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Expansion of Arrest Power: A Key to Effective Intervention

Lisa G. Lerman
The Catholic University of America, Columbus School of Law

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INTRODUCTION

Proper police handling of domestic violence cases is fundamental to successful prosecution, since battered women who want help from the criminal justice system generally turn to the police first. Because the police act as gatekeepers to the criminal justice system, their conduct may determine both whether the victim will pursue criminal charges and whether she will cooperate if charges are filed. Every aspect of police intervention, therefore, affects any subsequent prosecution.

From a prosecutor's point of view, there are three important aspects of police response: (1) that police file accurate reports for use at subsequent trial; (2) that the police make arrests which comport with due process; and (3) that police temporarily detain defendants who may intimidate complaining witnesses, so that conditions may be placed on their release. Police are reluctant to file reports or to take batterers into custody because so few domestic cases result in prosecution. Officers feel their time is wasted.[1] Prosecutors who vigorously pursue prosecution of spousal assaults and prohibit dismissal of charges encourage increased arrests by police which, in turn, facilitate successful prosecution.

Furthermore, if an arrest is made, a prosecutor who works closely with the police can expect that a report will be sent to his office and that evidence will be preserved. Similarly, the prosecutor can expect cooperation from the police in obtaining a conviction.

An arrest places the burden on the prosecutor to initiate further action, rather than leaving the onus on the victim to find out what remedies are available to her. She may not seek help because of ignorance, fear of retaliation, or feelings of helplessness. An arrest, on the other hand, increases the likelihood of victim coopera-

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* Lisa G. Lerman is an attorney with the Women's Rights Clinic of Antioch School of Law, Washington, D.C. A graduate of New York University School of Law, she was previously Staff Attorney at the Center for Women Policy Studies.

1. Consensus of thirty police officers, Domestic Violence Class, F.B.I. Nat'l Acad. in Quantico, Va. (July 15, 1981).

tion. The International Association of Chiefs of Police states that "A policy of arrest, when the elements of the offense are present, promotes the well-being of the victim. . . . The officer who starts legal action may give the wife courage she needs to realistically face and correct her situation."[2]

Immediate arrest may prevent further injury. Lenore Walker, Director of the Battered Women Research Center in Denver, Colorado, reports that police are most often called during the "acute battering incident," the second phase of the abuse syndrome, during which one or more severe beatings may occur.[3] This phase usually lasts between 2 and 24 hours.[4] A victim may be in serious danger if the police who respond depart, leaving both parties in the residence. This danger may not be apparent because abusers are often polite and deferential in the presence of police.[5]

Finally, an arrest communicates to the parties that the abuser has committed a crime, that the victim has a right not to be beaten, and that the criminal justice system will act to stop the abuse. If the police remain at the scene of a domestic disturbance for 20 minutes to talk to the couple and "cool things off," and then depart, the police leave both the victim and the abuser with a message that no crime has been committed, and that no serious consequences will follow from calling the police.

To advocate more frequent arrest of abusers is not to suggest that arrest is always appropriate or sufficient. In some cases there may not be probable cause that a crime was committed. In others, an abuser may go home and use the arrest as an excuse for further beatings. Police must be trained to analyze the situation carefully before taking any action. The risk of precipitating another beating by making an arrest may be reduced by detaining the abuser over-

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2. INT'L A. OF CHIEFS OF POLICE, WIFE BEATING: TRAINING KEY NO. 245 at 4 (1976).

3. Walker outlines a "cycle of violence" which appears to be repeated again and again in violent relationships. Stage one involves a build-up of tension in the abuser, during which he becomes increasingly violence-prone. Stage two involves an outburst of violence, during which the abuser releases agression. In stage three he becomes aware of the damage he has done, feels guilty, and becomes apologetic. L. WALKER, THE BATTERED WOMAN 64 (1979).

4. *Id.* at 60.

