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## **Domestic Violence: The District of Columbia's New Mandatory Arrest Law**

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Just about to enter her office building, on a busy downtown Washington, D.C., street, Mary Z. was attacked from behind. In full view of numerous witnesses, her assailant beat her savagely, breaking her nose, cheekbone, and several ribs. By the time the police arrived, the assailant had fled. The police questioned no one except the victim, made no report, made no attempt to apprehend the perpetrator. Why? Because the police had learned the assailant was not a stranger: he was Mary's husband. This act of brutality was a family matter—not police business. As a result, Mary was hospitalized, her husband free to terrorize her again at will.<sup>1</sup>

Mary's story is true and, unfortunately, is not an isolated incident. Many District of Columbia police officers base their response to domestic violence calls on the relationship between the assailant and the victim, not on the nature of the crime committed. A double standard has existed: a beating by a husband or boyfriend is treated as less serious than a beating by a stranger.

With the adoption of the Prevention of Domestic Violence Amendment Act of 1990,<sup>2</sup> the District of Columbia joins a growing number of jurisdictions that *require* a police officer to make an arrest where there is probable cause to believe domestic violence has occurred.<sup>3</sup> This mandatory arrest legislation is a necessary antidote to the pervasive and longstanding failure of the criminal justice system to protect domestic violence victims.

# DOMESTIC

D.C.'s New

Mandatory

Arrest Law

# VIOLENCE

BY CATHERINE F. KLEIN

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## Law Enforcement Policy

Until 1987 the D.C. Metropolitan Police Department had no specific internal policy for handling domestic violence cases.<sup>4</sup> What limited training the officers received taught them that domestic violence should be mediated and arrest avoided.<sup>5</sup> In 1986 a group of George Washington University law students,<sup>6</sup> with the assistance of the D.C. Coalition Against Domestic Violence (DCCADV),<sup>7</sup> petitioned the police department to develop guidelines recommending arrest rather than mediation as the preferred response to domestic violence.

As a result of the petition and growing community pressure, in June 1987 the Metropolitan Police Department adopted a "pro-arrest" domestic violence policy through promulgation of General Order 701.5, which stressed that arrest was the appropriate police response to domestic violence, but fell short of requiring it. General Order 701.5 provides that "[i]n cases where probable cause exists to believe a criminal offense has occurred, an immediate arrest should be made whenever possible."<sup>8</sup>

In an effort to find out how well this pro-arrest policy was being implemented, the DCCADV undertook a major empirical study of police practices under the new policy, based on extensive interviews of 274 victims of domestic abuse in the District.<sup>9</sup> Two populations were targeted: victims of domestic violence who went to the Citizen's Complaint Center<sup>10</sup> for help and those who went directly to the Superior Court to file a petition for a civil protection order.<sup>11</sup> The interviews took place one day a week at each site from November 1987 through March 1988.<sup>12</sup>

The results were shocking. Six months after the issuance of General Order 701.5 essentially nothing had changed: the police were still routinely telling victims that there was nothing the police could do even when there was clear evidence that a crime had taken place. Some of the stories told include:

- Two weeks after a forty-seven-year-old woman left her husband, she went to his auto shop to discuss financial matters. He beat her severely with a metal pipe and she was taken to the hospital. Police responded to her requests for help by asking her husband to go to the Citizen's Complaint Center with her. No further action was taken by the police.<sup>13</sup>
- When one woman's ex-boyfriend came to her home to retrieve his belongings, she called the police. Because of his past violence, she was afraid of him. After she called the police, the boyfriend dragged her into the bedroom, kicked her in the face, and beat her until she was unconscious. Finally, after a neighbor called the police again, an officer arrived and took the woman to the hospital. The police, however, refused to take further action, despite the woman's request that they arrest the abuser.<sup>14</sup>
- A husband and wife were at a friend's house.

