

Mandatory Arrests – A Double-Edged Sword

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The legal fight to protect women from domestic violence and abuse has been an uphill battle we have been struggling with since Alabama banned men from being able to legally beat their wives in 1871 (National Center on Domestic and Sexual Violence). Since then, the United States has passed a number of policies in order to actively increase awareness of these issues and encourage the prevention of violence against women. In 1994, Congress passed the Violence Against Women Act (VAWA) with the intention of bringing attention to, changing perceptions of, and improving the resources available to victims of domestic violence. One of the results of VAWA was reflected through the increase in arrests in domestic violence cases. The law enabled officers to arrest violent offenders without a warrant if there was probable cause. Some states took this a step further and mandated police officers to carry out arrests for any and all domestic violence reports. While this may have seemed like a good idea at the time, studies have shown that mandatory arrests of domestic violence offenders may be doing more harm than good for victims.

Many female victims of domestic violence depend on their spouse - the abuser - in order to survive. If her spouse is arrested, the woman will have to resort to other options in order to sustain a source of income and make up for what her spouse can no longer provide. If she is unemployed and/or unable to find a job, she may have to resort to tactics such as selling drugs or stealing, both of which would result in her arrest if she were caught. If she decides not to press charges and remains with her abusive spouse, her chances of being arrested for intimate partner violence increases. She could also develop a substance abuse problem to help her cope with the domestic violence. Additionally, dual arrests as a result of mandatory arrest laws contribute to an escalating number of female arrests since the 1980s. In these situations, mandatory arrest laws actually have adverse effects on women, and hold the potential to cause an increase in female incarceration. This paper will focus on mandatory arrest laws – that have come into being as a result of VAWA - and why they should be abolished.

MANDATORY ARRESTS AND VIOLENCE AGAINST WOMEN

Primarily, the Violence Against Women Act (VAWA) improved investigations and prosecutions of sex offenses, and addressed domestic violence and similar violent crimes against women through grants which funded programs in state, tribal, and local governments, as well as non-profit organizations. These programs were

intended to benefit victims of intimate partner violence, dating violence, sexual assault, and/or stalking. Since its passing in 1994, VAWA has been modified and reauthorized multiple times over the years: 2000, 2005, and most recently, in 2013 (Sacco 2015). Before the 1980s, both the public and the criminal justice system viewed domestic violence as a private matter which should be settled within the home. VAWA encouraged arrest policies and stronger enforcement of protection orders, enabling local, tribal, and state courts and governments to treat domestic/dating violence, stalking, and sexual assault as serious crimes (Sacco 2015). A number of laws were passed in order to give police the authority to make arrests without a warrant when responding to domestic violence incidents. As a result, each state implemented its own laws to determine how a responding officer should handle these arrests. Laws vary, so states typically take one of three approaches: 1) arrests are mandatory, 2) arrests are preferred, or 3) arrests are determined by the officer with their discretion (Hirschel 2008).

As a result of mandatory arrest laws, arrest rates of domestic violence cases have increased from 7-15% (1970-80s) to 30% or more (2008) (Hirschel et al. 2008:257). Out of the fifty states, twenty-three have implemented mandatory arrest laws: "...new laws required an officer to arrest a domestic violence offender, if the behavior met certain threshold elements" (Phillips 2007:377). Each state has its own set of circumstances which would warrant an arrest, determined by the responding police officer. This means that in Colorado, for example, if an officer had any reason to believe that a crime of domestic violence was committed, he/she would have to arrest whoever they deemed responsible. But in Nevada, there is a time frame of 24 hours in which an officer would need probable cause to believe that battery was committed in order to make an arrest (Hirschel 2008). Since domestic violence laws have expanded to cover a wider range of relationships, the number of those affected by mandatory arrest laws has increased. Now, not only do these laws include married couples, but also couples who share a child, couples who are dating, and adults related by blood/marriage.

INCREASES IN FEMALE ARRESTS

Studies have shown that women with a history of abuse are more likely -- compared to women without -- to be involved in and arrested for criminal activity. Bloom et al. states that abusive families, battering relationships, and sexual and/or physical abuse are significant factors in delinquency, addiction, and criminality (2003:53). More than half of all women in jail have been victims of physical or sexual violence before incarceration, and of those women, about 40% had experienced violence at the hands of an intimate partner (Richie et al. 2000). Many victims of domestic violence turn to drugs and alcohol to cope, which only heightens their chances of

being arrested and entering the criminal justice system (UK Center for Research on Violence Against Women 2011). If a female domestic violence victim is arrested - whether it be for dual arrest of intimate partner violence - there are a number of negative repercussions she will have to suffer through: "... loss of services designated for victims, (e.g., housing, restraining orders, victim's assistance, legal aid), employment problems, financial instability, and difficulties maintaining custody of [her] children" (Henning et al. 2006:352).

