approach that analyzed

Similarly, the eighth factor, the elimination of possible alternatives,<sup>222</sup> is yet another factor that weighs against admitting expert testimony on Battered Spouse Syndrome. This factor weighs toward admissibility if the research is careful to address and eliminate possible alternative conclusions for the results.<sup>223</sup> Walker addresses some of the limitations of her data, including its inability to discern between what causes an IPV survivor to leave or stay,<sup>224</sup> but, in spite of the concerns present for factor seven, Walker is adamant that her data specifically supports the Cycle of Violence theory.<sup>225</sup> By failing to address the factor seven concerns, allowing the possibility that “tension-building” and “loving contrition” are independent from each other,<sup>226</sup> possible alternatives to her conclusions continue to exist, creating reason for a court to weigh this factor against admissibility.<sup>227</sup>

### 3. Daubert-Rochkind *Factors that are Fact-Dependent Regarding Admitting Expert Testimony on Battered Spouse Syndrome*

On the other hand, the final two factors apply to Battered Spouse Syndrome on a more case-by-case basis. The ninth factor, level of care,<sup>228</sup> weighs toward admissibility if the expert is a “consummate professional in [their] field” who demonstrates the typical level of care they use at work.<sup>229</sup> This factor’s outcome would depend on the specific expert brought to testify, but since most Battered Spouse Syndrome experts will work in the proper field, this factor should tend to weigh toward admissibility.<sup>230</sup>

Additionally, the tenth factor, the reliability of the field’s assessment methodology,<sup>231</sup> may tend to weigh toward admitting expert testimony on

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an individual survivor’s experiences with battering, as is promoted by many battering and its effects researchers, minimizes this issue, as the court would only be concerned about conclusions extrapolated within an individual cases rather than the validity of a generally applicable model. *See infra* notes 271–277 and accompanying text.

222. *Rochkind v. Stevenson*, 471 Md. 1, 36, 236 A.3d 630, 650 (2020).

223. *See Abruquah*, 483 Md. at 695, 296 A.3d at 996 (stating the data should reliably eliminate all obvious alternatives for this factor to weigh toward admissibility).

224. WALKER, *supra* note 39, at 99.

225. *Id.*

226. Faigman & Wright, *supra* note 195, at 78.

227. *See Abruquah*, 483 Md. at 695, 296 A.3d at 996 (weighing the elimination of possible alternatives factor against admissibility because alternative sources of a bullet were not tested, which failed to eliminate alternative explanations for the expert’s conclusions).

228. *Rochkind v. Stevenson*, 471 Md. 1, 36, 236 A.3d 630, 650 (2020).

229. *See Abruquah*, 483 Md. at 695, 296 A.3d at 996 (finding that an expert exhibiting these qualities weighed toward admissibility).

230. *See, e.g., State v. Elzey*, 472 Md. 84, 96, 244 A.3d 1068, 1075 (2021) (including a psychiatrist as the expert witness on Battered Spouse Syndrome); *see also Wallace-Bey v. State*, 234 Md. App. 501, 526, 172 A.3d 1006, 1020 (2017) (including a clinical and forensic psychologist as the expert witness on Battered Spouse Syndrome).

231. *Rochkind*, 471 Md. at 36, 236 A.3d at 650.

Battered Spouse Syndrome, but largely because of the reliability of experts rather than the research itself.<sup>232</sup> This factor weighs toward admissibility if the methods that members of the field would use to evaluate a particular case are reliable both generally and specifically to the question at hand.<sup>233</sup> In general, trained psychologists and psychiatrists are regularly able to assess the mental state of someone who has experienced battering and can testify to those findings.<sup>234</sup> While the specific issue at hand may vary by case, established psychological and psychiatric evaluation methods should weigh this factor toward admissibility if the expert testifying works in one of these fields.<sup>235</sup>

