

## CR 417.43 Battered Person Syndrome [Rev. 4/13/19]

### COMMENT

The “battered person syndrome” was adopted by the Supreme Court of Ohio in *State v. Koss*, 49 Ohio St.3d 323 (1990), and subsequently codified in R.C. 2901.06 as the “battered woman syndrome.” Notwithstanding the statutory title, it is not limited to a woman, but applies to any family member suffering from the syndrome as established by the evidence. See *State v. Nemeth*, 82 Ohio St.3d 202 (1998); *State v. Stowers*, 81 Ohio St.3d 260 (1998) (permitting expert testimony on “battered child syndrome”). There is no reason to treat women and children, similarly situated, in a different manner. *State v. Nemeth*, 7th. Dist. Jefferson No.95-JE-32 (Jan. 30, 1997), motion for reconsideration overruled (Mar. 19, 1997). Courts in other states have also applied the “battered person syndrome” based upon the relationship of the persons and any pattern of abuse, regardless of the sex of the person asserting the “battered person syndrome.” *State v. Curley*, 250 So.3d 236 (La.2018); *State v. Doe*, 421 S.C. 490, 808 S.E.2d 807 (2017).

1. BATTERED PERSON SYNDROME BY DEFENDANT. The expert evidence about the (abuse) (battering) of the defendant by (*insert name of [deceased] [injured person]*) does not in itself establish (self-defense) (justification) (duress) (insanity) (serious provocation) (*insert other reason*). The evidence is designed to assist you as you consider the defendant’s (ability to leave the relationship) (non-reporting of prior abuse) (non-confrontational killing). You may consider that evidence in deciding whether he/she had reasonable grounds to believe and an honest belief that he/she was in (imminent) (immediate) danger of death or great bodily harm and that the only reasonable means of escape from such danger was by the use of deadly force. In that event, the defendant had no duty to (retreat) (escape) (withdraw), even though he/she was mistaken as to the existence of that danger.

### COMMENT

Drawn from R.C. 2901.06.

Expert evidence of battered woman syndrome/battered person syndrome is admissible under Evid.R. 702, and the jury may consider that evidence to decide whether the use of deadly force was justified in self-defense. *State v. Thomas*, 77 Ohio St.3d 323 (1997); *State v. Koss*, 49 Ohio St.3d 213 (1990).

Battered person syndrome may be raised as part of self-defense or to support a jury instruction for a lesser included offense. *State v. Koss*, 49 Ohio St.3d 213 (1990).

The battered person syndrome may apply to the issue of serious provocation occasioned by the victim for a jury instruction on an inferior degree offense of voluntary manslaughter to a murder charge. *See State v. Nemeth*, 82 Ohio St. 3d 202 (1980); *State v. Rodvold*, 6th Dist. Huron No. H-10-12 2012-Ohio-619. Battered person syndrome may also apply to the affirmative defense of duress or insanity. *See State v. Lillo*, 6th Dist. Huron No. H-10-001, 2010-Ohio-6221 (duress); R.C. 2945.392 (insanity).

2. BATTERED PERSON SYNDROME BY STATE. The expert evidence about the (abuse) (battering) by the defendant to (*insert name of [deceased] [injured person]*) was presented to assist you to explain (*insert name of [deceased] [injured person]*)'s behavior. You may consider the expert evidence when considering the (ability to leave the relationship) (non-reporting of prior abuse) (recanting of prior allegations of abuse) by (*insert name of [deceased] [injured person]*) or to understand the reaction to the (abuse) (battering) when you are considering the credibility of (*insert name of [deceased] [injured person]*).

#### COMMENT

The battered person syndrome is not limited to self-defense and may be presented by the state in its case in chief to explain to the jury why a person would continue to stay in an abusive relationship. *State v. Haines*, 112 Ohio St.3d 393, 2006-Ohio-6711. The state is not required to wait for rebuttal to present expert testimony when the victim's credibility could be attacked on cross examination or in opening statement to the jury.

The expert testimony should be limited to 1) the general characteristics of a victim suffering from battered person syndrome and 2) hypothetical questions regarding specific abnormal behavior exhibited by a person suffering from battered person syndrome, but not a specific opinion regarding whether the victim/witness in the case was a battered person. *State v. Haines*. *See also State v. Goff*, 120 Ohio St.3d 169, 2010-Ohio-6317 (finding reversible error to permit state's expert witness to testify to the defendant's credibility in response to defense of battered person syndrome).

3. OTHER ACTS AND PRIOR CONVICTIONS. OJI-CR 401.25.

#### COMMENT

Appropriate instructions should be given to the jury regarding the limits of the expert's testimony and testimony about any convictions or acts by the defendant that are not directly involved in the case.

4. EXPERT WITNESS AND HYPOTHETICAL QUESTION. OJI-409.21.