They quarreled and she went home. Her husband came home the next morning and immediately began to beat her. He slapped her, choked her, threw her on the floor repeatedly, pushed her chin to make her bite her tongue, and eventually tried to rape her. The abuse continued for two hours. Eventually, the woman fled and called the police from a friend's house. The police dispatcher told her nothing could be done because she had left the site of the abuse and suggested she go to the Citizen's Complaint Center.<sup>15</sup>

The police made arrests in only 5 percent of the domestic violence incidents covered by the survey.<sup>16</sup> The DCCADV study found that a police officer's decision to make an arrest had little to do with the severity of the victim's injuries. For example, in none of the cases where the victim was admitted to the hospital for treatment was the suspected abuser arrested.<sup>17</sup> Nor did the victim's request that an assailant be arrested (32.5 percent of the cases) make much difference.<sup>18</sup>

Instead, the single most important factor in determining arrest appeared to be the suspect's attitude toward the police. If the suspect failed to respect the authority of the officers, arrest was much more likely.<sup>19</sup> Another important factor influencing arrest was the presence of property damage. The arrest rate for incidents involving damage to a car was 28.6 percent. In contrast, the arrest rate in incidents involving a bleeding victim was only 13.7 percent.<sup>20</sup>

While there were some officers who responded to domestic violence victims with compassion and understanding, many more displayed shocking insensitivity to the suffering and legal rights of domestic violence victims. In the face of the police department's failure to implement its own pro-arrest policy or to change its de facto policy of "arrest as a last resort" or even no arrest, the DCCADV and other concerned groups and individuals began to demand that change in law enforcement policy and practice be legislated by the Council of the District of Columbia in the form of a mandatory arrest law.

### Breaking the Cycle of Violence

Critics of mandatory arrest laws maintain that such laws deprive police officers of needed flexibility in determining whether an arrest should be made, arguing that "not every situation where probable cause exists is suitable for immediate arrest."<sup>21</sup>

However, studies both in the District and elsewhere<sup>22</sup> have shown that police routinely abuse their discretion regarding arrests in domestic violence cases, failing to take suspected abusers into custody even when probable cause exists to do so. Thus, far from according special treatment to domestic violence victims, the mandatory arrest law is an attempt to ensure that they are merely given the protection afforded other victims of crime.

Moreover, arrest has been found to be the most effective way to break the cycle of violence. Initially, law enforcement experts thought that there was little that the police could do to prevent domestic violence. However, this attitude began to change in the late 1970s.<sup>23</sup> In 1977 the Police Foundation conducted a study in Kansas City, Kansas, that showed that in 85 percent of domestic homicide cases, police had been called to the home at least once before, and in 50 percent of these cases five or more times, in the two years prior to the homicide.<sup>24</sup> While the study did not address the issue of what exactly the police could do to stop the violence, it revealed that without effective police intervention domestic violence tends to recur and the level of violence escalates.

In 1981 the Minneapolis, Minnesota, police department agreed to participate in a landmark experiment sponsored by the National Institute of Justice to test the effectiveness of three different police responses to domestic violence.<sup>25</sup> The objective was to determine how effective the various methods were in reducing the likelihood of future violent incidents. The Minneapolis experiment, which applied only to misdemeanor domestic assaults, instructed police officers to respond in one of three ways: give advice or informally mediate; order the suspect to leave the premises for eight hours; or arrest the suspect. The type of response was randomly assigned.

The study found that when suspects were arrested, the likelihood of a recurrence of the violence decreased. Only 10 percent of the suspects who were arrested were involved in repeat occurrences of domestic violence within the next six months, compared with 24 percent of those who were sent away from the scene and 19 percent of those who received mediation or advice. Thus, the results showed that the suspects who were not arrested were twice as likely to commit another domestic assault within the succeeding six months as those who were arrested.

Following this important study, Minneapolis and other jurisdictions adopted mandatory arrest laws and policies. The experiences of jurisdictions with mandatory arrest have been extremely encouraging. After Newport News, Virginia, adopted a mandatory arrest law, domestic violence-related homicides fell from an average of 12 to 13 a year to 1 in the first six months of 1988.<sup>26</sup> In 1987, 44 percent of the homicides in Alexandria, Virginia, were domestic. In the first two months after the police adopted a mandatory arrest policy, that figure dropped to zero.<sup>27</sup> The Duluth, Minnesota, police department adopted a mandatory arrest policy in 1981, and the city experienced a 47 percent drop in domestic violence calls between 1982 and 1986.<sup>28</sup> Similarly, after Connecticut passed a mandatory arrest law in 1986, there was a 28 percent drop in reported incidents of domestic violence.<sup>29</sup>

The message is clear. Left unchecked, domestic violence typically escalates in frequency and severity.<sup>30</sup> Failure to arrest an abuser not only

deprives a woman of the immediate protection she is entitled to, but also implicitly teaches the abuser that his behavior is acceptable, that he can escape responsibility for the abuse. This, in turn, makes it more likely that the abuse will be repeated in the future, perpetuating the cycle of violence.