#### 4. Summary of Applying Daubert-Rochkind to Battered Spouse Syndrome

Overall, six factors weigh against admitting expert testimony on Battered Spouse Syndrome under a *Daubert-Rochkind* analysis, while only two factors weigh toward admissibility, and two factors are fact and/or expert dependent.<sup>236</sup> Without Section 10-916,<sup>237</sup> Maryland judges concerned with scientific method issues may weigh factors four and seven the strongest and hold that Walker’s lack of proper control standards and the “analytical gap” between her methodology and conclusions tilt expert testimony on Battered Spouse Syndrome against admissibility.<sup>238</sup> Furthermore, judges who weigh the general acceptance factor most significantly, particularly because of its inclusion as a factor under both the previous *Frye-Reed* and current *Daubert-Rochkind* tests,<sup>239</sup> may be similarly troubled by the weight of Battered Spouse Syndrome’s rejection by the federal government, psychological researchers,

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232. See *infra* notes 233–235 and accompanying text.

233. See *Abruquah*, 483 Md. at 695–96, 296 A.3d at 996–97 (explaining that firearms identification is reliable at matching markings from a bullet to a known firearm but is not reliable at matching them to an unknown firearm, ultimately weighing this factor against admissibility because the latter issue was the issue at hand).

234. See *Elzey*, 472 Md. at 97, 244 A.3d at 1076 (admitting evidence based on the expert conducting a psychiatric evaluation of the defendant and reaching diagnosis conclusions regarding the defendant’s mental state). *But see Wallace-Bey*, 234 Md. App. at 527–28, 172 A.3d at 1020–21 (showing two experts reaching opposite conclusions regarding whether a defendant had Battered Spouse Syndrome after using similar interview assessment methods to reach their conclusions, indicating that these methods do not always produce consistent results).

235. See *Abruquah*, 483 Md. at 695–96, 296 A.3d at 996–97 (stating that reliable methods within the field weigh in favor of admissibility).

236. See *supra* Sections II.B.1–3.

237. MD. CODE ANN., CTS. & JUD. PROC. § 10-916 (West 1996).

238. Faigman, *supra* note 74, at 637, 642; Faigman & Wright, *supra* note 195, at 76–78.

239. See *Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923), *superseded by* *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 587 (1993); *Reed v. State*, 283 Md. 374, 389, 391 A.2d 364, 372 (1978), *overruled by* *Rochkind v. Stevenson*, 471 Md. 1, 26, 236 A.3d 630, 645 (2020); *Daubert*, 509 U.S. at 594.

legal scholars, and feminist advocates.<sup>240</sup> However, this *Daubert-Rochkind* analysis cannot override Maryland’s statutory language permitting expert testimony on Battered Spouse Syndrome, despite it being unwise for Maryland to continue relying on Walker’s outdated and unreliable concepts.<sup>241</sup> As such, the General Assembly should consider the new Maryland court standards for admitting expert testimony on scientific evidence an influential force toward updating Section 10-916.<sup>242</sup>

### C. Applying *Daubert-Rochkind* to Battering and Its Effects

Broadening evidence admissibility to “battering and its effects” rather than merely Battered Spouse Syndrome would remedy several *Daubert-Rochkind* factors that weigh against admissibility for Battered Spouse Syndrome. This approach would allow experts to both introduce more validated models than Battered Spouse Syndrome and permit experts to introduce tools for individualizing analyses of reasonable reactions to violence within particular battering relationships.<sup>243</sup> As such, this Section argues that scholarly research under the battering and its effects umbrella demonstrates that expert testimony on battering and its effects should be admitted under the *Daubert-Rochkind* test. This Section analyzes five *Daubert-Rochkind* factors that weighed against admissibility for Battered Spouse Syndrome to show that battering and its effects research yields far more acceptable evidence under *Daubert-Rochkind* than Battered Spouse Syndrome.<sup>244</sup>

As it pertains to *Daubert-Rochkind* factor four on standards and controls,<sup>245</sup> leading quantitative research on battering and its effects has followed proper scientific control methods, favoring admissibility for expert

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240. See *supra* note 203 and accompanying text.

