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MANDATORY ARREST: THE DISTRICT OF COLUMBIA'S PREVENTION OF DOMESTIC VIOLENCE AMENDMENT ACT OF 1990

Last night I heard the screaming, loud voices behind the wall
It won't do no good to call the police always come late, if they
come at all

Tracy Chapman, "Behind The Wall"¹

Only in recent years has society begun to view violent relationships between men and women with a critical eye.² This heightened awareness is primarily due to the women's movement of the past two decades.³ Conclusive data on the incidence of domestic violence does not exist, but estimates suggest that between 1.8 and 6 million women are physically abused each year by the men with whom they have been intimately involved.⁴

Experts have shown that violence is learned behavior, therefore domestic violence has a great impact on family members.⁵ One study found that subjects who acted violently towards their spouses witnessed violent behavior between their parents while growing up.⁶ Another study also emphasized the effect domestic violence has on children who witness it:

When a child grows up in a home where parents use lots of physical punishment and also hit each other, the chances of becoming a

1. TRACY CHAPMAN, *BEHIND THE WALL*, TRACY CHAPMAN (Elektra/Asylum 1988).

2. Cf. Howard Schneider, *Battered Women Defense Bill Nears Passage in Maryland*, WASH. POST, Mar. 22, 1991, at C3 (discussing legislation introduced in the Maryland General Assembly that would allow battered women being tried for retaliatory violence against their mates to introduce evidence that they suffer from "battered woman syndrome").

3. KAREN BAKER ET AL., D.C. COALITION AGAINST DOMESTIC VIOLENCE & WOMEN'S LAW & PUB. POL'Y FELLOWSHIP PROGRAM AT GEO. UNIV. L. CENTER, REPORT ON DISTRICT OF COLUMBIA POLICE RESPONSE TO DOMESTIC VIOLENCE 4 (1989) (available from the Georgetown Sex Discrimination Clinic, Washington, D.C.).

4. Jeffrey A. Shapiro, Note, *The Inadequate Police Protection of Battered Wives: Can a City and Its Police Be Held Liable Under The Equal Protection Clause?*, 14 FORDHAM URB. L.J. 417, 417-8 (1986). See also Barbara K. Finesmith, *Police Response to Battered Women: A Critique and Proposals for Reform*, 14 SETON HALL L. REV. 74, 77 (1983) (discussing the varying conclusions reached by studies attempting to ascertain definitive statistical data on the frequency with which violence between adult partners occurs).

5. U.S. COMM'N ON CIVIL RIGHTS, UNDER THE RULE OF THUMB: BATTERED WOMEN AND THE ADMINISTRATION OF JUSTICE 3 (1982) [hereinafter U.S. COMMISSION ON CIVIL RIGHTS].

6. RICHARD J. GELLES, *THE VIOLENT HOME* 169-70 (1972).

violent husband, wife, or parent are greatest of all: About one of every four people who grew up in these most violent households use at least some physical force on their spouses in any one year [O]ne out of ten of the husbands who grew up in violent families are wife-beaters in the sense of serious assault. This is over three times the rate for husbands who did not grow up in such violent homes.⁷

Domestic violence also affects the area of health care. Injuries resulting from domestic violence require health care providers—particularly those in the area of emergency services—to expend significant time and resources for treatment.⁸ In studying ways to combat this wave of violence, researchers conclude that improving the police response to incidents of domestic violence will result in fewer incidents and decreased recidivism rates, thereby reducing the injuries requiring medical attention.⁹

For the greater part of the twentieth century, the only relief available to victims of domestic violence was to press charges for criminal assault and battery.¹⁰ However, due to police reluctance to arrest perpetrators, these charges were rarely filed.¹¹ In the 1970s, states began to make civil protection orders available to victims,¹² but the limited enforcement of these orders by the police resulted in the de facto decriminalization of violence within the confines of a familial or sexual relationship.¹³

Proponents of mandatory arrest of perpetrators have criticized the manner in which police handle situations of family violence.¹⁴ Since the 1960s,

7. MURRAY A. STRAUS ET AL., *BEHIND CLOSED DOORS: VIOLENCE IN THE AMERICAN FAMILY* 122 (1980).

8. According to one study, battering injuries accounted for one out of every four emergency room visits made by women. See E. Van Stark et al., *Wife Abuse In The Medical Setting: An Introduction For Health Personnel*, DOMESTIC VIOLENCE, Apr. 1981, at vii. The paper also pointed out that a Harris poll of Kentucky housewives revealed that 17% of women abused by their spouses seek emergency medical services. *Id.*

9. See Finesmith, *supra* note 4, at 108; U.S. COMMISSION ON CIVIL RIGHTS, *supra* note 5, at 91.

10. David L. Gottlieb & L. Eric Johnson, *Reform In Kansas Domestic Violence Legislation*, 31 KAN. L. REV. 527, 531 (1983).

11. *Id.* The authors state that the primary reason for the failure of law enforcement personnel to arrest was their perception that victims were reluctant to bring criminal charges against their assaulter and to cooperate if and when such charges were brought. *Id.*

12. Elizabeth Truningner, *Marital Violence: The Legal Solutions*, 23 HASTINGS L.J. 259, 267 (1971).

13. Gottlieb & Johnson, *supra* note 10, at 531. Gottlieb and Johnson charge that due to the refusal of police to arrest perpetrators, criminal acts of domestic abuse have been underreported, underprosecuted, and undeterred. *Id.* Researchers have found that domestic abuse is one of this country's most underreported crimes. *Id.*

14. Memorandum from Denise Duval to the D.C. Coalition Against Domestic Violence 1-2 (Aug. 2, 1988) (on file with the JOURNAL OF CONTEMPORARY HEALTH LAW AND POL-

police department policies have stressed avoiding arrest thereby encouraging officers to employ conflict resolution techniques that focus on the use of officers' mediation skills.¹⁵ However, battered women and their advocates criticized the use of mediation techniques. They charged that non-enforcement of criminal assault laws conveyed a message to both victims and perpetrators that society condoned violent behavior within the confines of intimate, adult relationships.¹⁶

In response to these criticisms and increased public pressure for solutions to the problem of domestic violence, twelve states enacted legislation mandating that police enforce criminal assault laws when confronted with cases of domestic abuse.¹⁷ In the District of Columbia, a 1989 study of the response of the Metropolitan Police Department (MPD) to incidents of domestic violence was a primary factor that influenced the D.C. City Council to enact legislation to alter police behavior.¹⁸

The District of Columbia's Prevention of Domestic Violence Amendment Act of 1990 (PDVAA) is an example of a mandatory arrest law.¹⁹ The PDVAA requires "a law enforcement officer [to] arrest a person [without a warrant] if the law enforcement officer has probable cause to believe that the person committed an intrafamily offense."²⁰ The Act requires police officers to file written reports for all domestic incidents to which they respond and to maintain a computerized record of all civil protection orders and bench war-

icy). This memo also states that the police must begin to treat domestic violence as a serious crime and develop a consistent response when confronting these situations. *Id.*

15. Finesmith, *supra* note 4, at 85. Officers generally walked the batterer around the block to cool him off or suggested that one of the parties spend the night at a friend or relative's home. U.S. COMMISSION ON CIVIL RIGHTS, *supra* note 5, at 19.