5. *See* A. Ganley Ph.D., Court-Mandated Counseling for Men Who Batter: A Three Day workshop for Men Who Batter, Participants' Manual 7-36 (1981) (Center for Women's Policy Studies, Washington, D.C.) (discusses denial and minimization of violent behavior by men who batter). The batterer's view that violence is not serious is reinforced by police acceptance of some violence as normal or even appropriate. R. DOBASH & R. DOBASH, VIOLENCE AGAINST WIVES: A CASE AGAINST THE PATRIARCH 212-17 (1979).

night until a bond hearing the next morning or by escorting the abuser elsewhere for the night. Alternatively, the police may take the victim to a shelter.

I. Constitutional Limits on Warrantless Arrest

The fourth amendment to the United States Constitution[6] prohibits the issuance of a warrant for arrest unless there is probable cause to believe both that a crime has been committed and that the person arrested committed it.[7] The Constitution has also been interpreted to require probable cause for warrantless arrests.[8]

A recent U.S. Supreme Court decision, *Payton v. New York*,[9] limited the power of the police to make a warrantless arrest in the home of the person arrested. The Court held that "the Fourth Amendment . . . prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest."[10] Because most domestic abuse occurs in the home of the suspect, this decision must be closely examined to determine the constitutionality of state laws expanding police power to make warrantless arrests in domestic cases.

The *Payton* decision invalidated two warrantless arrests in the homes of the persons arrested. In one case the police entered the apartment of a suspect by breaking the door with a crowbar. No crime was in progress in the dwelling.[11] In the other case, a suspect was arrested in his home by police who had not obtained a warrant even though they had known his address for two months before they tried to make the arrest.[12]

Writing for the majority, Justice Stevens stated that "we have no occasion to consider the sort of emergency or dangerous situation, described in our cases as 'exigent circumstances,' that would justify a warrantless entry into the home for the purpose of either

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6. U.S. Const. amend XIV.

7. "Probable cause" means that the arresting officer must have "reasonably trustworthy information" in light of any "facts and circumstances" that would lead a reasonably cautious person to believe that an offense had been or was being committed. Draper v. United States, 358 U.S. 307, 313 (1959) (quoting Carroll v. United States, 267 U.S. 132 (1924)).

8. *Id. See also* Wong Sun v. United States, 371 U.S. 471, 479-80 (1963).

9. Payton v. New York, ___ U.S. ___, 100 S. Ct. 1371 (1980).

10. *Id.* at ___, 100 S. Ct. at 1374-75.

11. *Id.* at ___, 100 S. Ct. at 1375.

12. *Id.* at ___, 100 S. Ct. at 1376.

arrest or search."[13] He also noted that "in both cases we are dealing with entries into homes made without the consent of any occupant."[14] Since domestic violence cases usually involve "exigent circumstances,"[15] and since the police would often enter with the consent of one occupant, the victim, this decision does not appear to apply to domestic abuse arrest laws.

Warrantless arrest laws have been challenged in state courts. On March 27, 1980, the Supreme Court of Florida, in *LeBlanc v. State*,[16] upheld a state law allowing a warrantless arrest by a police officer where:

> The officer has probable cause to believe that the person has committed a battery upon the person's spouse, and the officer:
>
> (a) finds evidence of bodily harm; or
>
> (b) the officer reasonably believes that there is danger of violence unless the person alleged to have committed the battery is arrested without delay.[17]

The Florida Supreme Court upheld the statute against a challenge that the application of the law to spouse abusers violated the equal protection clause of the fourteenth amendment[18] because it treated spouses differently from other persons. The court held that "[i]t is not a requirement of equal protection that every statutory classification be all-inclusive. . . . Rather, the statute must merely apply equally to the members of the statutory class and bear a reasonable relation to some legitimate state interest. . . . We find that the statute clearly satisfies this rationality test."[19]

Some laws use the language "for good cause shown"[20] or "reason to believe"[21] in place of "probable cause." This language has been challenged as allowing arrest without probable cause in viola-