241. See generally WALKER, *supra* note 39.

242. See *supra* Sections II.B.1–2.

243. See *supra* Section I.D.

244. See *infra* notes 280–284 and accompanying text; *supra* Section II.B.2. Since there continues to be unclear evidence as to how courts should treat the error rate factor for non-quantitative social science research, Michelle Michelson, *The Admissibility of Expert Testimony on Battering and Its Effects After Kumho Tire*, 79 WASH. U. L.Q. 367, 387–91 (2001), this Section will not address the error rate factor. Furthermore, since battering and its effects research has similarities related to the testability, peer review and publication, level of care, and reliability of the field’s assessment methodology factors, those factors—which already either consistently or situationally weigh toward admissibility for Battered Spouse Syndrome—will not be discussed in this Section.

245. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 594 (1993); see also *Rochkind v. Stevenson*, 471 Md. 1, 35, 236 A.3d 630, 650 (2020) (adopting *Daubert*’s research “standards and controls” factor).

testimony on this research.<sup>246</sup> For example, Dutton, Goodman, and Schmidt conducted a multigender survey constructed through “ethnographic and classical test theory methodologies.”<sup>247</sup> This study included a control group, comparing, among a 757-person sample, those reporting being victimized by IPV, those reporting that they have perpetrated IPV, those reporting they both were victimized by and had perpetrated IPV, and a control group of participants reporting they never were victimized by nor have perpetrated IPV.<sup>248</sup> Furthermore, this study used direct survey responses from study participants to assess results.<sup>249</sup> While acknowledging the limitations of recruiting a convenience sample rather than true random sampling,<sup>250</sup> this research lacks the validity concerns prevalent in Walker’s research because the researchers upheld standard scientific method controls.<sup>251</sup> As a result, the standards and controls upheld by this study’s research methodology should be stringent enough to weigh factor four toward admissibility.<sup>252</sup>

Additionally, the fifth factor, general acceptance,<sup>253</sup> weighs in greater favor of admissibility for battering and its effects research than for Battered Spouse Syndrome research because psychological, sociological, and feminist researchers have embraced research on the former more than the latter.<sup>254</sup> As

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246. See *infra* notes 247–249 and accompanying text; see also *Abruquah v. State*, 483 Md. 637, 687, 296 A.3d 961, 991 (2023) (noting that this factor weighs toward admissibility if the proper methods and controls within the associated research field are properly followed).

247. DUTTON ET AL., *supra* note 111, at 7 (report).

248. *Id.*

249. *Id.* at 19–20 (report).

250. *Id.* at 7 (report).

251. See *supra* note 197 and accompanying text.

252. See *Abruquah v. State*, 483 Md. 637, 687, 296 A.3d 961, 991 (2023) (explaining that proper standards and controls weigh expert testimony on research toward admissibility); see also DUTTON ET AL., *supra* note 111, at 7 (report) (detailing controls and methodologies following scientific methods within psychological research). But see Faigman & Wright, *supra* note 195, at 76 n.56 (citing LENORE E.A. WALKER, *THE BATTERED WOMAN SYNDROME* 203 (1st ed. 1984)) (stating that a control group was not analyzed for expense purposes when Walker developed Battered Woman Syndrome theory). One critique of *Daubert* states that the Court prefers standards that may work well for evaluating quantitative studies but may not be suited as well for social science research. Michelson, *supra* note 244, at 383. However, after *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), which applied *Daubert* beyond quantitative scientific methods to include “technical and other specialized knowledge,” *id.* at 141 (internal quotations omitted), it is worth considering how heavily this factor may be weighed if, for example, a battering shelter employee were to testify as an expert on battering and its effects based on the trends they observe with their clients.

253. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 594 (1993); see also *Rochkind v. Stevenson*, 471 Md. 1, 35, 236 A.3d 630, 650 (2020) (adopting *Daubert*’s “general acceptance” factor).

254. See *supra* notes 203–204 and accompanying text; EVAN STARK, *COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE* 117–121 (2007) (outlining common themes among these three research approaches—though including Walker’s research as a facet within the psychological model).

previously noted, analyses supported by the federal government in 1996 recommended shifting terminology from Battered Spouse Syndrome to “battering and its effects” because of advances in research since Battered Spouse Syndrome was conceived.<sup>255</sup> Models like coercive control and survivor theory “now dominate[] our understanding of the reactions of [people] to [IPV].”<sup>256</sup> These theories, unlike Battered Spouse Syndrome’s “learned helplessness” theory,<sup>257</sup> focus on the “innovative coping strategies and active help-seeking” IPV survivors enact when responding to violence.<sup>258</sup> As further research similarly found survivors had active, rather than passive, responses to violence, these theories have gained broader acceptance among scholars.<sup>259</sup> In response to this evidence, California, for example, amended its Battered Spouse Syndrome statute to alter all mentions of “Battered Spouse Syndrome” to instead say “battering and its effects.”<sup>260</sup> As such, theories created under the umbrella of battering and its effects appear to more strongly meet the general acceptance factor under *Daubert-Rochkind* than Battered Spouse Syndrome.<sup>261</sup>

Unlike the “legal advocacy” concerns present for Battered Spouse Syndrome<sup>262</sup> under the sixth factor, purpose of the expert’s research and testimony,<sup>263</sup> battering and its effects research stems from a government mandate.<sup>264</sup> When Congress passed the Violence Against Women Act (“VAWA”) in 1994, Congress mandated a report within one year of enactment on the “medical and psychological basis of ‘battered women’s syndrome.’”<sup>265</sup> These reports first recommended the term “battering and its effects”<sup>266</sup> and critiqued Battered Spouse Syndrome theory, lending credence to the coercive control, survivor theory, and feminist approaches to battering

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255. Gordon & Dutton, *supra* note 1, at 22.

256. Mahoney, *supra* note 110, at 707 (quoting MICHAEL P. JOHNSON, A TYPOLOGY OF DOMESTIC VIOLENCE: INTIMATE TERRORISM, VIOLENT RESISTANCE, AND SITUATIONAL COUPLE VIOLENCE 49 (2008)).

257. Walker, *supra* note 40, at 331.

258. Mahoney, *supra* note 110, at 707 (quoting JOHNSON, *supra* note 256, at 49).

259. See, e.g., EDWARD W. GONDOLF & ELLEN R. FISHER, BATTERED WOMEN AS SURVIVORS: AN ALTERNATIVE TO TREATING LEARNED HELPLESSNESS 22–23 (1988) (reframing learned helplessness as a characteristic of how social systems treat survivors rather than as a characteristic of IPV survivor behaviors).

260. See S.B. 1385, 2003–2004 Leg., 2004 Sess. (Cal. 2004) (codified as amended at (CAL. EVID. CODE § 1107 (West 2023)) (amending the language to say “battering and its effects”).

261. See *supra* notes 203–204 and accompanying text.

262. See *supra* notes 207–210 and accompanying text.

263. *Rochkind v. Stevenson*, 471 Md. 1, 35, 236 A.3d 630, 650 (2020).

264. Gordon & Dutton, *supra* note 1, at 1.

265. Violence Against Women Act, Pub. L. No. 103–322, § 40507, 108 Stat. 1796, 1949–50 (1994) (codified as 42 U.S.C. § 14013 (1994)).