### **The District's Mandatory Arrest Law**

**T**he District of Columbia Prevention of Domestic Violence Amendment Act was first introduced by city council member Hilda Mason in 1989. Mason and her staff had worked closely with the DCCADV and other domestic violence advocates in drafting the bill. In June 1989 the city council's judiciary committee held public hearings on the proposed mandatory arrest law. Thirty-four witnesses testified, representing a wide spectrum of the community. The witnesses were nearly unanimous in their support for the legislation, stressing the importance of treating domestic violence as a crime and holding the abuser responsible for his actions.<sup>31</sup>

After an amended bill was introduced in 1990, an effort was made to include a provision permitting "pretrial diversion" of domestic violence defendants into counseling programs. Under this proposal, abusers could be referred to counseling as an alternative to criminal prosecution. However, prosecutors in other jurisdictions, as well as persons involved in batterers' counseling programs, wrote to the members of the judiciary committee urging them to reconsider this provision.<sup>32</sup> In their experience, batterers' counseling is successful only if it is presented as an alternative to incarceration, not simply as an alternative to prosecution, because batterers minimize the seriousness of their actions. Accordingly, batterers will tend to be resistant to counseling unless the gravity of their offenses is clearly impressed upon them before the counseling starts. Thus, while an important part of the solution, the comments received by the city council indicated that counseling was a poor substitute for criminal sanctions. As a result of these efforts, the pretrial diversion provision was eliminated.

City council members were also concerned about liability to domestic violence victims if the police did not adequately respond to the problem.<sup>33</sup> In recent years an increasing number of domestic violence victims have successfully sued police departments, individual officers, and on occasion prosecutors for failing to protect their rights.<sup>34</sup> Council members were persuaded that a firm mandatory arrest policy would significantly reduce the city's exposure to such claims by improving police response.

The mandatory arrest bill was approved unanimously by the Council of the District of Columbia on July 10, 1990, and signed by Mayor Barry on July 13, 1990. The bill became effective on April 30, 1991.

### **How the New Law Works**

**T**he Prevention of Domestic Violence Amendment Act includes four important components: arrest, written reports, police training, and recordkeeping policies.

*Arrest.* A police officer must arrest if the officer has probable cause to believe that a person is responsible for an intrafamily offense<sup>35</sup> that either resulted in physical injury, including pain or illness,<sup>36</sup> or was intended to cause a reasonable fear of injury or death.<sup>37</sup> It does not matter whether the police officer saw what happened.<sup>38</sup> Nor is a warrant required. The law adds a new category of warrantless arrest to the District's criminal code.<sup>39</sup>

**Far from according special treatment to domestic violence victims, the mandatory arrest law is an attempt to ensure that they are merely given the protection afforded other victims of crime.**

This so-called mandatory arrest law does not mean that everyone accused of a domestic crime is automatically subject to arrest. The police officer must first determine that probable cause exists before an arrest can be made. Police officers do this successfully every day when investigating other types of crimes. However, until enactment of this law, the District's law enforcement officers have treated domestic violence cases differently. The new law makes it clear that this type of a double standard will no longer be tolerated.

*Written reports.* Any police officer who responds to a domestic violence call is now required to file a written report that includes the officer's disposition of the case.<sup>40</sup> This report, commonly referred to as an incident report, must be prepared regardless of whether an arrest was made.<sup>41</sup>

Incident reports are crucial for several reasons. They can help establish that the violence is not just an isolated incident but part of a pattern of abuse. An officer may lack the probable cause needed to make an arrest on an initial call. However, if the officer responds to a subsequent call at the same location, the officer should take the report from the previous incident into account in determining whether probable cause now exists

to make an arrest. In addition, the reports can help establish grounds for a civil protection order. Often, in a civil protection order hearing, it is the victim's word against her abuser's, and the report can be useful in corroborating her story. Moreover, and perhaps most important, the report requirement forces the officer to talk to people, to listen to their stories. Victim interviews after the Minneapolis study emphasized that the effectiveness of the police response increased dramatically when officers took the time to listen to victims. Finally, requiring written reports increases police accountability and provides a database for studying the extent of domestic violence in our community.