16. U.S. COMMISSION ON CIVIL RIGHTS, *supra* note 5, at 19. Not only was the use of mediation as a substitute for arrest criticized, but commentators have viewed the neutral terminology and nonauthoritarian approach as evidence that police believed domestic violence was a trivial matter. This trivialization resulted in victims experiencing feelings of both hopelessness and resignation. *Id.*

17. By 1988, 12 states had enacted mandatory arrest laws: Connecticut, Iowa, Louisiana, Maine, Massachusetts, Minnesota, Nevada, New Jersey, North Carolina, Oregon, Washington, and Wisconsin. See CONN. GEN. STAT. ANN. § 46b-38b (West Supp. 1991); IOWA CODE ANN. § 236.2 (West 1985); LA. REV. STAT. ANN. § 2140(1)-(2) (West Supp. 1991); ME. REV. STAT. ANN. tit. 19, § 770(5) (West Supp. 1990); MASS. GEN. LAWS ANN. ch. 209A, § 6(7) (West Supp. 1991); MINN. STAT. ANN. § 518B.01 (14) (West Supp. 1991); NEV. REV. STAT. ANN. § 171.137(1) (Michie 1986); N.J. STAT. ANN. § 2C:25-5(a) (West Supp. 1991); N.C. GEN. STAT. § 50B-4(b) (1989); OR. REV. STAT. § 133.055 (1989); WASH. REV. CODE ANN. § 10.31.100(2)(b) (West 1990); WIS. STAT. ANN. § 968.075(2) (West Supp. 1991).

18. COMMITTEE ON THE JUDICIARY, REPORT TO THE COUNCIL OF THE DISTRICT OF COLUMBIA 3 (1990) [hereinafter REPORT TO THE COUNCIL].

19. *Id.* PDVAA is this author's acronym for the statute.

20. D.C. Prevention of Domestic Violence Amendment Act (PDVAA) of 1990, §§ 16-1031 to -1034, 37 D.C. REG. 5001 (1990).

rants issued for intrafamily offenses.²¹

The PDVAA makes four specific changes in the manner in which the D.C. Metropolitan Police Department handles incidents of domestic violence. It amends Chapter 10 of the D.C. Code by requiring (1) a law enforcement officer to arrest a person without a warrant if there is probable cause to believe that the person committed an intrafamily offense,²² (2) a law enforcement officer to file written reports of incidents of domestic violence,²³ (3) the Metropolitan Police Department to incorporate into its educational program a training program for new and currently employed officers,²⁴ and (4) the District police to maintain a computerized record of all civil protection orders and bench warrants issued by the Family Division of the D.C. Superior Court.²⁵ Supporters of the PDVAA predict that its implementation will result in a significant decline in the number of domestic violence cases in the District of Columbia.²⁶ They base their prediction on several studies that conclude that arrest produces dramatic reductions in the number of repeat incidents of domestic violence because perpetrators are forced to confront the fact that neither the police, nor society as a whole, condone or ignore domestic violence.²⁷

This Comment examines previous methods of police response to domestic violence and the criticisms directed at this response that resulted in enactment of mandatory arrest laws. The focus will be exclusively on violence arising between adult men and women who are, or have been, involved in a marriage or intimate relationship. This Comment will also examine the content of the PDVAA, the rationale behind it, and the events leading to its

21. *Id.* § 16-1032, 37 D.C. REG. 5001. The Intra-Family Act, D.C. CODE § 16-1001 converts a criminal assault committed within an intimate relationship into an "intrafamily offense." This permits victims to petition the Intrafamily Branch, Family Division of D.C. Superior Court for the injunctive remedy of a civil protection order. BAKER ET AL., *supra* note 3, at 9 n.4, 13.

22. § 16-1031, 37 D.C. REG. at 5001.

23. *Id.* § 16-1032, 37 D.C. REG. at 5001.

24. *Id.* § 16-1034, 37 D.C. REG. at 5001.

25. D.C. CODE ANN. § 4-131 (1991).

26. REPORT TO THE COUNCIL, *supra* note 18, at 2.

27. See BAKER ET AL., *supra* note 3, at 1 n.2 (discussing the results of a study conducted by the Minneapolis Police Department and the National Police Foundation). While commentators have widely cited this study, at least one article criticizes it. According to this critique, the weaknesses of the study include: the size of the sample (314 people), the fact that Minneapolis is an atypical city (*i.e.* little violence, long winters, low unemployment, large Native American population), and the city's practice of keeping arrested batterers overnight (most jurisdictions release an offender on his own recognizance once the arrest paperwork is complete). All of these factors lessen the dramatic impact of the study's results because they are unlikely to exist in other metropolitan areas. The article also points out that the ongoing interviewing of victims may have deterred batterers. Jon Cohen, *And The Beats Go On*, WASH. CITY PAPER, Feb. 3-9, 1989, at 18.

enactment. The PDVAA's strengths and weaknesses will then be compared to the twelve mandatory arrest laws enacted in other jurisdictions prior to 1988. Finally, this Comment proposes amendments which would increase the PDVAA's effectiveness in reducing domestic violence in the District of Columbia.

I. PREVIOUS METHODS OF POLICE RESPONSE

And when they arrive, they say they can't interfere with domestic affairs, between a man and his wife

Tracy Chapman, "Behind The Wall"²⁸

A. Early American Law

American law developed out of the traditions and rules of British common law.²⁹ British law, and Western civilization as a whole, had long condoned the physical punishment of wives by their husbands.³⁰ In the eyes of the law, upon marriage, a man and a woman became one person, embodied in the man.³¹ From that moment on, the husband was responsible for his wife's behavior.³² The law allowed him to monitor his wife's conduct and to punish her for behaving inappropriately.³³ The "rule of thumb" instructed a husband that he could use a "rod not thicker than his thumb" to chastise his wife.³⁴ In America, both common and statutory law subscribed to the British view of violence within marriage.³⁵

In the 1870s, with the impetus of ideas of the Enlightenment and the beginning of the American suffrage movement, the American judiciary began

28. CHAPMAN, *supra* note 1.

29. U.S. COMMISSION ON CIVIL RIGHTS, *supra* note 5, at 2.

30. *Id.*

31. *United States v. Yazell*, 382 U.S. 341, 361 (1966) (Black, J. dissenting).

32. U.S. COMMISSION ON CIVIL RIGHTS, *supra* note 5, at 2.

33. *Id.* The Commission's report provides an illustrative quote drawn from Blackstone's 1765 COMMENTARIES ON THE LAWS OF ENGLAND as cited in Terry Davidson, *Wife Beating: A Recurring Phenomenon Throughout History*, in BATTERED WOMEN: A PSYCHOLOGICAL STUDY OF DOMESTIC VIOLENCE 19 (Maria Roy ed., 1977). "For as [the husband] is to answer for [the wife's] misbehavior, the law thought it reasonable to intrust [sic] him with this power of chastisement, in the same moderation that a man is allowed to correct his apprentices or children" *Id.*

34. U.S. COMMISSION ON CIVIL RIGHTS, *supra* note 5, at 2 (citations omitted).

35. Finesmith, *supra* note 4, at 80. The author discusses the doctrine of coverture, adopted by the American judiciary, which dictated that marriage caused the husband and wife to become one person. See also *United States v. Yazell*, 382 U.S. 341, 361 (1966) (Black, J. dissenting) (referring to the doctrine of coverture, noting that "[t]his rule has worked out in reality to mean that though the husband and wife are one, the one [person] is the husband."). *Id.*

to reverse its position with regard to physical violence within marriage.³⁶ The following decade saw states begin to enact statutes criminalizing wife-beating.³⁷ As public opinion increasingly condemned the physical abuse of women by men, all American jurisdictions began to implement both criminal and civil remedies for victims.³⁸

Presently, victims of domestic abuse may pursue criminal relief by pressing assault or battery charges or both against their assailants.³⁹ However, this remains difficult because of the traditional (and still prevalent) attitude among police, prosecutors, and judges that non-stranger assaults are not as serious as assaults by strangers.⁴⁰ Police attitudes, in particular, consistently reflect this view in regard to family violence between adult partners.⁴¹

Civil relief is currently available to victims of domestic violence in the form of an injunction known as a civil protection order (CPO).⁴² These injunctions require the assailant to refrain from further abuse of or contact with the victim.⁴³ Judges can tailor these CPOs to provide for the individual victim's particular needs by excluding the defendant from the home, if it is shared by the parties, and requiring the payment of both child support and

36. This change is demonstrated by comparing *State v. Black*, 60 N.C. 274, 275 (Win) (1864), which stated that the law would not interfere with a husband's right to physically control his wife, with *State v. Oliver*, 70 N.C. 60, 61-62 (1874), which was decided only 10 years subsequent to *Black* and condemned husbands who physically abuse their wives.