266. Gordon & Dutton, *supra* note 1, at 17.



and its effects research that followed.<sup>267</sup> In responding to VAWA,<sup>268</sup> this research expressly stemmed from a policy mandate, while the *Rochkind* court was concerned solely with research “developed . . . expressly for purposes of testifying.”<sup>269</sup> As a result, this factor weighs toward admissibility for battering and its effects research.<sup>270</sup>

The seventh *Daubert-Rochkind* factor, the justifiability of extrapolated conclusions,<sup>271</sup> weighs more toward admissibility for testimony on battering and its effects research than Battered Spouse Syndrome research by avoiding Walker’s “analytical gap.”<sup>272</sup> Instead, battering and its effects research has focused on explaining varied contextual responses to violence.<sup>273</sup> Dutton’s research has been instrumental at pushing researchers to individualize the experiences of each survivor, framing the effects of battering on survivors through “four key components”:<sup>274</sup>

- (1) The cumulative history of violence and abuse experienced by the victim in the relationship at issue, including, where relevant, the nature and extent of violence or abuse in a specific episode;
- (2) The psychological reactions of the battered [person] to the batterer’s violence;
- (3) The strategies used (or not used) by the battered [person] in response to prior violence and abuse, and the consequence of (or the expectations that arise from) those strategies; and
- (4) The contextual factors that influenced both the battered [person’s] strategies for responding to prior violence, and [their] psychological reactions to that violence.<sup>275</sup>

Research conclusions that focus on individualized experiences move away from the danger presented by overarching models that are too broad to capture experiences of the general population being studied.<sup>276</sup> As a result,

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267. See *Mahoney*, *supra* note 110, at 709–10 (discussing how financial support and pilot programs for battering and its effects research dramatically expanded because of VAWA).

268. Violence Against Women Act § 40507.

269. *Rochkind v. Stevenson*, 471 Md. 1, 35, 236 A.3d 630, 650 (2020).

270. See *Abruquah v. State*, 483 Md. 637, 693, 296 A.3d 961, 995 (2023) (weighing research developed for testimonial purposes toward inadmissibility).

271. *Rochkind*, 471 Md. at 36, 236 A.3d at 650.

272. See *supra* notes 214–221 and accompanying text.

273. *Mahoney*, *supra* note 110, at 708.

274. Mary Ann Dutton, *Understanding Women’s Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191, 1202 (1993).

275. *Id.*

276. See Faigman & Wright, *supra* note 195, at 78 (estimating Cycle of Violence theory as overbroad for IPV survivors); see also GONDOLF & FISHER, *supra* note 259, at 22–23 (describing the notion that IPV survivors experience learned helplessness as “misleading”). Importantly, however, the broadness of these theories should not detract from the experience that some IPV survivors have that resemble learned helplessness or the Cycle of Violence. See, e.g., *State v. Elzey*,

studies focused on individualized experiences minimize the importance of factor seven.<sup>277</sup> Similarly, factor eight, elimination of possible alternatives,<sup>278</sup> may too be minimized in importance when battering and its effects research focuses on analyzing individual relationship contexts in assessing whether an IPV survivor's responses to violence were reasonable.<sup>279</sup>

From this analysis, modern battering and its effects research remedies at least three of the factors that weigh against admissibility for expert testimony on Battered Spouse Syndrome.<sup>280</sup> Additionally, depending on the research considered, battering and its effects research may either remedy or minimize the importance of factors seven<sup>281</sup> and eight.<sup>282</sup> As such, at least seven of the ten *Daubert-Rochkind* factors weigh toward admissibility when considering battering and its effects research,<sup>283</sup> making expert testimony on battering and its effects research more validly and reliably admissible than expert testimony on Battered Spouse Syndrome.<sup>284</sup>

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472 Md. 84, 97–98, 244 A.3d 1068, 1076 (2021) (presenting expert testimony that the defendant's experiences with IPV included both learned helplessness and the Cycle of Violence).