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13. *Id.* at ____, 100 S. Ct. at 1378.
14. *Id.*
15. Generally speaking, "exigent circumstances" may be said to exist when the demands of the occasion reasonably call for an immediate police response. Thus a warrantless entry may be justified when required to prevent imminent danger to life or serious damage to property, or to forestall the likely escape of a suspect or the threatened removal or destruction of evidence. State v. Lloyd, ____ Hawaii ____, ____, 606 P.2d 913, 918 (1980).
16. Le Blanc v. State, 382 So.2d 299 (Fla. 1980).
17. *Id.* at 300 n.1 (quoting FLA. STAT. ANN. § 901.15(6) (West Supp. 1981)).
18. U.S. CONST. amend XIV § 1.
19. 382 So.2d at 300.
20. *E.g.*, TENN. CODE ANN. § 36-1205 (Supp. 1981).
21. *E.g.*, UTAH CODE ANN. § 30-6-8 (Supp. 1981).

tion of the fourth amendment. At least one court has held, however, that such language is synonymous with "probable cause," and that a statute using the former language is not unconstitutional.[22]

II. State Arrest Laws

State law may not abolish the probable cause requirement. However, within the limits imposed by the fourth amendment,[23] police authority to arrest is defined by state law. In most states, one law dictates standards for warrantless arrest in cases in which an officer has probable cause to believe that a felony, most often defined as a crime punishable by more than one year in jail, has been committed,[24] or where an officer witnesses the commission of a misdemeanor, usually defined as an offense punishable by less than one year in jail.[25]

These standards have been criticized by scholars of criminal law, and are particularly inappropriate for domestic violence cases. Wayne LaFave, for example, suggests that standards for warrantless arrest should be based on the need for immediate action, rather than on the felony/misdemeanor distinction.[26] The American Law Institute recommends that statutes authorizing warrantless arrest adopt the following standards:

> (1) *Authority to Arrest Without a Warrant*—A law enforcement officer may arrest a person without a warrant if the officer has reasonable cause to believe that such a person has committed
> (a) a felony;
> (b) a misdemeanor, and the officer has reasonable cause to believe that such person
> (i) will not be apprehended unless immediately arrested; or
> (ii) may cause injury to himself or others or damage to property unless immediately arrested; or
> (c) a misdemeanor or petty misdemeanor in the officer's presence.[27]

These recommendations for change in the state arrest laws make

22. City of Columbus v. Herrell, 18 Ohio App. 2d 149, ____, 247 N.E.2d 770, 773 (1969).
23. *See supra* text accompanying notes 4-5.
24. *E.g.*, Fla. Stat. Ann. § 901.15 (West 1973 & Supp. 1981).
25. *E.g.*, D.C. Code § 23-581 (1973).
26. W. LaFave, Arrest 18 (1965).
27. American Law Institute, A Model Code of Pre-Arraignment Procedure § 120.1 (1975).

clear that domestic abuse cases are just one of several types of emergency situations in which warrantless arrest is necessary and appropriate.

Arrest standards based on a misdemeanor/felony distinction discourage arrest in most domestic abuse cases. Police generally view family abuse as a minor offense, especially if there has been no serious injury or if the injury is not visible. If mate abuse is treated as a misdemeanor, and the law allows warrantless arrest only in felony cases, the police may not arrest because the process of obtaining a warrant may take hours or days. Misdemeanor arrest warrants are generally issued only when a victim files a private criminal complaint;[28] they are rarely sought by police officers who answer domestic disputes.

III. New Warrantless Arrest Laws

Currently, a policy favoring arrest of abusers is reflected in the laws of twenty-seven states which authorize police to make warrantless arrests, either for misdemeanor offenses in domestic abuse cases or for violation of protection orders, or both.[29] Abolishing the requirement that a warrant be obtained prior to arrest is an important step in activating the criminal justice system to reduce family violence.

In twenty-one states, arrest laws allow warrantless arrest for misdemeanor offenses committed against family members.[30] Most

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28. Parnas, *The Police Response to the Domestic Disturbance*, 1967 Wis. L. Rev. 914, 936-37.