37. U.S. COMMISSION ON CIVIL RIGHTS, *supra* note 5, at 2 (discussing an 1882 Maryland enactment making wife-beating a criminal offense punishable by either 40 lashes or a year in jail).

38. *Id.*

39. *Id.* at 8.

40. *Id.* See generally UNITED STATES DEP'T OF JUSTICE, ATTORNEY GENERAL'S TASK FORCE ON FAMILY VIOLENCE, FINAL REPORT (Sept. 1984) [hereinafter ATTORNEY GENERAL'S TASK FORCE] (providing extensive examples of the traditional attitude toward domestic violence). Comments such as the following from victims and their siblings are illustrative: "A domestic situation . . . is looked at in an entirely different light. As soon as you explain to the police . . . she is married to him . . . no one takes the situation seriously." *Id.* at 19.

My sister asked [the clerk of the court] what the record number of postponements on a case such as this was. The clerk said that he remembered one case was delayed twelve times . . . She then said "Well, I guess he will have to kill me before this comes to trial." We were postponed again that day to July 14, 1983—on that day we buried my sister.

Id. at 41. "When he was picked up two weeks after the [bench] warrant was issued [for violation of a civil protection order], the police told me that Family Court warrants are low priorities." *Id.* at 26.

41. ATTORNEY GENERAL'S TASK FORCE, *supra* note 40, at 19.

42. PETER FINN & SARAH COLSON, U.S. DEP'T OF JUSTICE, CIVIL PROTECTION ORDERS: LEGISLATION, CURRENT COURT PRACTICE, AND ENFORCEMENT 1 (Mar. 1990) (discussing and responding to critics who charge that CPOs are difficult to draft and enforce and that they are susceptible to fraud, due process, or equal protection violations because notice and an opportunity to be heard are usually not provided to the defendant).

43. *Id.* at 2.

spousal maintenance.⁴⁴

B. Mediation: The Marriage of Police and Social Science

While the women's movement worked to increase public awareness of domestic violence and states devised civil relief for victims, police departments across the country began developing new methods of handling domestic disturbances. Beginning in the late 1960s, police departments started to focus training programs on the development of officers' mediation and conflict resolution skills.⁴⁵ However, police misused these techniques. The designers of the original program intended for police to apply the techniques only in verbal disputes, not physically violent ones:

The psychologists assumed that situations involving violence and assault exceeded the limits of "crisis intervention" and that police powers of force and arrest would be invoked. Unfortunately, this was not to happen. Because there was no further analysis of the problem, training, and direction, police officers have been taught to handle all family conflict calls with these reconciliation techniques. If more precise guidelines had been developed as to when and in what circumstances to use these techniques, police handling of spousal violence calls might well have been more effective.⁴⁶

Police responded to their critics by offering various rationales for their use of mediation techniques rather than arrest in situations of domestic violence. These rationales include: 1) arrest violates marital privacy, 2) economic detriment would result from the male "breadwinner's" incarceration, 3) acceptance of marital violence within the parties' culture, 4) possibilities of severe retaliation after the defendant's release, 5) preservation of the familial structure, 6) futility of arrest due to complainant attrition, 7) inadequate police resources, and 8) high incidence of police injury during domestic disturbance calls.⁴⁷

44. *Id.*

45. Finesmith, *supra* note 4, at 85; see also U.S. COMMISSION ON CIVIL RIGHTS, *supra* note 5, at 18. Finesmith suggests that this development evolved out of an experimental program conducted in New York City in 1967. The program involved the formation of a family crisis unit within the New York City Police Department. Officers assigned to the unit underwent intensive training in crisis intervention, interpersonal conflict management techniques, and the use of referrals to social service agencies. The experiment was conducted for a two year period and at its conclusion, it was found to have reduced the number of both domestic disturbance calls and officer injuries. U.S. COMMISSION ON CIVIL RIGHTS, *supra* note 5, at 18.

46. U.S. COMMISSION ON CIVIL RIGHTS, *supra* note 5, at 18-19 (quoting NANCY LOVING, *RESPONDING TO SPOUSE ABUSE AND WIFE BEATING* 36 (1980)).

47. Lisa R. Beck, Note, *Protecting Battered Women: A Proposal For Comprehensive Domestic Violence Legislation In New York*, 15 *FORDHAM URB. L.J.* 999, 1021-22 (1987). See also Shapiro, *supra* note 4, at 435 (listing and discussing these same rationales).

Nevertheless, critics have offered counter arguments to several of these justifications. First, the marital privacy argument is indefensible because courts have held that the right to privacy shields acts from government intrusion only when both parties consent and the act does not impair their health and safety.⁴⁸ Second, the economic detriment argument is illogical because police fail to express similar concern about the economic detriment experienced by the families of other incarcerated criminals.⁴⁹ Furthermore, empirical evidence does not support police complaints that women battered by their spouses generally fail to follow through with prosecuting their assailants. No objective data exists that shows an increase in complainant attrition rates when a victim and her assailant are either married or cohabitating.⁵⁰ Lastly, police concerns about the supposed threat to their safety presented by a domestic violence call are unfounded. A study conducted in New York City concluded that domestic disturbance calls accounted for only two percent of the total number of assaults committed against police officers.⁵¹ In rejecting these rationalizations, advocates for battered women consistently assert that only by arresting an abuser will he be forced to realize that society views his behavior and attitude as unacceptable.⁵²

One factor that universally impeded arrest in situations of domestic violence was the requirement in all fifty states and the District of Columbia that police obtain a warrant before they arrest an individual for a misdemeanor offense unless the crime was committed in their presence.⁵³ Generally, warrantless arrests are permitted only when an officer possesses probable cause to believe that a felony has occurred.⁵⁴ However, domestic violence often involves misdemeanor assaults and batteries, rather than felonious ones.⁵⁵ This caused legislatures to structure mandatory arrest statutes so that they

48. See *People v. Liberta*, 474 N.E.2d 567 (N.Y. 1984), *cert. denied*, 471 U.S. 1020 (1985). In *Liberta*, the New York Court of Appeals held the marital rape exemption of New York Penal Law § 130 unconstitutional because the right to privacy protects from state interference only consensual acts, not violent assaults. *Id.* at 574.

49. Beck, *supra* note 47, at 1023.

50. *Id.*

51. *Id.* at 1024.

52. Gottlieb & Johnson, *supra* note 10, at 535. See also Lisa G. Lerman, *Expansion Of Arrest Power: A Key To Effective Intervention*, 7 VT. L. REV. 59, 60 (1982) (discussing the agreement among researchers that one of the primary causes of spousal violence is the commonly held belief among batterers that physical abuse of women is normal, acceptable behavior).

53. See *United States v. Watson*, 423 U.S. 411, 418 (1976) (discussing whether police officers had probable cause to arrest defendant).

54. *Id.*

55. Gottlieb & Johnson, *supra* note 10, at 534.

require warrantless arrests for misdemeanor acts of domestic abuse.⁵⁶ The PDVAA conforms to this model.