277. See *Rochkind v. Stevenson*, 471 Md. 1, 36, 236 A.3d 630, 650–51 (2020) (citing *Daubert v. Merrell Dow Pharms., Co.*, 509 U.S. 579, 594 (1993)) (explaining that these factors are flexible and can vary in importance based on the issues and research at hand). Formal models that make generalizations created under the “battering and its effects” umbrella, like that proposed in *DUTTON ET AL.*, *supra* note 111, at 7 (report), should be further analyzed by courts to ensure that their research does not include “analytical gap[s],” *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997), but such analysis is beyond the scope of this Comment. However, in the example noted, the controls in place should minimize these gaps. *DUTTON ET AL.*, *supra* note 111, at 6–7 (report).

278. *Rochkind*, 471 Md. at 36, 236 A.3d at 650.

279. See *supra* note 277 and accompanying text. If factor eight weighs toward admissibility when research presented as evidence addresses how alternative explanations could not have led to the conclusion that the research reached, see *Abruquah v. State*, 483 Md. 637, 695, 296 A.3d 961, 996 (2023) (stating that data weighs towards admissibility if the research reliably eliminates all obvious alternatives), research concluding that the natures of each battering relationship are contextual to those individual relationships avoids the risk created by attributing one model to all battering relationships. When Walker applied a model to battering relationships, she was responsible for justifying that her model applied better to battering relationships than other possible models, but she did not do so. See *supra* notes 222–227 and accompanying text. Since battering and its effects researchers ask analysts to individualize each battering relationship rather than applying a prescriptive model, those researchers do not have to account for eliminating alternative models in the same way. See, e.g., *Dutton*, *supra* note 274, at 1202 (proposing components for analyzing a battering relationship's context rather than applying a prescriptive model to all battering relationships). However, as with factor seven, battering and its effects research that proposes formal prescriptive models should focus more on eliminating possible alternatives to be admissible. See *supra* note 277 and accompanying text.

280. See *supra* notes 245–270 and accompanying text.

281. See *supra* notes 271–277 and accompanying text.

282. See *supra* notes 278–279 and accompanying text.

283. See *supra* notes 177, 184, 190, 199, 204, 210, 221, 227, 230, 235 and accompanying text.

284. However, as mentioned in *Rochkind v. Stevenson*, these factors are “flexible” rather than having a uniform calculus, so there may be cases where a minority of factors pointing toward inadmissibility are weighed heavier than the remaining factors due to the specific facts of the case.

*D. The Impact of “Battering and Its Effects” Terminology on Maryland Precedent*

Altering the language of Section 10-916<sup>285</sup> to include “battering and its effects” research should strengthen precedent for IPV survivors who claim self-defense after killing their abusers.<sup>286</sup> In doing so, a trial court could admit validated scientific models<sup>287</sup> and defendants’ individualized experiences of their battering relationships without eliminating the benefits Section 10-916 currently gives IPV survivors.<sup>288</sup>

Recent cases considering the admissibility of prior abuse display how precedent would both be maintained and expanded for survivors seeking to introduce expert testimony on battering and its effects.<sup>289</sup> In *State v. Elzey*,<sup>290</sup> the defendant appealed the trial court’s voluntary manslaughter conviction after the defendant stabbed her abuser with a butcher knife.<sup>291</sup> At trial, an expert witness testified to the defendant’s history in three physically abusive relationships.<sup>292</sup> The Maryland Court of Appeals (now the Supreme Court of Maryland) found the defendant’s history navigating multiple abusive relationships as relevant to determining whether the defendant had a heightened sensitivity to impending violence requiring self-defense.<sup>293</sup> Despite this expert testifying as to whether the defendant met Maryland’s legal definition of Battered Spouse Syndrome,<sup>294</sup> Maryland’s highest court post-*Rochkind* has recognized the relevance of contextual battering

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471 Md. 1, 36, 236 A.3d 630, 651 (2020) (citing *Daubert v. Merrell Dow Pharms., Co.*, 509 U.S. 579, 594 (1993)).

285. MD. CODE ANN., CTS. & JUD. PROC. § 10-916 (West 1996); *see supra* note 17 and accompanying text.

286. *See infra* notes 289–309 and accompanying text.