29. In addition to those statutes appearing at *infra* note 30, *see* Mo. Ann. Stat. § 455.085 (Vernon Supp. 1981); N.C. Gen. Stat. § 50B-4 (Supp. 1979); N.D. Cent. Code §§ 14-07.1-01 to .1-08, 29-01-15(4) (Supp. 1979) *as amended*; 35 Pa. Cons. Stat. Ann. § 10190 (Purdon 1977 & Supp. 1979); Tenn. Code Ann. §§ 36-1205, 36-1213 (Supp. 1981); Utah Code Ann. § 30-6-8 (Supp. 1981).

30. Alaska Stat. § 12.25.030(b)(1980); Ariz. Rev. Stat. Ann. § 13-3602 (Supp. 1980); Fla. Stat. Ann. § 901-15(6)(West Supp. 1980); Ga. Code Ann. § 53-7 (Supp. 1981); Hawaii Rev. Stat. § 709-906 (Supp. 1980); Idaho Code § 19-603 (Supp. 1981); Ill. Ann. Stat. ch. 38, § 107-2 (Smith-Hurd 1980); Ky. Rev. Stat. Ann. § 431.005 (Baldwin 1981); Me. Rev. Stat. Ann. tit. 15, § 301 (Supp. 1981) as amended by 1981 Me. Legis. Serv. ch. 420; Mass. Ann. Laws ch. 276, § 28 (Michie/Law Co-op 1980); Mich. Comp. Laws Ann. §§ 764.15a, 769.4a, 772.13, 772.14a (Supp. 1979); Minn. Stat. Ann. § 629.341 (West Supp. 1980); Nev. Rev. Stat. § 171.124 (1979); N.H. Rev. Stat. Ann. § 594:10-1 (Supp. 1979); N.M. Stat. Ann. § 31-1-7 (Supp. 1978); N.Y. Fam. Ct. Act. § 155 (McKinney Supp. 1980) *as amended by* 1981 N.Y. Laws, ch. 416, & N.Y. Code Crim. Proc. § 530.12 (McKinney Supp. 1980) *as amended by* 1981 N.Y. Laws, ch. 416; Ohio Rev. Code Ann. § 2935.03 (Baldwin 1979); Or. Rev. Stat. §§ 133.055, 133.515 (1979); R.I. Gen. Laws § 11-5-9 (Supp. 1980); Tex. Crim. Proc. Code Ann. § 14.03 (Vernon 1977) *as amended by* 1981 Tex. Sess. Law Serv., Ch. 422;

of these allow warrantless arrest where an act of physical abuse has occurred.[31] Some, in addition, allow warrantless arrest where "there is *substantial likelihood of immediate danger* of that [adult family] member being abused."[32]

Many of the new laws impose other conditions that must be met before a warrantless arrest can be made. Some reflect a concern that warrantless arrests be made only in emergencies. In Minnesota[33] and New Hampshire,[34] the domestic abuse laws allow warrantless arrest only within a few hours of the incident of abuse. In Rhode Island,[35] warrantless arrest is allowed within 24 hours of abuse. In addition, Minnesota[36] and Nevada[37] preclude warrantless arrest for domestic violence unless there is physical evidence of abuse.

Most of these new laws either mention domestic abuse or were enacted as part of a package of domestic violence legislation. In a few states, arrest powers have been broadened without reference to domestic abuse, but with the effect that warrantless arrest is permitted in some domestic abuse cases. Illinois law, for example, allows warrantless arrest for any *misdemeanor* offense based on probable cause alone.[38] In Nebraska, warrantless misdemeanor arrest is allowed when the officer has witnessed the offense or if the suspect may get away, injure another, or destroy evidence of the offense unless arrested immediately.[39]

Warrantless arrest by a police officer who has probable cause to believe that a protection order has been violated is permitted by statute in fourteen states.[40] Some of these laws allow arrest for acts

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WASH. REV. CODE ANN. §§ 10.31.100, 10.99.030(3)(a) (1980).