C. *Developments Within The District Of Columbia*

Until 1987, no explicit policy regarding domestic violence guided the Metropolitan Police Department.⁵⁷ The Department's training program emphasized the use of mediation techniques, resulting in a general practice of officers not arresting assailants.⁵⁸ In 1987, the MPD responded to pressure from local advocates for battered women, primarily the D.C. Coalition Against Domestic Violence (DCCADV), and issued a General Order outlining procedures for officers to follow when responding to domestic violence calls.⁵⁹ General Order 701.5 stated:

- criminal offenses occurring in domestic situations shall be treated like any other criminal offense;
- where probable cause exists to believe a criminal offense has occurred, there is a presumption in favor of arrest;
- factors such as the existence of a Civil Protection Order, visible injury, etc., should be taken into account in determining probable cause to arrest;
- factors such as the relationship of the parties should not unduly influence the decision to arrest; and
- arrest for unlawful entry should be made when a respondent violates a stay-away provision in a Civil Protection Order in the face of a police warning to leave.⁶⁰

After the order took effect, the DCCADV conducted a study of police response to domestic violence under the new department policy.⁶¹ While the MPD receives approximately 19,000 calls concerning domestic violence each year,⁶² the study revealed that police made arrests in only 5% of the incidents surveyed.⁶³ The study concluded that the MPD's adoption of General

56. For an example of this type of mandatory arrest statute, see MASS. ANN. LAWS. ch. 209A, § 6(7)(b) (Law.-Coop. 1991).

57. BAKER ET AL., *supra* note 3, at 1.

58. *Id.*

59. *Id.* at 3.

60. *Id.* The MPD drafted this General Order in consultation with the Legal Committee of the D.C. Coalition Against Domestic Violence. *Id.*

61. *Id.*

62. *Id.* at 1. The study was based on interviews with 300 victims of domestic violence. *Id.* at 3. The subjects were drawn from two survey populations: (1) victims who sought assistance from the D.C. Citizens' Complaint Center, and (2) victims who sought relief directly from the D.C. Superior Court. *Id.* at 12.

63. *Id.* at 46. The DCCADV found that police made notes regarding incidents in 30.7% of the 300 cases surveyed. However, officers took notes in 64.3% of the cases when an arrest was made. The authors of the study suggested that the note taking represented active, con-

Order 701.5 had no significant effect on the manner in which police handled incidents of nonstranger assault.⁶⁴

The results of the study caused local advocates to increase their legislative lobbying.⁶⁵ However, these efforts alone did not convince the D.C. City Council to act. It was not until several federal courts held that the failure of police to enforce criminal assault laws in a consistent manner—treating stranger and non-stranger assaults differently—constituted a violation of 42 U.S.C. § 1983 that the possibility of courts imposing liability on cities or states and their police departments for failure to arrest arose.⁶⁶ This threat of potential liability spurred the Council to act.⁶⁷

II. ARREST NOW OR PAY LATER

In 1984, the United States District Court for Connecticut allowed a victim of domestic violence to bring a civil rights action under 42 U.S.C. § 1983 against the city of Torrington, Connecticut and its police department.⁶⁸ Tracey Thurman, a resident of Torrington, made repeated complaints to the city's police force concerning threats made against her and her child by her estranged husband Charles.⁶⁹ Between October 1982 and June 10, 1983, Charles Thurman attacked and threatened Tracey and her son on at least five separate occasions.⁷⁰ Throughout this period Tracey and various witnesses to these attacks attempted to press criminal charges against Charles, but the police never responded to their efforts.⁷¹ On May 6, 1983, Tracey obtained an *ex parte* restraining order that forbade Charles from assaulting, threatening, and harassing her.⁷² On May 27 and May 31, Tracey attempted to swear out a warrant for her husband's arrest. She finally secured it on

cerned listening by police, which made them more likely to view and treat the incident like any other call involving criminal activity. *Id.*

64. *Id.* at 3-4.

65. REPORT TO THE COUNCIL, *supra* note 18, at 1.

66. *See infra* notes 68-82 and accompanying text.

67. REPORT TO THE COUNCIL, *supra* note 18, at 3.

68. *Thurman v. City of Torrington*, 595 F. Supp. 1521, 1527 (D. Conn. 1984). A plaintiff and her son brought an action against the city and its police department alleging that the police violated their civil rights by breaching their duty to arrest plaintiff's husband after he committed numerous assaults against her. *Id.* at 1524. The city moved to dismiss the action and the court denied the motion. *Id.* The court held that plaintiff's complaint set forth a violation of the equal protection clause by alleging a consistent pattern of conduct by the Torrington police in which they inadequately protected victims of domestic violence as compared to victims assaulted by strangers. *Id.* at 1529.

69. *Id.* at 1524.

70. *Id.* at 1524-25.

71. *Id.* at 1525.

72. *Id.*

May 31st, but the police never arrested Charles Thurman.⁷³

On June 10, 1983, Charles Thurman went to the home of Judy Bentley and Richard St. Hilaire where Tracey was staying.⁷⁴ Tracey called the Torrington Police Department and asked them to arrest Charles.⁷⁵ Approximately fifteen minutes later, Tracey went outside to speak with Charles and try to persuade him to leave her and her son alone.⁷⁶ At this point Charles pulled out a knife and stabbed his wife repeatedly in the chest, neck, and throat.⁷⁷

In *Thurman v. City of Torrington*, the district court expanded the duty of police to protect battered women by holding that "a police officer may not knowingly refrain from interference in such violence, and may not 'automatically decline to make an arrest simply because the assaulter and his victim are married to each other.'" ⁷⁸ The court found that Tracey's complaint alleged a pattern of acts and omissions by the Torrington Police Department and its officers that occurred over an eight month period.⁷⁹ The particularized pleading evidenced the development of a pattern of "deliberate indifference on the part of the police department to the complaints of the plaintiff Tracey Thurman and to its duty to protect her."⁸⁰ This pattern raised an inference of a custom or policy within the city; therefore, the court concluded that the plaintiff properly alleged an illegal custom or policy as required under 42 U.S.C. § 1983.⁸¹

The *Thurman* decision paved the way for courts to impose liability on states or municipalities whose police refuse to take appropriate action, *i.e.* arrest, when confronted with domestic violence. In its report to the entire D.C. City Council, the Committee on the Judiciary candidly stated that the PDVAA was needed to "avoid . . . liability for the District of Columbia"⁸²

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.* What made Tracey's case even more horrifying was the fact that the police did not arrest Charles immediately upon arriving on the scene despite the fact that he was holding a bloody knife. In the officer's presence, Charles kicked Tracey in the head twice before finally being arrested. *Id.* at 1526.

78. *Id.* at 1528 (quoting *Bruno v. Codd*, 396 N.Y.S.2d 974, 976 (1976) (discussing battered wives who sued New York City alleging that the city police and clerks of the N.Y. Family Court engaged in a consistent practice of denying battered women the assistance and protection they were entitled to by law), *rev'd on other grounds*, 407 N.Y.S.2d 165 (App. Div. 1978), *aff'd*, 393 N.E.2d 976 (N.Y. 1979).

79. *Id.* at 1530.