*Police training.* The law mandates a minimum of 20 hours of training on domestic violence for all new recruits and 8 hours of training for current officers.<sup>42</sup> The law outlines specific training areas: the nature and causes of domestic violence; the legal rights and remedies of the victim and perpetrator; and the duties of police officers to enforce the arrest provision of the law and to offer assistance to the victim.

Training is important not only as a means of familiarizing police officers with the contents of the new law, but also as a way to enable officers to confront their own attitudes about the propriety of using violence to resolve domestic disputes. Previously, some police officers may have been reluctant to treat domestic violence as a criminal matter because they believed that there was nothing wrong with hitting a wife or girlfriend. In fact, recent studies show that police officers are as likely as anyone else to use violence against family members.<sup>43</sup>

*Recordkeeping policies.* Finally, the Metropolitan Police Department must maintain a computerized record of civil protection orders and bench warrants issued in connection with an abuse case.<sup>44</sup> This provision will assist women in obtaining and enforcing civil protection orders.

### **The Problem of Dual Arrest**

**A** major area of concern surrounding mandatory arrest laws has been dual arrests, which occur when the victim is arrested along with the abuser. A dual arrest is rarely appropriate in domestic violence cases. Police officers, following protocols used in investigating all other types of crimes, can almost always determine who is the aggressor and who is acting in self-defense. The overwhelming majority of domestic violence victims are female, and perpetrators are male. National crime statistics show that approximately 95 percent of domestic violence victims are women.<sup>45</sup> While women sometimes use physical force against their partners, it is often in self-defense.<sup>46</sup> Furthermore, the effects of male violence are far more serious when measured by the frequency and severity of the injuries.<sup>47</sup>

Despite this reality, in some jurisdictions,

usually during the initial implementation period of a mandatory arrest policy, dual arrests have occurred all too frequently. There appear to be two main reasons: some police officers, resenting the loss of some of their discretion, were trying to sabotage the mandatory arrest law; and some officers, because of inadequate training, genuinely misunderstood the provisions of the law.<sup>48</sup>

Jurisdictions have responded to the problem of dual arrests by new legislation and enhanced police training. For example, in 1984, immediately after Washington State passed its mandatory arrest law, many police officers began making unwarranted dual arrests. The problem was handled in that jurisdiction by amending the legislation to provide that the police are to arrest only the "primary aggressor" in situations where both parties have used violence.<sup>49</sup> This new provision, coupled with a better police training program, helped to reduce dramatically the number of dual arrests.<sup>50</sup>

The DCCADV, mindful of what had happened in Washington State in the absence of a primary-aggressor provision, successfully lobbied to have this language included in the initial draft of the District's proposed mandatory arrest law. This earlier version of the bill stated that an officer was required to make an arrest if the officer had probable cause to believe that the person "was a primary aggressor and committed an intrafamily offense."<sup>51</sup> In determining who was the primary aggressor, the officer was to take several factors into account, including the relative degree of injury inflicted by both parties and the existence of a prior history of violence.

Unfortunately, the primary-aggressor language was not included in the law as enacted. The decision to drop this provision may prove to have an adverse impact on victims of domestic violence. The experience of other states has shown that such a provision may be necessary if domestic violence victims are not to be further victimized by a law designed to help them. The Metropolitan Police Department and the community need to monitor this area closely. Amendment of the District's law may be in order if similar problems occur here.<sup>52</sup>

## The Role of Prosecutors

**A**lthough the new mandatory arrest law signals an important change in the way law enforcement officials are to respond to incidents of domestic violence, it will be of limited value unless our local prosecutors, the U.S. Attorney's Office, aggressively prosecute those who have been arrested. Prosecutors play a key role in domestic violence cases. If the U.S. Attorney's Office fails to prosecute domestic violence cases with the same vigor as nondomestic crimes, the effectiveness of the mandatory arrest law will be undermined. Police are traditionally reluctant to make an arrest if they think the suspect will not be prosecuted.<sup>53</sup> And once again, abusers will

be sent a tacit message that they can act with impunity.