31. *E.g.*, MINN. STAT. § 629.341 (Supp. 1980).

32. *E.g.*, UTAH CODE ANN. § 30-6-8(2) (Supp. 1981) (emphasis added).

33. MINN. STAT. ANN. § 629.341 (West Supp. 1980) (within four hours).

34. N.H. REV. STAT. ANN. § 549:10-1 (Supp. 1979) (within six hours).

35. R.I. GEN. LAWS § 11-5-9 (Supp. 1980).

36. MINN. STAT. ANN. § 629.341 (West Supp. 1980).

37. NEV. REV. STAT. § 171.124(1)(f) (1979).

38. ILL. ANN. STAT. ch. 38, § 107-2 (Smith-Hurd 1980).

39. NEB. REV. STAT. § 29-404.02 (1979).

40. ARIZ. REV. STAT. ANN. § 13-3602(I) (Supp. 1980); ILL. ANN. STAT. ch. 38, § 107-2 (Smith-Hurd 1980); ME. REV. STAT. ANN. tit. 19, § 769(2) (1964) & *id.* § 770 (Supp. 1981-82); MASS. ANN. LAWS ch. 276, § 28 (Michie/Law Co-op 1980); MICH. COMP. LAWS ANN. §§ 764.15a, 769.4a, 772.13, 772.14a (Supp. 1979); MO. ANN. STAT. § 455.085 (Vernon Supp. 1981); N.Y. FAM. CT. ACT. §§ 155, 168 (McKinney 1975 & Supp. 1980-81); N.C. GEN STAT. § 50B-4 (Supp. 1979); N.D. CENT. CODE § 14-07.1-06 (Supp. 1979) *as amended*; OR. REV. STAT. § 133.310 (1973); 35 PA. CONS. STAT. ANN. § 10190 (Purdon 1977 & Supp. 1979); TENN. CODE

which could not be the basis of an independent criminal charge, such as contact with the victim or failure to attend counseling. The issuance of a protection order renders such action a misdemeanor,[41] contempt of court,[42] or both.[43]

Before a protection order becomes effective it must be served on the abuser. A statute allowing warrantless arrest for violation of a protection order is more likely to be enforced if it includes language requiring a law enforcement agency to deliver orders to abusers. If the law does not require free delivery of orders by a specific agency within a certain period of time, police officers or sheriffs may delay delivery or may charge for the service.[44]

An abuser may not be arrested for violation of a protection order unless he has received a copy of the order *and* the police have verified that an order is currently in effect. This can be done either by providing victims with certified copies of protection orders, or by setting up a procedure to enable police to verify the existence of an effective order, or both.

Some state laws require that the court deliver a copy of each protection order to the local police department. Oregon provides for verification by requiring that a certified copy of each protection order and proof of service be kept on file in the police department.[45] Massachusetts, in addition, requires that "[l]aw enforcement agencies shall establish procedures adequate to insure that an officer at the scene of an alleged violation . . . may be informed of the existence and terms of such [an] order."[46] If protection orders are filed in a building open only during regular office hours, verification is difficult. In large cities, protection orders should be recorded on a computer system, so that radio verification can be made from anywhere in the city.

Several states have passed criminal laws making spouse abuse a separate offense.[47] Some of these allow warrantless arrest where a

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ANN. § 36-1213 (Supp. 1981); TEX. CRIM. PROC. CODE ANN. § 14.03 (Vernon 1977) *as amended by* 1981 Tex. Sess. Law Serv., ch. 422; UTAH CODE ANN. § 30-6-8(2) (Supp. 1981).

41. *E.g.*, UTAH CODE ANN. § 30-6-8 (Supp. 1981).

42. *E.g.*, W. VA. CODE § 48-2a-7 (1980).

43. *E.g.*, ME. REV. STAT. ANN. tit. 19, § 769 (1964).

44. Presentation by Chris Butler, Massachusetts Coalition of Battered Women Services Groups, Northeast Conference on Women & the Law, March 29, 1980.