80. *Id.*

81. *Id.*

82. REPORT TO THE COUNCIL, *supra* note 18, at 3.

Jurisdictions adopting pro-arrest policies have reported subsequent reductions in domestic violence homicides.⁸³ For example, in 1984 nine women in Newport News, Virginia were victims of violent domestic homicides.⁸⁴ After the city instituted a pro-arrest ordinance in 1985, the number of domestic homicides fell, reaching a low of two in 1988.⁸⁵ Baltimore County, Maryland experienced a similar decline in the number of domestic homicides after police implemented a policy favoring arrest and requiring a written report for all domestic violence calls.⁸⁶ In Alexandria, Virginia, a city which has a mandatory arrest policy, the recidivism rate of men who had previously abused their partners was 14% in 1988—for that same year, the Bureau of Justice reported that the national rate of repeat arrests for domestic violence was 41%.⁸⁷ Proponents of the PDVAA predicted that the number of domestic homicides, incidents of domestic violence, and rates of recidivism would also decrease in the District of Columbia.⁸⁸

III. CHANGES EFFECTED BY THE PDVAA

The PDVAA amends existing provisions of the District of Columbia Code. Its stated purpose is to promote the arrest of those who perpetrate domestic violence and to prevent, detect, and punish the crime of domestic violence more effectively; however, the rationale underlying the Act really appears in its legislative history.⁸⁹ The PDVAA's legislative history unambiguously states that the D.C. City Council enacted the PDVAA in order to minimize the risk of liability imposed on the District of Columbia because of police nonfeasance.⁹⁰

The drafters of the PDVAA left one provision of the Code dealing with domestic violence unchanged. This provision defines intrafamily offense:

83. Testimony of Susan Paisner (on behalf of Dr. Elsie Scott, Executive Director, National Organization for Black Law Enforcement Executives), Public Hearing on the D.C. PDVAA (June 8, 1989), reprinted in REPORT TO THE COUNCIL, *supra* note 18, at 6. Ms. Paisner based her testimony on statistics reported by the City of Newport News, Virginia and by the Baltimore County Police Department.

84. *Id.*

85. *Id.*

86. *Id.* The rate of domestic homicides in Baltimore County declined 13% in the year following implementation of this policy. In 1983, the rate had been 37%, by 1984 it was 24%. By 1988, the rate of domestic homicides in Baltimore County decreased to 7%. *Id.*

87. *Id.* at 4-11.

88. Karlyn Barker, *Domestic Abuse Arrests Expected To Soar Under New D.C. Law*, WASH. POST, Aug. 27, 1990, at B1, B7.

89. REPORT TO THE COUNCIL, *supra* note 18, at 3.

90. *Id.* The members of the Committee on the Judiciary who reported to the Council regarding the PDVAA were: Chairperson Rolark, Councilmember Crawford, Councilmember Mason (who originally introduced and sponsored the PDVAA), Councilmember Nathanson, and Councilmember Ray. *Id.* at 12.

[I]ntrafamily offense means an act punishable as a criminal offense committed by an offender upon a person: (A) to whom the offender is related by blood, legal custody, marriage, having a child in common, or with whom offender shares or has shared . . . a mutual residence; and (B) with whom the offender maintains or maintained an intimate relationship rendering the application of this chapter appropriate.⁹¹

This broad definition encompasses the myriad of relationships in which domestic violence arises.⁹² The specificity of this provision's classifications reflects a legislative awareness of the variety of contexts in which domestic violence may arise, including couples that are married, unmarried, parents, nonparents, heterosexual, or homosexual.⁹³

A. Prosecutorial Options

Since 1970, the United States Attorneys who prosecute crimes in the District of Columbia have had a duty to notify the D.C. Director of Social Services whenever complaints are filed or suspects are arrested for intrafamily offenses.⁹⁴ The Director is then permitted by law to investigate the matter and make recommendations to the U.S. Attorney regarding the advisability of the defendant's release.⁹⁵

Prosecutors may pursue one of two alternative courses of action. First, the U.S. Attorney may simply refer the case to D.C. Corporation Counsel which will file a petition for a civil protection order.⁹⁶ The U.S. Attorney must first consult the Director of Social Services to determine the appropriateness of the referral. Second, the U.S. Attorney may prosecute if the victim wishes to file criminal charges or if the police make an arrest. The statute does not provide the prosecutor with the option of sending the accused to a counseling and treatment program.⁹⁷

On a national basis, prosecutors rarely pursue domestic violence cases because they impede the prosecutorial goal of obtaining the maximum number

91. D.C. CODE ANN. § 16-1001(5) (1989).

92. The District of Columbia's definition of intrafamily offense recognizes that violence occurs not only between couples who are currently involved, but also between those whose relationships have ended. *Id.*

93. Lisa G. Lerman, *A Model State Act: Remedies For Domestic Abuse*, 21 HARV. J. ON LEGIS. 61, 74 (1984).

94. D.C. CODE ANN. § 16-1002(a) (1991).

95. *Id.*

96. *Id.*

97. *Compare* REPORT TO THE COUNCIL, *supra* note 18, at 2 with PDVAA § 16-1002(b), 37 D.C. REG. at 5001 (1991). An earlier draft of the PDVAA would have added the counseling alternative; however, it was omitted from the final version of the Act. *Id.*

of convictions and guilty pleas.⁹⁸ Thus, prosecutorial efforts tend to be expended on cases perceived as offering the greatest possibility for obtaining a conviction. A national study conducted in 1977 found that while only twenty-nine percent of cases involving stranger-to-stranger assaults were eventually dismissed,⁹⁹ fifty-two percent of the cases in which the accused and the victim had a past or current relationship ended in dismissal.¹⁰⁰ This discrepancy cannot be completely attributed to the unwillingness of prosecutors to pursue these cases: victims of domestic violence are less likely to press charges against their assailants than are victims of other crimes.¹⁰¹

Enabling prosecutors to pursue both criminal and civil remedies in domestic violence cases can accomplish several important objectives. The first is punishment of the offender. Subject an individual to criminal sanctions forces him to understand that if he physically abuses a woman, he is committing a crime and will be treated accordingly. Second, the defendant may be deterred from future violent acts or, at least, persuaded to seek professional assistance to control his violent behavior. Finally, a victim receives protection from further abuse while pursuing criminal charges when holding a civil protection order.

An earlier draft of the PDVAA, which included a counseling alternative, would have undermined the objectives and accomplishments of the Act. The counseling provision would have permitted prosecutors to legitimately sidestep the prosecution of domestic violence cases.¹⁰² Thus, the U.S. Attorney's Office might have continued to dismiss these difficult cases, regardless of the victim's wishes. Assuming *arguendo* that the PDVAA's purpose is to influence only police behavior, this provision would have allowed a case to end at the arrest stage. This means that police would realize that those whom they arrested suffered no harsh consequences as a result of their con-

98. U.S. COMMISSION ON CIVIL RIGHTS, *supra* note 5, at 33. The Commission stated, in Finding #4.2, that the rate of prosecution in criminal cases is significantly lower when there is a prior or present relationship between the defendant and the victim than when an assault between strangers takes place. *Id.*

99. *Id.* at 24 (citations omitted).

100. *Id.*

101. *Id.* at 27.

102. Report to the Council, *supra* note 18, at 3. Compare U.S. COMM'N ON CIVIL RIGHTS, DOMESTIC VIOLENCE HEARING HELD IN PHOENIX, ARIZONA 79 (1980) (statement of Mr. M. Louis Levin, City Prosecutor, Phoenix Arizona). Mr. Levin expressed approval of granting prosecutors the discretion of directing batterers into counseling programs stating:

I would like to see programs available to us for . . . domestic violence, and at the present time there are none available. I would like to be able to encourage those offenders to go through the program with the hope that it will provide them some insight and understanding . . . so we don't have to process them through the criminal justice system.