Dual Arrests

There are a high number of dual arrests executed by police officers who respond to domestic violence reports in states with mandatory arrest laws. 'Dual arrests' occur when an officer arrests both people -- the victim and the perpetrator -- involved in a domestic violence incident. States with mandatory arrest laws don't necessarily require officers to arrest both individuals; officers determine on their own whether or not a dual arrest is necessary: "Dual arrest[s] can be influenced by state laws and policies, the characteristics of the people involved [...] the victim's relationship with the offender, and whether the offender remained at the crime scene" (Hirschel 2008). Henning et al. believes that the primary reason officers prefer to dually arrest both individuals is because they cannot determine who should be held responsible; by bringing the couple in, the court can determine who is at fault (2006:352). These arrests are another consequence of mandatory arrest laws which has resulted in an increase in the amount of women arrested because both the offender and the victim are taken into custody.

Intimate Partner Violence

Women who feel like they are trapped in abusive relationships sometimes feel the need to take justice into their own hands, turning to homicide as a self-help solution (Peterson 1999). If they lack faith in the criminal justice system (i.e., mandatory arrest laws), they could resort to homicide or other violent measures to escape their domestic violence abusers. According to David Hirschel et al.: "...[mandatory] domestic violence laws has resulted in an increase in arrests for intimate partner violence..." (2008:256). Women who have taken defensive action against violent partners usually do so because they feel they don't have any other options. In relation to dual arrest practices, Henning et al. notes that: "Some battered women, as a consequence of their arrest, may be unwilling to seek assistance from the criminal justice system during later assaults [in the future]" (2006:352).

CONCLUSION

Even though the Violence Against Women Act of 1994 has increased awareness of the issue of domestic violence, and increased the arrests of offenders, there are

a number of unforeseen consequences brought forth by mandatory arrest laws. These laws are criticized for a number of reasons, one being they can be viewed as taking away the power victims have to determine what the best option would be for their own situation: "... mandatory arrest policies can prevent women from calling police for help because an arrest does not seem appropriate for their circumstances" (UK Center for Research on Violence Against Women 2011). According to Kate Pickert, these laws could discourage women from reporting domestic violence incidents because: "...they fear their partners - sometimes a family's sole earner - will be automatically arrested and thrown in jail" (2013). If that happens, she is left alone bearing her family's financial burdens, and if they have children, the state could take custody of them.

Other reasons victims of domestic violence are unwilling to participate in prosecuting their abuser include: "...fear of reprisal or escalating abuse if the victim appears to go against her partner, concern for her partner's status in the community, concern that arrest and public prosecution would harm her children, and disillusionment with a system that has failed to protect her in the past" (Fais 2008:1203). Additionally -- contrary to popular belief -- mandatory arrest laws do not always lower the chances of re-offense by domestic violence perpetrators. Factors such as a high number of prior assaults against a partner; drinking or using drugs at the time of the offense; and the offender being unemployed or being unmarried all contribute to re-offending, despite how police had responded in prior instances (UK Center for Research on Violence Against Women 2011).

Simply abolishing these laws, however, is not so simple. Critics worry that getting rid of mandatory arrests entirely could cause police officers who respond to reports of domestic violence to revert back to tactics such as telling the perpetrator to: "...cool off and walk around the block" (Pickert 2013). In 2005, one of the revisions of VAWA stated that departments receiving funds should actively prevent dual arrest and enact policies to assist police officers in identifying primary offenders during domestic violence incidents (Messing et al. 2005:306). An oversight of this solution would include two aspects: 1) lack of conviction and practice by officers, and 2) such policies would assist officers in determining the offender of the incident in question, but not the offender in the relationship as a whole. Not all domestic violence cases are the same, so even though mandatory arrest policies have helped some victims, they also harm others.

The best solution to the problems that mandatory arrest laws and domestic violence have caused is to empower survivors to act in their best interests. It is not the criminal justice system's place to determine whether or not police intervention is required. Police officers should make an effort to establish a relationship with the victim, then they will have a better understanding of the

situation when they respond to reports in the future. If a survivor does choose to press charges on her abuser, the justice system should provide support. In several cities around the country, police officers collaborate with social workers: "...with police focusing on arrest and building a case for the prosecutor while the social workers provide services to the victim including counseling, advocacy, shelter, support, and legal aid" (White et al. 2005:265). By encouraging survivors of domestic violence to utilize the resources VAWA provides and supporting their choices -- whether it includes prosecuting their abuser or not -- these women can rebuild their trust in the system and other people.

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