Historically, prosecutors have not treated domestic violence as a serious crime and have used restrictive policies to screen out otherwise meritorious cases. The U.S. Commission on Civil Rights found that prosecutors often apply more restrictive filing and charging policies to domestic assaults than to other types of assaults.<sup>54</sup> Prosecutors also tend to believe that battered women are unwilling to cooperate with the criminal prosecution of abusive men, that this belief is communicated to victims, and that this preconception swiftly becomes a self-fulfilling prophecy.<sup>55</sup>

Recently, prosecutors' offices in several jurisdictions have made domestic violence cases a priority, and are prosecuting cases resolutely and successfully.<sup>56</sup> Their successes illustrate that victim reluctance is a myth. Most domestic violence victims, given the opportunity and provided with the necessary support, will cooperate fully with prosecutors. Successful programs recognize that domes-

tic violence cases involve many complex factors. Many victims appear ambivalent about pressing charges because they are facing pressure or threats from the abuser to drop the case.

Tragically, many women's fears about the danger of participation in the criminal process are well founded. A National Institute of Justice study concluded that a domestic violence victim is especially vulnerable to retaliation or threats by the defendant during the pretrial period.<sup>57</sup> Moreover, national crime statistics show that in almost 75 percent of reported domestic assaults, the partners were already divorced or separated.<sup>58</sup> Data from the National Crime Survey show that once a person is victimized by domestic violence, the risk of being victimized again is high.<sup>59</sup> Therefore, successful domestic violence prosecution programs must work closely with the victim to monitor compliance with pretrial release conditions and must respond firmly to violations.

Moreover, prosecutors must make it clear to the victim and her abuser that it is the state, not the victim, that is pressing charges. They must communicate clearly that domestic violence is not only a crime against an individual but a crime against the state, and the state has an interest in seeing the abuser held accountable.<sup>60</sup>

Unfortunately, in the District of Columbia the U.S. Attorney's Office continues to enforce policies that place the onus of prosecution in domestic violence cases on the victim. Most significantly, the U.S. Attorney's Office requires that domestic violence victims be present at the office on the morning following the offense as a precondition to the filing of criminal charges. If the victim fails to appear for any reason (unless "physically unable" to appear), the office will not press charges.

Thus, if the police fail to inform the battered woman of this obligation, if she is unable to take time off from work without advance notice, if she is unable to find child care, or if she is unable to appear for any other reason, the abuser could be released without so much as a warning.

In sharp contrast, when prosecuting other types of crimes, including nondomestic assaults, the U.S. Attorney's Office works with police officers to prepare and swear out an affidavit describing the facts of the crime. This affidavit provides the basis for criminal charges. The crime victim need not appear.

Requiring domestic violence victims to appear for papering is bad policy. The Attorney General's Task Force on Family Violence,<sup>61</sup> the U.S. Department of Justice's National Institute of Justice,<sup>62</sup> and the National Council of Juvenile and Family Court Judges<sup>63</sup> have criticized this and other similar requirements for prosecution. Furthermore, the experiences of other cities and states where mandatory arrest has been in effect show that this policy is unnecessary to achieve even the stated purposes of the U.S. Attorney's Office: to get information from the victim and to ensure that the victim is willing to cooperate with the prosecution.

It is clear that domestic violence training for

## DOMESTIC VIOLENCE TRAINING PROGRAM

**Domestic violence is a community problem, demanding a community response. The criminal justice system's response to domestic violence must be part of a larger community effort to end the devastating consequences of violence within the family.**

**Private lawyers also have an important role. Domestic violence victims desperately need representation to obtain civil protection orders, divorces, custody and child support, as well as other types of civil relief. Domestic violence victims who are unrepresented are much less likely to obtain the relief they need from the civil courts.<sup>1</sup> Lawyers also can help clients survive the criminal process.**

**In order to address this need in our community, the Public Service Activities Corporation of the D.C. Bar is sponsoring a daylong, intensive training program on domestic violence on Friday, December 13. Attending this training and agreeing to represent a domestic violence victim is one important way for Bar members to become involved in the ongoing struggle to improve the District's response to domestic violence.**

<sup>1</sup>P. Finn & S. Colson, *Civil Protection Orders: Legislation, Current Court Practice, and Enforcement* (1990).