287. *See, e.g.*, DUTTON ET AL., *supra* note 111, at 6–7 (presenting models created through a “battering and its effects” research design rooted in the scientific method).

288. *See infra* notes 289–303 and accompanying text.

289. *See generally* *State v. Elzey*, 472 Md. 84, 244 A.3d 1068 (2021) (discussing via expert testimony the impact of prior abuse on Battered Spouse Syndrome); *Wallace-Bey v. State*, 234 Md. App. 501, 172 A.3d 1006 (2017) (analyzing whether testimony about abuse caused by people beyond the murder victim to the defendant should be admitted).

290. 472 Md. 84, 244 A.3d. 1068 (2021).

291. *Id.* at 92, 244 A.3d at 1073. The intermediate appellate court found in favor of the defendant in ruling that the trial court gave erroneous jury instructions, so the State appealed to the Court of Appeals. *Id.*

292. *Id.* at 97–98, 244 A.3d at 1076.

293. *Id.* at 127–28, 244 A.3d at 1093–94.

294. MD. CODE ANN., CTS. & JUD. PROC. § 10-916 (West 1996). In the statutory alteration proposed in this Comment, “battering and its effects” would be defined by the same mental state definition that currently defines Battered Spouse Syndrome, with the intent to exemplify that it is the research underlying these mental states, not the analysis of the mental states themselves, that is at issue. *See supra* note 17 and accompanying text.

experiences to assessing a defendant's responses, a hallmark of battering and its effects research.<sup>295</sup>

On the other hand, altering the statute to focus on “battering and its effects” research may prevent expert testimony that harms defendants based on Battered Spouse Syndrome research.<sup>296</sup> In *Wallace-Bey v. State*,<sup>297</sup> the defendant appealed a first-degree murder conviction resulting from an incident in which the defendant shot her boyfriend after he allegedly raped her.<sup>298</sup> The Court of Special Appeals (now the Appellate Court of Maryland) considered testimony from the state's expert concluding the defendant did not have Battered Spouse Syndrome because she had physical and financial independence from her abuser.<sup>299</sup> Such conclusions make sense if an expert evaluating a defendant is evaluating “learned helplessness,”<sup>300</sup> but, as the court in *Wallace-Bey* concluded, the particular contexts within which the defendant has previously experienced battery are relevant to assessing the reasonableness of the defendant's response to abuse.<sup>301</sup> Maryland courts appear already willing to individualize defendants raising a Section 10-916 issue beyond solely “learned helplessness” or other concepts stemming from Battered Spouse Syndrome.<sup>302</sup> As such, altering Section 10-916 to say “battering and its effects” would avoid hurting precedent while preventing harmful expert testimony that relies too narrowly on Battered Spouse Syndrome's theories.<sup>303</sup>

Yet, despite the greatest benefit of Section 10-916 being that the statute excuses the first aggressor, excessive force, and failure to retreat self-defense exceptions,<sup>304</sup> murder defendants currently raising Section 10-916 issues still face harsh sentences by receiving manslaughter downgrades rather than

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295. *Elzey*, 472 Md. at 127–28, 244 A.3d at 1093–94.

296. See *infra* note 299 and accompanying text.

297. 234 Md. App. 501, 172 A.3d 1006 (2017).

298. *Id.* at 512, 172 A.3d at 1012.

299. *Id.* at 528, 172 A.3d at 1021.

300. Walker, *supra* note 40, at 331.

301. See *Wallace-Bey*, 234 Md. App. at 562–63, 172 A.3d at 1041 (stating that evidence, including abuse the defendant faced by persons beyond the victim and specific statements the victim made to the defendant, were admissible); see also Holly Maguigan, *It's Time to Move Beyond "Battered Woman Syndrome"*, 17 CRIM. JUST. ETHICS 50, 50 (1998) (reviewing DONALD ALEXANDER DOWNS, MORE THAN VICTIMS: BATTERED WOMEN, THE SYNDROME SOCIETY, AND THE LAW (1996)) (explaining that experts since the 1990s have viewed Walker's Cycle of Violence and “learned helplessness” theories as inadequate at “captur[ing] the full experience” of IPV survivors, leading them to offer testimony on battering and its more individualized effects).

