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An analysis of mandatory arrest policy on domestic violence

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Abstract

Women are more likely to be beaten, raped, or killed because of domestic violence. Men have beaten their wives and partners for centuries with no payback from the criminal justice system. Recent decades domestic violence cases became an important focal point for criminal justice system. Despite increased public awareness, domestic violence remains a serious public policy issue in all around the world. Domestic violence was historically an area of policing where officers were reluctant to interfere because of its sensitive nature vary from one culture to another. Governments started to face with increased liability for police inaction. Therefore law makers passed laws requiring the warrantless arrests of individuals for misdemeanor assault of an intimate partner. This article tries to explain background information over domestic violence from public policy perspective at first. Then tries to explain mandatory arrest policies with its goals and effects. After evaluation and implications of mandatory arrest policies on domestic violence this article concludes by recommending various policy recommendation at the end.

Keywords: Domestic violence, public policy, mandatory arrest policy, police, arrest, deterrence, victim, criminal justice system, police discretion

Introduction

Government decision making is a straight forward process bound by law. When the law is not enough to handle cases, people who exercise law on behalf of state has to give some sort of decision in a certain and limited time period. In these circumstances, power of discretion comes to the scene. “Discretion is the power or authority conferred by law to act in certain situations in accordance with an official's or an official agency's own considered judgment and conscience.” (<http://www.asisonline.org/library/glossary/p.xml>) Discretion is inevitable part of criminal justice system, particularly policing and nobody expects perfection from law enforcement officers. In all steps of law, from enactment to enforcement, there are a lot of trade-offs, and employees always try to achieve perfect outcomes. In policing, this is more visible. Police have the greatest opportunity to exercise discretion when compared to other actors of criminal justice system. Broad discretion

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power of police on arrest decision always is a debated issue. Why police in one condition make arrest, and why not in another similar incident? If we look from police points of view, we can see some justifications not to make arrest.

As a specific case on arrest decision in terms of crime type, we can closely look at incidents of domestic violence. Many factors effect the arrest decision of a police officer in a domestic violence case. Police may think that it is a private matter and in many cases, female victims are non-cooperative, male officers may think in favor of male offenders, and officers may think that an arrest will hurt future family relations; as a result, sometimes officers use their discretionary power in favor of non-arrest. What is the consequence of a non-arrest in a domestic violence case? It may produce a good result by the mediation of other parties, or it may result in a reverse direction, and the offender may kill the victim. There are many cases in both directions. Good results mostly do not receive attention, but bad ones always draw public's attention. Recent court decisions about police attitudes in domestic violence incidents indicate that police fail in their duty to protect the public, which raises interesting questions in terms of both organizational and individual level risk assessment.

The Federal Violence Against Women Act (VAWA) of 1994 encouraged the states to legislate mandatory arrest statutes. In mandatory arrest, the police have no authority to determine whether or not to make an arrest, even if the act is a misdemeanor. In mandatory arrest, neither officer discretion nor victim preference is recognized by the policymaker (Dugan, 2003). There are several benefits, problems, and unexpected consequences in making an arrest in domestic violence incidents, but with all its consequences, it is at least an attempt at a solution as Cohen (2010) stressed.

1.1 Mandatory Arrest Policies

An arrest is the action of the police, or person acting under the law, to take a person into custody so that they may be forthcoming to answer for the commission of a crime (Arrest, 2012). Law enforcement agencies operate under certain parameters provided by the legal system. An arrest can be made when a police officer satisfies probable cause that the suspect has committed a particular act for which he or she can be held responsible (Hirschel and Buzawa, 2002).

Mandatory arrest laws are a kind of requirement for police officers to make an arrest suspect/s when the police officer has probable cause that an assault or battery has occurred (Ciraco, 2001). Mandatory arrest laws mandating arrest in certain circumstances such as, violation of a child or domestic abuse or harassment restraining orders, foreign protection order, or a felony committed

(Hirschel & Hutchison, 1991; <http://oja.state.wi.us/docview.asp?docid=6477&locid=97>). As Stanko (1992) noted that the mandatory arrest laws give a powerful encouragement for police to arrest since failure to arrest bears risk of being considered as being negligent or incompetent.