—C.F.K.



prosecutors is also essential. If prosecutors become familiar with the dynamics of domestic abuse, they will be better prepared to address victims' concerns and provide the necessary support. Successful prosecution programs try to match the goals of the prosecutor and the victim. For example, a woman may want the violence stopped but not want to see her husband go to jail. She may be more willing to cooperate if the prosecutor agrees to ask for postconviction placement in a counseling program for batterers instead of incarceration.<sup>64</sup>

Successful criminal justice programs also make extensive use of victim advocates who work closely with the prosecutors. A victim advocate serves several important functions in a domestic violence case.<sup>65</sup> The advocate can help investigate and prepare the case; provide early and consistent contact with the victim, helping her to explore any reasons why she may be reluctant to testify; help prepare the victim to testify in court; and assist the victim in developing a support system by linking her with available community services.<sup>66</sup> The DCCADV is currently working on instituting a victim advocate program in the District that would be independent of the U.S. Attorney's Office but would work in close coordination with it.

## A Community Problem

No longer can our community tolerate the historical double standard applied in domestic violence cases: providing domestic violence victims with less protection and consideration than victims abused by total strangers. Experience shows that strong measures are needed to combat the extraordinary acceptance our society has had toward violence in the home. Mandatory arrest is one such measure.

Mandatory arrest can be an effective means to deter future domestic violence. Although its implementation needs to be hastened and closely monitored, the new law is a welcome change. The law brings the District of Columbia into line with other progressive jurisdictions. In addition to the Metropolitan Police Department, the U.S. Attorney's Office has a key role to play in determining the success of the law. A coordinated criminal justice response is required. There is a lot at stake. The cost to our community in lost lives and resources is a constant reminder that domestic violence is not just a family matter. ■

## Notes

<sup>1</sup>K. Baker, N. Cahn & S. Sands, *Report on District of Columbia Police Response to Domestic Violence* 26 (Nov. 3, 1989) [hereinafter *DCCADV Report*]; see *infra* note 9.

<sup>2</sup>D.C. Act 8-239 (codified at D.C. Code §§ 4-131, 16-1001, 16-1031 to -1034, 23-581 (Supp. 1991)).

<sup>3</sup>The following states currently have some form of mandatory arrest law: Connecticut, Hawaii, Iowa, Maine, Missouri, Nevada, New Jersey, Oregon, Rhode Island, South Dakota, Utah, Washington, and Wisconsin. See National Center on Women & Family Law, *Mandatory Arrest Summary Chart* (1991).

<sup>4</sup>*DCCADV Report, supra* note 1, at 1.

<sup>5</sup>*Id.*

<sup>6</sup>See *Formal Request for Rulemaking*, submitted on April 14,

1986, by the Task Force on Battered Women, under the supervision of Professor John F. Banzhaf III.

<sup>7</sup>The D.C. Coalition Against Domestic Violence is a nonprofit organization of domestic violence service providers and legal advocates in the Washington, D.C., area.

<sup>8</sup>General Order 701.5 at 2 (June 1, 1987). The initial order proposed by the police department was significantly strengthened by suggestions from the DCCADV. One key addition was a list of factors the police were to take into consideration when deciding whether to make an arrest, including visible injury; the need for medical treatment; the involvement of weapons; furniture in disarray; threats in the officer's presence; and the existence of a civil protection order.

<sup>9</sup>*DCCADV Report, supra* note 1. The report was a joint project of the DCCADV and the Women's Law and Public Policy Fellowship Program at Georgetown University Law Center. Copies are available from DCCADV, PO Box 76069, Washington, DC 20013; 703-860-0019.

<sup>10</sup>The Citizen's Complaint Center refers to a building located at 5th and F streets NW that houses representatives from various D.C. agencies: the U.S. Attorney's Office, Office of the Corporation Counsel, D.C. Social Services, and D.C. Mediation Service.

<sup>11</sup>A civil protection order is a civil domestic violence remedy available under the D.C. Intrafamily Offenses Act, D.C. Code § 16-1001 *et seq.* (1990).

<sup>12</sup>*DCCADV Report, supra* note 1, at 9-18.

<sup>13</sup>*Id.* at 46.

<sup>14</sup>*Id.* at 49.

<sup>15</sup>*Id.* at 44.

<sup>16</sup>*Id.* at 46.