Id.

duct, making it less likely that officers would continue to comply with the PDVAA's provisions. Because the drafters of the Act deleted the counseling option, the PDVAA can accomplish its true purpose of "provid[ing] for the more effective prevention, detection, and *punishment* of crime in the District of Columbia" ¹⁰³

B. The New Duties Imposed on Police by the PDVAA

The PDVAA makes four major changes to the D.C. Code.¹⁰⁴ It eliminates the traditional requirement that a police officer obtain a warrant before making an arrest for a misdemeanor unless the offense takes place in his presence. Furthermore, it places an affirmative duty on the police to arrest when they have probable cause to believe that an intrafamily offense has occurred.¹⁰⁵ The statute also requires that police officers file written reports for every domestic violence incident they investigate and that the police department maintain those reports.¹⁰⁶ The PDVAA specifies the components of an instructional program in domestic violence in which all officers must participate.¹⁰⁷ Finally, the Act requires the MPD to maintain computerized records of all civil protection orders and bench warrants that the Family Division of the D.C. Superior Court issues.¹⁰⁸

Chapter 10 of the D.C. Code deals specifically with intrafamily offenses.¹⁰⁹ The PDVAA creates a new subchapter in Chapter 10 which imposes the most significant new duties on police.¹¹⁰ In subchapter III, a provision mandates arrest when police have probable cause to believe a person violates a civil protection order or commits an intrafamily offense that results in either physical injury or the fear that such injury is imminent.¹¹¹

103. REPORT TO THE COUNCIL, *supra* note 18, attachment 2, at 1 (emphasis added).

104. See *supra* note 22-25 and accompanying text.

105. D.C. CODE ANN. § 16-1031(a)(1) (1991).

106. *Id.* § 16-1032.

107. *Id.* § 16-1034(a).

108. *Id.* § 4-131(4A).

109. The title of Chapter 10 is "Proceedings Regarding Intrafamily Offenses." § 16-1001 (1991).

110. § 16-1031 (1991).

111. *Id.* § 16-1031. Section 16-1031 provides:

(a) a law enforcement officer shall arrest a person if the law enforcement officer has probable cause to believe that the person: (1) committed an intrafamily offense that resulted in physical injury, including physical pain or illness, regardless of whether or not the intrafamily offense was committed in the presence of the law enforcement officer; or (2) committed an intrafamily offense that caused or was intended to cause reasonable fear of imminent serious physical injury or death.

(b) The law enforcement officer shall present the person arrested under subsection (a) of this section to the United States Attorney for charging under section 16-1002.

Id.

The provision explicitly states that the offense must result in either physical injury or a “reasonable fear of imminent serious physical injury”¹¹² The most significant language in this section eliminates the traditional requirement that a misdemeanor offense take place in the presence of police officers before they can make a warrantless arrest.¹¹³

This important section of the PDVAA underwent several drafts prior to its adoption. One of the most significant changes was the elimination of language requiring police to arrest the “primary physical aggressor” in a domestic violence situation.¹¹⁴ This provision also contained a list of factors for police to consider in making a determination of which party was the “primary physical aggressor.” These factors included:

- (A) The legislative intent to protect victims of domestic violence;
- (B) The relative degree of injuries inflicted or serious fears creating fear of physical injury;
- (C) Past incidents of domestic violence between the persons involved, as determined by:
 - (i) information obtained from department records including calls to dispatchers and incident reports filed by officers;
 - (ii) information provided by the courts, including civil protection orders, bench warrants, and restraining orders issued in civil or criminal actions.¹¹⁵

The drafters removed this language from the PDVAA prior to its submission to the D.C. City Council and its subsequent enactment. Examination of the testimony of Inspector David W. Bostrom reveals that the MPD objected to officers having to determine which party was the “primary physical aggressor.”¹¹⁶ The objection may have resulted from police reluctance to consult the proposed sources for information on the parties when the police confronted a situation which required immediate action and resolution.

The section as enacted accomplishes several important objectives. It af-

112. *Id.*

113. *Id.*

114. Compare *id.* § 16-1031(a) with REPORT TO THE COUNCIL, *supra* note 18, attach. 1, § 16-1031(a)(2).

115. See REPORT TO THE COUNCIL, *supra* note 18, attach. 1, § 16-1031(b).

116. *Id.* attach. 3, at 4. The relevant portion of Inspector Bostrom’s testimony reads:

This concept, in terms of police arrest powers—to my knowledge—is a departure from established law. While the concept may be an appropriate consideration for a jury or a judge at the time of sentencing, it does not appear to be an appropriate consideration in the context of arresting people. Probable cause is relatively straightforward. A law enforcement officer, applying a “reasonable person” standard, determines that a crime has been committed and the person the officer is about to arrest committed that crime.

Id.

firms the public policy that police should uniformly enforce the District's criminal assault laws regardless of whether a victim and assailant are or were intimately involved. Section 16-1031 unequivocally informs police that the appropriate response to domestic violence is the arrest of the perpetrator. Thus, the exercise of the police arrest power becomes mandatory—not discretionary—as long as the requisite probable cause exists. If police violate this statutory duty, victims may sue the department for breach.¹¹⁷ The District's possible exposure to liability strongly condemns the MPD's previous method of dealing with domestic violence.

The PDVAA also affects the manner in which District police maintain records. Section 16-1032 requires police officers to file written reports whenever they investigate an intrafamily offense.¹¹⁸ There is no qualification to this requirement; police must file reports whether or not the investigation culminates in an arrest.¹¹⁹ The statute also imposes a duty on the MPD to maintain these reports.¹²⁰

Several factors support the imposition of these record-keeping duties. A report file aids police when they receive numerous calls involving the same parties. If officers know who is involved and what the history of the parties is, they can better prepare themselves to handle the situation. If a victim decides to pursue criminal or civil remedies or both, the reports will provide credible verification of the parties' accounts of the incident. Additionally, should a victim bring an action for the failure of police to arrest, she may be able to use records showing a pattern of violence and police inaction in her evidentiary presentation. A final consideration involves the usefulness of written incident reports as research data. Records may provide valuable statistics on police responses, frequency of incidents, and types of abusive scenarios.¹²¹ This information is extremely valuable in educating the public, lawmakers, and law enforcement officials on the extent to which domestic violence pervades American society.

Generally, all police departments impose a duty on their officers to file incident reports; however, studies demonstrate that officers routinely ignore this requirement.¹²² The most effective way to ensure police compliance

117. *Thurman v. City of Torrington*, 595 F. Supp. 1521 (D. Conn. 1984). See also, *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696 (9th Cir. 1990); *Watson v. City of Kansas*, 857 F.2d 690 (10th Cir. 1988).

118. § 16-1032 (1991).

119. *Id.* The provision does specify that officers should state the disposition of each incident.

120. *Id.*

121. For a discussion of the difficulty encountered in obtaining reliable data on the pervasiveness of domestic violence in the United States, see *supra* note 4 and accompanying text.

122. Lerman, *supra* note 93, at 123.

with this requirement is to incorporate it into officers' training in domestic violence. Also, a department should consider imposing fines or other disciplinary action when officers fail to file the reports.

The PDVAA also addresses the issue of police liability when they do make an arrest.¹²³ Section 16-1033 reads: "A law enforcement officer shall not be civilly liable solely because he or she makes an arrest in good faith and without malice pursuant to this subchapter."¹²⁴ Earlier versions of the PDVAA did not contain this provision; apparently, the drafters added it at the request of the MPD and the D.C. Corporation Counsel—the two organizations that would defend an officer if a plaintiff brought an action for false arrest.¹²⁵ The section as enacted also differs from the one proposed by the police. The MPD's preferred liability provision would protect police from liability when they failed to arrest as well as when they did arrest. This would take the force out of the entire PDVAA—police officers would have been able to ignore their statutory duty without fearing the imposition of reprisals or other consequences.

The liability provision of section 16-1033 reinforces the premise that public policy in the District of Columbia demands that police cease mediating between batterers and their victims and begin arresting them. As long as an arrest meets the "good faith and without malice"¹²⁶ standard, an officer cannot be civilly liable. Hopefully, this protection will increase police motivation in complying with the PDVAA.

Finally, subchapter III addresses the domestic violence training received by officers and the law pertaining to it.¹²⁷ Police recruits must have a mini-

123. § 16-1033 (1991).