Discretion is an inevitable part of policing and police have the greatest opportunity to exercise discretionary judgment in their daily routine; particularly while they are making an arrest decision (Worthley, 2003). Mandatory arrest policies remove not only the police but also then victim's preferences about an incident. To some, victims trapped in coercive relations with offenders have no ability to make decision for themselves; that is why mandatory arrest policies give no weight to the victim's preference (Hirschel & Hutchison, 2003). In reality, most of the time, victims are simply want police officers to calm the tension and stop the abuse, but not to arrest the offender (Buzawa & Austin, 1993).

In this context, mandatory arrest policies are not easy embraceable for police departments since they take away police officers' discretion any arrest decision, which is the most important element of policing. For that reason their embrace by police departments has been a lengthy process. For example, it took 4 years to implement the mandatory arrest policy after enactment of the law in Phoenix (Ferraro, 1989).

1.2 Domestic Violence

Domestic violence is defined as spousal abuse or intimate partner violation by many states in the U.S. In addition to wives, ex-wives and romantic partners are also counted within that category of victims. Husbands have battered and abused their wives for centuries. Historically, domestic violence has been perceived as being normal behavior in the family, sometimes which women should expect and tolerate when they marry (Erez, 2001).

Domestic violence may include physical harm, sexual assault, rape, emotional and verbal abuse, and isolation as well as threats to and intimidation of victims. Domestic violence is a consistent set of behavior that is frequently repeated. Without proper intervention, the problem is likely to become more frequent and severe. If not handled properly, the victim may suffer from physical and emotional pain, live under fear of being harmed, and confront physical and emotional dangers including injuries, mental disorders, and even loss of life (Straus, 1991).

Besides civil remedies, there are some criminal justice-based interventions to protect the victims of domestic violence from further abuse. Most of the criminal justice-based policies came after domestic violence had been accepted as a crime in the early 1980s. Positive progress on domestic violence policy during the Carter administration seemed to be reversed during the Reagan

Administration. Reagan put an end to much of the funding that had been allocated pro domestic violence programs. Although domestic violence program proponents experienced a setback during the Reagan administration, domestic violence was gradually redefined as being a social problem (Daniels, 1997). At the end, the U.S. Attorney General mandated that all justice agencies treat domestic violence as a crime in 1984. The same year, Congress passed the Family Violence Prevention and Services Act (Brooks, 1997) Mandatory arrest policies were espouse to develop the response capacity of the criminal justice system (Lyon & Mace, 1991). Since those policies were adopted, there have been many critics regarding their efficacy. In fact, some research findings suggested that mandatory arrest policies inadvertently caused an increase in domestic violence incidents.

2. Background

2.1 History of Domestic Violence

The roots of domestic violence can be found as early as ancient times. Within the rules of the monogamous family, the responsibilities that women had were to satisfy her husband's needs, to take care of children, and to do housework. Husbands, historically, had the right to punish all family members for any disobedient behavior. Wives were punished, even killed, by their husbands for such reasons as miscarrying children, verbally questioning their husband, or not doing housework well. The earliest laws explicitly recognized the superiority of the husband as the sole protector of family. An old English law, the rule of thumb, which was also passed to the colonies in America, allowed husbands to punish their wives with a stick which was not larger than their thumb. The California Court of Appeal in *State v. Oliver* 1979 and the North Carolina Court of Appeal in *Joyner v. Joyner* 1962 reaffirmed the acceptability of moderate use of force by husbands to compel wives to "know her place." In short, the justice system intentionally stayed away from domestic violence cases as long as any serious physical harm had not occurred (Erez, 2001).

Some social scientists claim that the marriage contracts in the past reflected the husband's authority in the family. Women had to vow to love, honor, and obey their husband at the time they married. They could not even have any private property of their own, which made them economically dependent on their husband. This dependency has always been justified in the name of family sanctity and keeping the integrity of wife and husband, as has been done in the decriminalization of domestic violence by the courts.

At the end of 19th century, some legal changes occurred in the rights of women; some of these restricted husbands from punishing their wives for disciplinary purposes. Nevertheless, there was

confusion among the legislators and judges whether battering a wife was to be considered as a criminal act or as “normal corrective” behavior. The earliest trend of the criminal justice system was against intervening in any domestic violence disputes as long as they did not require a criminal investigation.