<sup>17</sup>*Id.* at 39. Particularly noteworthy is the fact that in seven cases the victim had broken bones as a result of the beatings, and in none of these cases was the abuser arrested.

<sup>18</sup>*Id.* at 46.

<sup>19</sup>*Id.* at 49.

<sup>20</sup>*Id.* at 44.

<sup>21</sup>A. Spitzer, *Don't Make Domestic Arrest Mandatory*, WCL Newsl. 3 (Sept. 1990).

<sup>22</sup>See, e.g., U.S. Dep't of Justice, *Attorney General's Task Force on Family Violence, Final Report*, 16-27 (1984) [hereinafter *Attorney General's Task Force*]; *DCCADV Report, supra* note 1, at 5.

<sup>23</sup>P. Langan & C. Innes, *Preventing Domestic Violence Against Women* (1986).

<sup>24</sup>Police Found., *Domestic Violence and the Police, Studies in Detroit and Kansas City* (1977).

<sup>25</sup>L. Sherman & R. Berk, *The Minneapolis Domestic Violence Experiment*, 1 Police Found. Rep. 1 (1984).

<sup>26</sup>S. Buel, *Mandatory Arrest for Domestic Violence*, 2 Harv. Women's L.J. 213, 216 (1988).

<sup>27</sup>Wash. Post, Jan. 29, 1988, at D7.

<sup>28</sup>S. Buel, *supra* note 26, at 216.

<sup>29</sup>*Id.*

<sup>30</sup>N. Lemon, *Domestic Violence: The Law and Criminal Prosecution* 19 (1990) (citing G. Stahly, *Victims' Rights and Issues: Special Problems of the Battered Woman as Victim/Witness in Partner Abuse Cases* 7, paper presented at the Western Society of Criminology Conference, Las Vegas, Nevada, Feb. 27, 1987 (in appendix)). A report by the Justice Department showed that once a woman has been the victim of domestic violence, the chances are high that she will be victimized again. *Id.* (citing P. Langan & C. Innes, *Preventing Domestic Violence Against Women* 1 (1986)).

<sup>31</sup>See Report from the Chairperson of the Committee on the Judiciary, dated May 16, 1990 [hereinafter *Judiciary Committee Report*], summarizing the legislative history of the District of Columbia Prevention of Domestic Violence Amendment Act and recommending its passage.

<sup>32</sup>See, e.g., Letter from David Adams, Executive Director, EMERGE, to Wilhelmina Rolark, Chair, Committee on the Judiciary (June 15, 1990); Letter from Candace Heisler, Assistant District Attorney, Domestic Violence Prosecution Unit, San Francisco, California, to Wilhelmina Rolark (June 14, 1990); Letter from Ruth D. Reichard, Deputy Prosecuting Attorney, Marion County, Indiana, to Wilhelmina Rolark (June 21, 1990); Letter from Roni Young, Director, Domestic Violence Unit, Office of the State's Attorney for Baltimore County, to Wilhelmina Rolark (June 19, 1990) (all letters available from the D.C. Coalition Against Domestic Violence).

<sup>33</sup>Judiciary Committee Report, *supra* note 31, at 3.

<sup>34</sup>*DCCADV Report, supra* note 1, at 2. Cities that have been sued include New York; Oakland, California; Kansas City, Kansas; and Torrington, Connecticut. The landmark case in the area is *Thurman v. Torrington*, 595 F. Supp. 1521 (D. Conn. 1985), in which a federal court jury in Connecticut awarded Tracey Thurman, a battered woman, \$2.3 million in her suit against the city of Torrington and 24 of its police officers be-

cause of the department's policy and practice of nonintervention and nonarrest in domestic violence cases. See also *Watson v. Kansas City*, 857 F.2d 690 (10th Cir. 1988).

<sup>35</sup>"Intrafamily offense" is defined by D.C. Code § 16-1001(5), which provides in relevant part:

The term "intrafamily 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 the 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.

<sup>36</sup>D.C. Code § 16-1031(a)(1) (Supp. 1991).

<sup>37</sup>*Id.* § 16-1031(a)(2).

<sup>38</sup>*Id.* § 16-1031(a)(1).

<sup>39</sup>*Id.* § 23-581.

<sup>40</sup>*Id.* § 16-1032.