124. *Id.* An earlier version of this provision was much broader than the section that was enacted. See REPORT TO THE COUNCIL, *supra* note 18, attach. 3, at 5. (testimony of Inspector David W. Bostrom before the Committee on the Judiciary on June 8, 1989). The proposed provision read:

Neither the District of Columbia, nor any law enforcement officer, shall incur civil liability based solely on the commission or omission of any action called for in this subchapter, including making or failing to make an arrest. Nothing in this law shall be construed to limit any defenses or immunities otherwise available to the District government or its police officers.

Id. at 5.

125. REPORT TO THE COUNCIL, *supra* note 18, attach. 3, at 4, 5.

126. § 16-1033 (1991).

127. *Id.* § 16-1034. Compare REPORT TO THE COUNCIL, *supra* note 18, attach. 3, at 2, 5 (testimony of Inspector David W. Bostrom, comparing the training program of the MPD with the one required by the PDVAA). Inspector Bostrom noted:

Since January 1979, a 40-hour block of training, entitled "Family Crisis Intervention," has been a component of this department's recruit training program. *Id.* attach. 3, at 2. The family crisis intervention training given all new officers . . . exceeds the requirements outlined in the [PDVAA] legislation, both in terms of content and

num of twenty hours of training, while veteran officers must participate in an eight hour program.¹²⁸ The discrepancy is due to the fact that veteran officers are aware of the requirements of probable cause and, therefore, need less instruction. The PDVAA establishes broad criteria for the curriculum of this training, thereby granting a great deal of discretion to the MPD and those formulating the program.¹²⁹ This allows the use of varying approaches for conveying information. The MPD is working with the D.C. Coalition Against Domestic Violence in developing the program. The Coalition's participation will ensure that mediation is not emphasized as a method new officers should employ in confronting domestic violence. The PDVAA specifically authorizes this collaboration¹³⁰ which will ensure that the training program conforms to the purpose of section 16-1034: enforcing the law against intrafamily offenses.¹³¹ Research shows, however, that police recruits rarely receive training which emphasizes the circumstances when they should make arrests; thus, this purpose will be difficult to achieve.¹³²

Police recruits are probably aware of society's condemnation of domestic violence. Their outlook may be more sensitive to the changing attitudes displayed in the media toward battered women and their assailants, making the new officers more responsive to the idea that these abusers are criminals and

duration, for all items except the requirement that this new legislation be outlined to the officers.

Id. attach. 3, at 5.

128. § 16-1034(c) - (d) (1991). The training for officers already on the force is a new addition to the MPD's training program.

129. *Id.* § 16-1034(a) - (b). Section 16-1034(a) lists five areas in which police are to receive instruction. They are:

- (1) The nature, dimension, and causes of intrafamily offenses;
- (2) The legal rights and remedies available to a victim or perpetrator of an intrafamily offense;
- (3) The services and facilities available to a victim or perpetrator of an intrafamily offense;
- (4) The legal duties imposed on a police officer to enforce the provisions of this subchapter and to offer protection and assistance to a victim of an intrafamily offense;
- (5) Techniques for handling an intrafamily offense that minimize the likelihood of injury to the officer and promote the safety of the victim.

§ 16-1034(a).

130. Section 16-1034(b), provides:

The training shall stress the importance of enforcing the law against intrafamily offenses. The Police force may:

- (1) Utilize the resources of any law enforcement agency or community organization; and
- (2) Invite any community organization that provides counselling or assistance to victims of intrafamily offenses to help in planning and presenting the training program.

§ 16-1034(b).

131. *Id.*

132. *See, e.g.,* Gottlieb & Johnson, *supra* note 10, at 541.

should be arrested for their actions. However, experienced officers, comfortable with the department's former policy of mediation, may resist conforming with the dictates of the PDVAA. Their attitudes and practices must be changed to conform with the duties imposed by the PDVAA. Such a change cannot be accomplished by simply mandating attendance at one eight-hour training session. Because these veteran officers exert a great deal of influence over rookie officers entering the force, the MPD must ensure that the recruit's training in domestic violence is not undone by a senior partner's antiquated beliefs that police should not get involved in domestic situations.¹³³

Unfortunately, a more extensive training program for experienced members of the force is unlikely to be instituted. Neither the time nor the funds needed to implement such a program is available. Additionally, veteran officers might resent being forced to participate in more than one session, and with such feelings, additional training sessions will probably not improve the officers' performance in resolving situations of domestic violence.

The final change effectuated by the PDVAA is an amendment to title 4, section 131 of the District of Columbia Code. New language in this section details the specific types of records which the MPD must maintain.¹³⁴ According to the statute, the MPD must maintain a computerized record of all civil protection orders and bench warrants issued by the Family Division of the D.C. Superior Court for intrafamily offenses.¹³⁵ By maintaining a record of this sort, police will be able to confirm the existence of CPO's and bench warrants so that they may make arrests when batterers violate these orders or warrants. If someone violates a CPO or bench warrant and the police fail to take appropriate action, the victim may utilize this record to support an inference that officers breached their duty of protection. Again, this threat of liability will encourage compliance with the PDVAA's dictates.

IV. THE PDVAA COMPARED TO OTHER MANDATORY ARREST LAWS

By 1988, twelve states had enacted mandatory arrest laws.¹³⁶ The PDVAA adopted some provisions of these laws, rejecting those that have not

133. U.S. COMM'N ON CIVIL RIGHTS, DOMESTIC VIOLENCE HEARINGS HELD IN PHOENIX, ARIZONA 11 (1980) (statement of Ellen Lyon, Executive Director, Sojourner Center, Phoenix, Arizona). Ms. Lyon, testifying about one hour police training sessions conducted by shelter staff, said "The recruits who were there basically stated . . . that they had been told by training officers that it was a waste of paper to write up a complaint in a domestic violence situation, that it was a waste of time to take the assailant in." *Id.* at 11.

134. D.C. CODE ANN. § 4-131 (1991).

135. *Id.*

136. *See supra* note 17.

been effective in combatting police failure to arrest. Overall, the PDVAA most closely resembles the mandatory arrest laws of Oregon and Iowa. The Oregon statute requires police to arrest for all assaults, regardless of whether that assault occurred in an officer's presence.¹³⁷ It also contains a broad definition of domestic violence.¹³⁸ Iowa's law mandates arrest when police have probable cause to believe that a domestic assault resulting in physical injury has occurred, that an assault with intent to inflict physical injury has occurred, or that an alleged assailant has used or displayed a dangerous weapon.¹³⁹ The PDVAA follows the approach of both Oregon and Iowa by permitting police to arrest not only when actual physical injury results, but also when a situation creates the fear of imminent physical harm without subsequent injury.¹⁴⁰

Like the PDVAA, the arrest laws of North Carolina and Minnesota mandate arrest for the violation of a civil protection order. However, neither state demands arrest for criminal acts of violence. North Carolina requires police to make warrantless arrests when they can determine the existence of a CPO and possess probable cause to believe that order has been violated.¹⁴¹ Minnesota's statute is very similar. It explicitly states that the violation of a CPO constitutes a misdemeanor and requires police to arrest without a warrant when such a violation takes place.¹⁴² By making the violation of a CPO a crime, North Carolina, Minnesota, and now the District of Columbia, em-

137. OR. REV. STAT. § 133.055(2) (1989) provides:

[W]hen a peace officer is at the scene of a domestic disturbance and has probable cause to believe that an assault has occurred between spouses, former spouses[,] or adult persons related by blood or marriage or persons of opposite sex residing together or who formerly resided together, or to believe that one such person has placed the other in fear of imminent serious physical injury, the officer shall arrest and take into custody the alleged assailant or potential assailant.

138. *Id.* See *supra* notes 90-92 and accompanying text.