The pro-women and pro-victim activists challenged the traditional approach to domestic violence at the beginning of 1970s. These movements focused on the plight of sexual assault, rape, and domestic violence victims who were victimized twice: first by the criminals and then by the criminal justice system. The efforts of these advocates helped to alter the existing system to be a more responsive and sensitive structure that would ultimately change police behaviors against domestic violence in the late 1970s (Lyon & Mace, 1991).

2.2. History of Police Responses to Domestic Violence

Over time, the criminal justice system has responded to domestic violence in various ways. Different policies have been applied by many police agencies to reduce the rate of domestic violence incidents. However, the challenge of the criminal justice system to find the most effective response still continues. Each of the policies has been questioned numerous times for practicality and applicability to the different, emerging types of domestic violence incidents (Dugan, 2003).

Before looking at specific examples of police interventions we should look at over all criminal justice system interventions. Generally these interventions include protection orders to assist victims, the arrest of the perpetrators, abuser programs, customized probation programs for domestic violence convicts (Dobash, 2003), and domestic violence courts to emphasize the need for special attention by separating the domestic violence court process from the traditional criminal court process (Karan et. al., 1999).

The police have applied three major policies to address domestic violence: non-intervention, mediation, and arrest.

2.2.1. Non-Intervention Era

Until the 1960s, police did not intervene in any domestic violence cases. This was a typical reflection of the prevailing views of the justice system. To police, what was happening inside the home was none of their business unless the situation required otherwise, which meant only if the case required a criminal investigation. Protective arrest, in this sense, was rarely applied in misdemeanor domestic violence situations. Research has clearly shown that the response time (calculated as minutes) in domestic violence situations was significantly longer in the 1970s than in the 1980s. The earliest police response, non-intervention, to domestic violence can be attributed to

several reasons. Some states' laws, for example, required that the police be present at the time a misdemeanor domestic violence incident occurred in order to make an arrest. In addition, in some cases, police officers underestimated the risk that the individual domestic violence incident posed. Amid these factors, the absence of any appropriate policy to take concrete action certainly had the greatest impact on the earliest police response to domestic violence incidents (Erez, 2001).

2.2.2. Mediation Era

The non-intervention or no arrest policy was extensively criticized by some social scientists who advocated that the police should be mediator in domestic violence incidents. At first, the new approach gained wide acceptance from the police. In the late 1960s, police began to set up family crisis intervention teams exclusively for domestic violence incidents. The new intervention policy of the police included the separation of parties, reconciliation, or referral to social services. Soon after the new policy was adopted, the arrest rate in criminal domestic violence cases significantly decreased. In this decline, the policy of reconciliation of parties had an important role in keeping the domestic violence cases out of criminal justice system and in preventing the further violations (Erez, 2001).

The rate of domestic violence incidents correspondingly increased to the rate of arrests in the early 1980s. After that time, the mediation policy took severe criticism from police agencies and women rights' advocate groups. The opposition of police focused on two different points. To police, there was no evidence that showed the long-term successfulness of mediation policy. For them, the mediation was the job of social workers rather than police. For women advocates, on the other hand, mediation failed at the very beginning because the idea of mediation considered the offender to be at an equal level with the victim. Moreover, the mediation policy adversely contributed to an increase in domestic violence incidents (Lyon & Mace, 1991).

2.2.3. Arrest Era

2. 2. 3. 1. Discretionary Arrest (Warrantless Arrest)

One of the most important developments in domestic violence incidents has been the change in federal and states' law authorizing the police to make warrantless arrest. These laws give the police authority to make arrests in domestic violation incidents when they have sufficient probable cause to believe that a misdemeanor domestic violence incident has occurred. Arrest is imposed to deter the offender from repeated offenses and thus to protect the victim from further abuses. As of 2004, all states in the U.S. authorize warrantless arrest based solely on probable cause. In some states, the arrest authority is limited with time, noticeable injury, and felony cases (Dugan, 2003).

In 1985, Connecticut was the first state to legislate a warrantless arrest law, after *Thurman. v. City of Torrington* case. In early 1989, a short time after Connecticut adopted this policy, 75 percent of the other states legislated warrantless arrest laws, which gave the police discretionary authority to make an arrest without a warrant when they confronted a misdemeanor domestic violation incident (Dugan, 2003).