45. OR. REV. STAT. § 133.310(3)(b) (1973).

46. MASS. ANN. LAWS. ch. 208, § 34C (Michie Law Co-op 1981).

47. *E.g.*, ARK. STAT. ANN. § 41.1653 (Supp. 1981); CAL. PENAL CODE §§ 2734, 1000.6-.11

charge of spouse assault is filed. In Ohio, for example, a first offense of spouse assault is a first degree misdemeanor, and subsequent offenses may be charged as fourth degree felonies. Where a charge is filed under this statute, police may arrest without a warrant. The Ohio law allows arrest upon "the execution of a written statement by a person alleging that an alleged offender has committed the offense [of domestic violence] against the person or against a child of the person."[48]

IV. Mandatory Arrest

While most of the new laws expand the authority of the police to make arrests, only a few *require* that they be made when there is probable cause to arrest for spousal assault. Those state statutes which impose a mandatory duty to arrest abusers are Maine,[49] Minnesota,[50] North Carolina,[51] Oregon,[52] and Utah.[53] They differ from the other laws in that "shall arrest" is used in place of "may arrest."[54]

Under the Oregon law, the duty to arrest is imposed only in cases in which the victim does not object.[55] Conditioning the duty to arrest on the consent of the victim may render the mandate ineffective. If a victim is asked in the presence of her abuser if she objects to the making of an arrest, she may be afraid to consent. If the wishes of the victim are to be taken into account by criminal justice officials, the victim should be consulted under circumstances where she may safely express her feelings. The primary duty of the police is to assess the danger and protect the safety of the victim. Police should not be required to act as social workers, and should be empowered to make an arrest without the victim's consent if necessary.

The inclusion of explicit mandatory duties in state arrest laws is desirable for several reasons. First, it makes clear a legislative intent to increase the number of arrests made in family abuse

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(West Supp. 1981).

48. Ohio Rev. Code Ann. § 2935.03(B) (Baldwin 1979).
49. Me. Rev. Stat. Ann. tit. 19, § 770(5) (Supp. 1981).
50. Minn. Stat. Ann. § 629.341 (West Supp. 1980).
51. N.C. Gen. Stat. § 50B-4 (Supp. 1979).
52. Or. Rev. Stat. §§ 133.035, 133.310 (1973 & Supp. 1979).
53. Utah Code Ann. § 30-6-8(2), 77-13-3(3) (1978 & Supp. 1981).
54. Or. Rev. Stat. §§ 133.035, 133.310 (1973 & Supp. 1979).
55. *See* State v. Marshall, 105 N.E.2d 891 (Ohio Mun. Ct. 1952).

cases. Second, it reduces police discretion to treat family violence as a trivial matter. Third, if the law prescribes a mandatory duty, the failure of the police to make an arrest where probable cause is present is a violation of the law and the basis for a lawsuit.[56]

Two such lawsuits were filed in November of 1980 against police departments in Oregon by Oregon Legal Services Corporation on behalf of two battered women.[57] A similar suit is pending in Florida, in which a battered woman who killed her husband after the police refused to arrest him is suing the police for violation of their statutory duty.[58] Florida law, though it includes discretionary language, has been interpreted to impose a duty on police to take precautions to protect a class of persons unable to protect themselves.[59]

V. Police Immunity

Most laws expanding police power to make warrantless arrests for domestic abuse explicitly protect the police from civil liability for any action taken in a "good faith" effort to enforce the law.[60] Police may be reluctant to make an arrest if they perceive the situation as one of mutual combat, or if the victim objects to the offender's arrest. Even if a battered woman urges that the police arrest her mate, some police fear that the parties may reconcile and sue for false arrest. The good faith immunity provisions are a legislative response to these frequently articulated fears of suits for false arrest.

The immunity clauses in the arrest laws do not completely

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56. *See* Woods, *Litigation on Behalf of Battered Women*, 5 Womens Rights L. Rep. 7 (1978).