139. IOWA CODE ANN. § 236.12(2) (West Supp. 1991).

140. § 16-1031(a)(2) (1991).

141. N.C. GEN. STAT. § 50B-4(b) (1989) provides:

(b) A law enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person has violated a court order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from harassing or interfering with the victim, and if the victim, or someone acting on the victim's behalf, presents the law-enforcement officer with a copy of the order or the officer determines that such an order exists, and can ascertain the contents thereof, through phone, radio[,] or other communication with appropriate authorities.

142. The relevant portion of the statute states: "[V]iolation of the order for protection is a misdemeanor A peace officer shall arrest without a warrant . . . a person whom the peace officer has probable cause to believe has violated an order" MINN. STAT. ANN. § 518.01 (14) (West Supp. 1991).

power police to arrest for its violation, thereby increasing the effectiveness of the CPO as a protective device.

Another feature which the PDVAA shares with Minnesota's Domestic Violence Statute is an immunity provision.¹⁴³ The Minnesota statute is very similar to the PDVAA, in that it protects peace officers from civil liability when they act in good faith and exercise due care.¹⁴⁴ Minnesota also requires officers to file written reports for all incidents of domestic violence that they investigate, and to undergo specialized training in domestic violence.¹⁴⁵

The PDVAA is much more comprehensive than the mandatory arrest laws of New Jersey and Wisconsin. Both of these states require that evidence of physical injury be present before police may arrest without a warrant. New Jersey specifically states that arrest is mandatory only "if a victim exhibits signs of injury caused by an act of domestic violence."¹⁴⁶ Wisconsin's slightly more liberal Domestic Violence Act requires arrest when signs of injury are present or when an officer believes there is a possibility for continued violence.¹⁴⁷ Listing these factors in the disjunctive indicates some awareness that police need discretion and flexibility in handling situations of domestic violence. However, the PDVAA protects both actual and potential victims, thus deterring domestic violence more effectively than either the New Jersey or the Wisconsin laws.

Four states—Connecticut, Minnesota, Nevada, and Washington—require arrest only if police receive notice of a domestic assault within a prescribed time period. In Nevada, Minnesota, and Washington, police must arrest if an assault took place no more than four hours prior to their notification.¹⁴⁸

143. *See supra* notes 123-136 and accompanying text.

144. MINN. STAT. ANN. § 629.341 (2) (West Supp. 1991).

145. MINN. STAT. ANN. § 629.341 (4), (5) (West Supp. 1991).

146. N.J. STAT. ANN. § 2C:25-5(a) (West 1991). The "signs of injury" requirement may be problematic because injuries such as bruises may not manifest until the day following an assault.

147. WIS. STAT. ANN. § 968.075(2) (West Supp. 1991) provides:

[A] law enforcement officer shall arrest and take a person into custody if: (1) The officer has reasonable grounds to believe that the person is committing or has committed domestic abuse and that the person's actions constitute the commission of a crime; and (2) Either or both of the following circumstances are present: a. The officer has a reasonable basis for believing that . . . continued domestic abuse against the alleged victim is likely. b. There is evidence of physical injury to the alleged victim.

148. The Nevada statute requires arrest when police have probable cause to believe a person has committed battery upon a family or household member. NEV. REV. STAT. ANN. § 171.137(1) (Michie 1986). Washington mandates arrest when the alleged abuser is at least 18 years of age and a police officer believes:

(i) A felonious assault has occurred; (ii) An assault has occurred which has resulted

Connecticut does not specify a specific time period; it requires arrest if an officer "upon speedy information" determines that a domestic assault took place.¹⁴⁹ In contrast, the PDVAA does not contain a specific time period in which victims must notify police of an assault. This provides a victim time to receive medical treatment and contemplate what, if any, course of action she wishes to pursue. A complainant who rationally decides to file and press criminal charges may be more likely to pursue her complaint. This type of victim may not be the norm, but the structure of the PDVAA permits the possibility that one exists.

These statutes appear to have influenced the drafters of the PDVAA. The drafters examined the state laws and drew from the various requirements and provisions of each statute.¹⁵⁰ As a result, they developed the PDVAA in a manner that maximized its effectiveness. The Act does not provide police with loopholes which would enable them to ignore the mandates of the Act. Clearly, the PDVAA should prove more effective in combatting police inertia towards domestic violence than earlier state statutes.

V. PROPOSED AMENDMENTS TO THE PDVAA

The Prevention of Domestic Violence Amendment Act of 1990 effects several important changes in the way District of Columbia police respond to and resolve situations of domestic violence. Obviously, one law cannot completely abolish a problem as prevalent in society as domestic violence, nonetheless the PDVAA accomplishes a great deal. The PDVAA provides that officers receive instruction on informing victims of their legal rights and remedies and the support services and social agencies which provide them with the particular services they need. However, in order to ensure that each victim receives a thorough description of her rights and available support services, the information should be printed on a card or pamphlet which officers can distribute and explain. In light of the District of Columbia's large Spanish-speaking population, this material should appear in both English and Spanish. The cost of printing this material and the burden on police to distribute it appears minimal compared to the benefit it would generate for victims.

in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death.

Bodily injury means physical pain, illness, or an impairment of physical condition.

WASH. REV. CODE ANN. § 10.31.100(2)(b) (West 1991). This same section contains the requirement that the assault have occurred "within the preceding four hours." *Id.* See also MINN STAT. ANN. § 629.341 (1) (West Supp. 1991).

149. CONN. GEN. STAT. § 46b-38b(a) (1990).

150. Duval, *supra* note 14, at 1-9.

The first step in combatting police prejudice against domestic violence victims is to educate police officers. However, other officers within the criminal justice system share the same outdated attitudes held by police that the PDVAA hopes to combat. Prosecutors and judges cannot shirk their duties anymore than the police. Therefore, efforts at educating these persons must also be made. One method of accomplishing this is to develop continuing legal education programs that focus on domestic violence issues. This will help publicize the various statutory changes made by jurisdictions.

Finally, the PDVAA should include provisions establishing a periodic review of police practices and the statute's effect once it is fully implemented.¹⁵¹ Local advocacy groups cannot shoulder the entire burden of ensuring that the MPD fully and properly implements the PDVAA. Establishing long-term reviews will also enable legislators and researchers to determine what provisions of the statute are effective and which ones require revision. Because domestic violence perpetuates itself from generation to generation within families,¹⁵² it is vital to continue examining and revising the methods designed to eliminate it. Otherwise, a law such as the PDVAA may prove merely a temporary aid to an entrenched societal problem.

VI. CONCLUSION

The District of Columbia's Prevention of Domestic Violence Amendment Act of 1990 exemplifies legislation enacted to change the response of police to domestic violence. The PDVAA is not a complete solution to the use of violence by men against the women with whom they are intimately involved. Such violence results from society's long-held belief in women's inferiority to men and demands deeper probing into society's attitudes. However, the PDVAA is one step towards the goal of eradicating domestic violence, and it must be fully implemented and studied so that other jurisdictions can assist their citizens who fall prey to domestic violence.

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151. According to a letter sent to D.C. area law students by the D.C. Coalition Against Domestic Violence, a police monitoring project was planned for the summer and fall of 1991, the period of the PDVAA's implementation. The purpose of the project was to determine if police file the reports required by the Act, and participants were to contact victims to determine what their situation entailed and how they viewed the police response to it. Letter from Deborah Epstein and Ayesha Kahn, D.C. Coalition Against Domestic Violence, to D.C. area law students (Jan. 14, 1991) (on file with THE JOURNAL OF CONTEMPORARY HEALTH LAW AND POLICY).

152. See *supra* notes 5-7 and accompanying text (explaining that children who are raised in an environment that contains family violence are more likely to physically abuse their own spouses).