2. 2. 3. 2. Warrantless Arrest in Protection Order

In non-criminal or misdemeanor domestic violence incidents, if there is not sufficient evidence to charge the perpetrator, then the court can order civil protection. Civil protection is provided by the courts either upon the application of domestic violence victims or by the judge. These orders are applied to protect the victims from further abuse. Protection may include:

1. Ordering the abuser not to harm or threaten the victim and the victim's children.
2. Ordering the abuser to stay away from the victim's house and workplace.
3. Forbidding the abuser from having any contact with the victim and victim's children.
4. Awarding the victim temporary custody of children who are with the abuser.
5. Awarding the victim spousal support-if married.
6. Ordering abusers to take counseling programs.

Violation of any of these protection orders is a crime in most states. Police can also make an arrest if any of the protection orders is violated. In order to make an arrest for the violation of a protection order, police need to confirm the validity of the victim's assertion that a protection order is needed (Dugan, 2003).

2. 2. 3. 3. Arresting the Primary Aggressor

In a domestic violence situation where each party accuses the other side of inflicting the primary aggression, police officers become perplexed. Some states, in these situations, direct the responding officers to determine the primary aggressor first before making an arrest. Determining the primary aggressor prevents police officers from making a dual arrest, which is an poor application of justice (Dugan, 2003).

2. 2. 3. 4. Mandatory Arrest

Even though the new laws dictated arrest, the majority of police officers did not exercise their discretion and did not always use arrest in response to a domestic violence case. Therefore, the rate of arrests remained low until the second half of 1990s. The trend of arrest increased when national

attention was brought to domestic violence again with the O.J. Simpson trial. Also, the incentives for the pro-arrest policies of the Federal Violence Against Women Act of 1994 were responsible for increasing the rate of arrests. The law encouraged the states to legislate mandatory arrest statutes. In mandatory arrest, the police have no authority to determine whether or not to make an arrest, even if the act is a misdemeanor. In mandatory arrest, neither officer discretion nor victim preference is recognized by the policymaker (Dugan, 2003).

3. Mandatory Arrest Policies

3. 1. Goals of Mandatory Arrest Policies

3.1.1. Arrest as a deterrence

The main goal of mandatory arrest policies is to protect the victim of domestic violence from further abuse by using mandatory arrest as a mean of deterrence. This can be exercised in two ways-specific and general deterrence. Policymakers wish that the domestic violence abuser would acknowledge the power of criminal justice system. Arresting the abusers, in this sense, can be a specific deterrent, even without a conviction. The goal of arrest is not only to protect the victim and deter the abuser, but it also notifies the potential abusers not to abuse any of their family or people that they come into contact with on a daily basis. The victim, on the other hand, is ensured that the law is properly enforced. The victim is also given time to reconsider the relationship with the abuser. Also, when needed, the victim can comfortably undertake the custody of her children after the abuser has been arrested (Dugan, 2003).

3.1.2. Arrest as an assurance of trust in the criminal justice system.

It is reasonable to think that if police do not make an arrest when the victim expects the police to make an arrest, the victim is more likely to lose faith in the criminal justice system. Arrest also helps the victim to legitimize her reasonable claims on the criminal justice system. If the situation is vice versa, the victim will be legally vulnerable to losing her battle in the court.

3.1.3 Window of opportunity for victim

Arrest is a window of opportunity for the victim to get help, support, advice, and protection from her relatives, friends, neighbors, or government while the offender is being temporarily incapacitated in custody.

3.1.4. Arrest as an indicator of a crime

Arrest policies also aim to send a message to the abuser that the behavior is unacceptable and criminal. In the broad perspective, when the police use arrests for domestic violence, they send a message to the community that domestic violence is being considered as a crime.

3.1.5. Arrest as a measurement

Arrest is a law enforcement process and it must be officially recorded by police. Arrest labels; and therefore arrest can provide documentation to other governmental agencies and to the public about the magnitude of domestic violence. Arrest data must be combined with victimization surveys in order to get a more reliable picture of domestic violence. In any case, arrest data are an important indicator for domestic violence incidents.