<sup>41</sup>*Id.*

<sup>42</sup>*Id.* § 16-1034.

<sup>43</sup>See, e.g., Note, *Protecting Battered Women: A Proposal for Comprehensive Domestic Violence Legislation in New York*, 15 Fordham L. Rev. 999, 1021 (1987) (citing L. Walker, *The Battered Woman* 207 (1979)).

<sup>44</sup>D.C. Code § 4-131 (Supp. 1991).

<sup>45</sup>Bureau of Justice Statistics, U.S. Dep't of Justice, *Report to the Nation on Crime and Justice: The Data* (1983).

<sup>46</sup>See D. Saunders, *When Battered Women Use Violence: Husband-Abuse or Self-defense?*, 1 Violence & Victims 47-60 (1986).

<sup>47</sup>See R. Berk, S. Berk, D. Loseke & D. Rauma, *Mutual Combat and Other Family Violence Myths*, in Finkelhor *et al.*, *The Dark Side of Families: Current Family Violence Research* (1983). Each year more women are seriously injured by their intimate partners than by rapes, auto accidents, and muggings combined. *DCCADV Report, supra* note 1, at 1.

<sup>48</sup>See, e.g., S. Buel, *supra* note 26, at 225-26; S. Crane, *Washington's Domestic Violence Prevention Act: Mandatory Arrest 2 Years Later*, 3 Women's Advoc. 1 (May 1987); S. Epstein, *New Connecticut Law on Domestic Violence*, 8 Women's Advoc. 1 (Jan. 1987).

<sup>49</sup>S. Crane, *supra* note 48. In addition to Washington State, the states incorporating the concept of "primary aggressor" into their mandatory arrest laws are Iowa, Nebraska, New Jersey, Rhode Island, South Dakota, and Wisconsin. See National Center on Women & Family Law, *Mandatory Arrest Summary Chart* (1991).

<sup>50</sup>S. Buel, *supra* note 26, at 225.

<sup>51</sup>See District of Columbia Prevention of Domestic Violence Amendment Act of 1989, Bill 8-192.

<sup>52</sup>However, a primary-aggressor provision alone will not necessarily eliminate the problem of dual arrests unless coupled with comprehensive training of police officers about what the standard means and how to apply it. Although Wisconsin's mandatory arrest law initially included a primary-aggressor standard, the police were arresting both parties in about 20 percent of the cases. Statistics showed that 67 percent of the women had either been defending themselves against an assault or were retaliating for an attack that occurred moments before. K. Hamberger & J. Arnold, *The Impact of Mandatory Arrest on Domestic Violence Perpetrator Counseling Services*, Fam. Violence Bull. 11. Although the language of the statute was clear, the police had not been adequately trained to understand what it meant. *Id.*

<sup>53</sup>See L. Lerman, *Prosecution of Spouse Abuse: Innovations in Criminal Justice Response* 14-15 (1981, 1983).

<sup>54</sup>U.S. Comm'n on Civil Rights, *Under the Rule of Thumb: Battered Women and the Administration of Justice* 30 (1982).

<sup>55</sup>*Id.*; L. Lerman, *supra* note 53, at 20-21.

<sup>56</sup>L. Lerman, *supra* note 53, 33-37.

<sup>57</sup>G. Goolkasian, *Confronting Domestic Violence: The Role of Criminal Court Judges* (1986).

<sup>58</sup>Bureau of Justice Statistics, U.S. Dep't of Justice, *Report to the Nation on Crime and Justice: The Data* (1983).

<sup>59</sup>P. Langan & C. Innes, *Preventing Domestic Violence Against Women* (1986).

<sup>60</sup>See, e.g. *Attorney General's Task Force, supra* note 22, at 29-30.

<sup>61</sup>See *id.* at 29-30.

<sup>62</sup>See G. Goolkasian, *supra* note 57.

<sup>63</sup>See *Recommendations from the National Council of Juvenile and Family Court Judges* (1990).

<sup>64</sup>See L. Lerman, *supra* note 53, at 34.

<sup>65</sup>See, e.g. *Attorney General's Task Force, supra* note 22, at 29; N. Lemon, *supra* note 30, at 58.

<sup>66</sup>See *Attorney General's Task Force, supra* note 22, at 29; L. Lerman, *supra* note 53, at 51-53.