302. *Wallace-Bey*, 234 Md. App. at 562–63, 172 A.3d at 1041; *State v. Elzey*, 472 Md. 84, 127–28, 244 A.3d 1068, 1093–94 (2021).

303. See *supra* note 299 and accompanying text.

304. MD. CODE ANN., CTS. & JUD. PROC. § 10-916(b) (West 1996); see *supra* notes 64–66 and accompanying text.

perfect self-defense acquittals.<sup>305</sup> In Maryland, the distinction between perfect and imperfect self-defense to murder hinges on whether a reasonable person would objectively consider the defendant's actions necessary.<sup>306</sup> When presented Battered Spouse Syndrome theory, a jury is led to view a defendant who killed their abuser as acting unreasonably since such an action does not align with learned helplessness, hindering a perfect self-defense argument.<sup>307</sup> However, a battering and its effects approach, with its emphasis on individualization,<sup>308</sup> allows juries the opportunity to understand why a defendant's actions would be objectively reasonable for someone within their context.<sup>309</sup>

Thus, altering the statute or adjusting judicial interpretation of Section 10-916 to include battering and its effects research would both improve upon current precedent and possibly reduce sentences for IPV survivors that defend themselves against their abusers.<sup>310</sup>

## CONCLUSION

Maryland's adoption of the *Daubert-Rochkind* factors for evaluating the admissibility of expert testimony provides an impetus for reexamining expert evidence on Battered Spouse Syndrome.<sup>311</sup> Unfortunately, the reevaluation conducted in this Comment demonstrates such evidence is no longer sufficient.<sup>312</sup> On the other hand, contemporary research on battering and its effects has validly revealed much more about the individualized experiences and responses IPV survivors have to threats of abuse and violence, providing both more acceptable research upon which to base expert testimony and more avenues for IPV survivors to argue that their responses to such threats constitute perfect self-defense.<sup>313</sup> However, this research is all for naught in Maryland if the General Assembly continues to only statutorily admit

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305. See, e.g., *Elzey*, 472 Md. at 105, 244 A.3d at 1080–81 (explaining the jury convicted the defendant of voluntary manslaughter after receiving Battered Spouse Syndrome testimony).

306. See *State v. Faulkner*, 301 Md. 482, 499–500, 483 A.2d 759, 768–69 (1984) (agreeing with lower court language delineating between perfect and imperfect self-defense); see also *supra* Section I.A.

307. See, e.g., *Wallace-Bey*, 234 Md. App. at 528, 172 A.3d at 1021 (describing an expert explaining that the defendant's lack of alignment with learned helplessness meant that the defendant should not be able to introduce evidence that their experiences with battery were connected to their mental state at the time of the killing).

308. Mahoney, *supra* note 110, at 706.

309. See *BWS Overview*, *supra* note 56, at 348 (identifying that juries that view a defendant who survived IPV as irrational compared to their expectations are less likely to find in favor of perfect self-defense).

310. See *supra* notes 302–303, 309 and accompanying text.

311. See *supra* Section II.A.

312. See *supra* Section II.B.

313. See *supra* Section II.C.

questionable Battered Spouse Syndrome research.<sup>314</sup> Therefore, the Maryland General Assembly has a duty to update Section 10-916 to replace the term “Battered Spouse Syndrome” with the contemporarily accepted term “battering and its effects.”<sup>315</sup>

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314. MD. CODE ANN., CTS. & JUD. PROC. § 10-916 (1996); *see supra* Section II.B.

315. *See supra* note 17 and accompanying text.