57. Nearing v. Weaver, No. 26761 (Cir. Ct., Columbia Cty., OR, filed Nov. 13, 1980); Kubitscheck v. Winnett, No. 8587 (Cir. Ct. Hood River Cty., OR, filed Feb. 20, 1980). In both cases protection orders (referred to in Oregon law as restraining orders) were in effect and defendant police officers knew or had probable cause to believe that they had been violated. In late 1981 the Kubitscheck case was settled after motions for an undisclosed but substantial sum of money. (Telephone interview with Ruth Gundle, Oregon Legal Services, attorney for plaintiffs, December, 1981).

58. Plaintiffs' Memorandum of Law in Opposition to Defendant's Motion to Dismiss, Buckhannan v. Miami, No. 80-14830 (Cir. Ct. Fla. March 30, 1981) (on file at the Center for Women Policy Studies).

59. *Id.*, De Jesus v. Seaboard Coastline Railroad Co., 281 So.2d 198 (Fla. 1973); Tamiami Gun Shop v. Klein, 109 So.2d 189 (Fla. 1959), *cert. discharged* 116 So.2d 121 (Fla. 1959).

60. *E.g.*, N.C. Gen. Stat. § 14-134.3(19) (1978 & Supp. 1979); Or. Rev. Stat. § 13.315 (Supp. 1979).

shield the police from liability. They would not necessarily defeat a lawsuit requesting an injunction against police misconduct,[61] or a suit for damages for police misconduct where absence of good faith could be proven.[62] Neither does the qualified immunity provided by the arrest laws prohibit suit under federal civil rights laws.[63] In fact, the good faith standard is the same as that articulated by the courts regarding police liability for civil rights violations.[64]

While the laws cannot guarantee that police will not be sued for false arrest, the good faith immunity clauses will protect police who make arrests only when they believe that they have the authority to do so.[65]

CONCLUSION

The trend, now reflected in a majority of state statutes, toward allowing warrantless arrest in wife abuse cases, reflects a developing consensus in the domestic violence movement that traditional law enforcement by police is more useful in deterring subsequent abuse than the mediation/crisis intervention approach developed in the early seventies.

The expansion of arrest power may also be viewed as part of the increasing focus on rights of crime victims and a corresponding reduction of defendant's rights. The question of whether to require a warrant for the arrest of a wife abuser provides an important case study because it presents a direct conflict between the princi-

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61. Suits to enjoin illegal police conduct are generally based on a pattern of repeated misconduct and a serious danger that the action in question will recur. *See* Long v. District of Columbia, 469 F.2d 927, 932 (D.C. Cir. 1972). While a showing of good faith might defeat such an action, the statutory protection would not automatically bar the issuance of an injunction.

62. *See* Kubitscheck v. Winnet, No. 8587 (Cir. Ct. Hood Cty., OR, filed Feb. 20, 1980); Dellums v. Powell, 566 F.2d 167, 176-77 (D.C. Cir. 1977), *cert. denied*, 438 U.S. 916 (1977).

63. *See* Guerro v. Mulhearn 498, F.2d 1249 (5th Cir. 1974) (state law indemnifying police officers by their public employers for damages incurred in a lawsuit arising out of the performance of their duties held not to immunize police from suit under 28 U.S.C. § 1983).

64. Dellums v. Powell, 566 F.2d at 176.

65. The Supreme Court listed factors to be considered in determining whether a police officer is immune from liability because he acted in good faith: "It is the existence of reasonable grounds for the belief [that cause for action existed] formed at the time and in light of all the circumstances, coupled with good-faith belief, that affords a basis for qualified immunity." Scheuer v. Rhodes, 416 U.S. 232, 247-48 (1974). Another court held that a policeman could establish immunity by proving that he reasonably believed that he had probable cause to make an arrest. Testa v. Winquist, 451 F. Supp. 388 (D. R.I. 1978).

ple that a man's home is his castle and the often urgent need to invade the sanctity of that home to protect the victim of a crime.