3. 2. Proponents, Opponents, Symbolic Politics and Mandatory Arrest Policies

There are two important components to the domestic violence issue. The first component is external politics in the form of the women's movement. This movement has been strong on both the policy and research areas. Second, is the impact of research on policy, such as the Minneapolis experiment. (Walker, 2004)

The anti-rape movements fueled campaign violence against women and raised public attention to the issue in the early 1970's. Policymakers were still looking at the issue as an untouchable taboo. In 1978, the National Coalition against Domestic Violence (NCADV) was organized as a leading lobbying group on the domestic violence issue. With their pressure, President Carter established the Office on Domestic Violence. NCADV attempted two times to legislate an act on domestic violence, but it was defeated by the votes of Republican Congressmen (Heise & Chapman, 1992). The Reagan Administration was harsher against domestic violence supporters. GOP's "pro-family" conservative agenda cut off all federal funding for domestic violence programs. NCADV's persistent work on the domestic violence issue was fruitful. At the end, the U.S. Attorney General mandated that all justice agencies treat domestic violence as a crime in 1984. The same year, Congress passed the Family Violence Prevention and Services Act (Brooks, 1997)

Though domestic violence was recognized as a criminal act in 1984, a comprehensive federal law to respond to the problem of violence against women was first proposed by Senator Joseph Biden of Delaware in 1990 (Laney, 2005). The Violence Against Women Act (VAWA) was drafted without much preliminary discussion with feminist lobbying groups of whom pressuring policy and law-makers to put domestic violence to the US Congress' agenda. Bipartisan debate on weapon ban and the Racial Justice Act (RJA) delayed the process of adoption VAWA. Due to heavy lobbying by the

National Rifle Association (NRA), VAWA was failed in the house and was returned to the committee. In the end, the modified bill was finally signed by President Clinton on September 13, 1994 as part of the Violent Crime Control and Law Enforcement Act of 1994 which included VAWA under title IV. VAWA were allocated \$1.62 billion in federal funds for a 5 year period (Brooks, 1997).

Though congressional control shifted to Republicans after the 1994 election, they could not touch VAWA because, in part, of media coverage of the Simpson trial. The televised O.J. Simpson trial changed Americans' points of the view toward to domestic violence drastically. An EDK Associates poll revealed that family violence rose to first place among all social issues in Americans' point of view, after the O.J Simpson trial (Klein et al., 1997).

Dissatisfied with police mediation, women's advocate groups began to sue police agencies for their misconduct in some jurisdictions in the early 1980s. Their accusation focused on failures of police in arresting women's abusers when they needed to do so. In most cases, courts found police culpable for their negligence in arresting the offender, when the situations seemed warrant arrest. In *Thurman. v. City of Torrington* 1984, for example, the United States District Court D. Connecticut found the police liable for failure to provide equal protection of the law, which is guaranteed by the 14th Amendment. In this case, Tracy Thurman- a woman battered by her husband who subsequently sued the police for failure to protect her - had won a \$2 million settlement against the city of Torrington. This case and other civil suits urged the police to change their course of action in mediation policy. The Minneapolis Domestic Violence Experiment, funded by the National Institute of Justice, in this sense, coincided with a time when the police began to seek new alternatives.

The Minneapolis Domestic Violence Experiment sought to find out the deterrence effect of arrest on domestic violence incidents. In this study, Sherman and Berk (1984) randomly assigned some of the street-level police officers to respond to misdemeanor domestic violence cases by using one of three responses: arresting the suspects, ordering one side to stay out of the home, and counseling. After an experimentation phase, a six months follow-up phase was conducted. Using the official criminal records and victim interviewing techniques, the researchers concluded that arrest was by far the most effective deterrent on domestic violence. During the six months period, the domestic violence rate was reduced by 50 percent when the suspect was arrested. When the findings of the study were reported on some TV channels, it received nation-wide attention. The Minneapolis Domestic Violence Experiment proved a landmark in changing the general perception of domestic violence from being a family problem to being a law violation. Later on the study was replicated,

but not everybody was happy with replication, particularly the feminists who believed that the effectiveness of arrest has been proven, and that there was no need further studies to prove it again. For example, a feminist group in Milwaukee opposed conducting a replication of the Minneapolis experiment in that city (Sherman and Cohn, 1989).

Proponents of mandatory arrest policies argued that victims of domestic violence were too helpless to make appropriate arrest decisions or were afraid to press charges (Hanna, 1996). The pro-arrest movement aimed to remove police discretion in the arrest decision for domestic violence cases, since the police were traditionally reluctant to make arrests for domestic violence because it was considered a private matter. Walker (2004) very well explains how symbolic politics wars in the domestic violence issue. He says, “the women’s movement not only defined domestic violence as a major social problem, but also effected a 180 degree reversal in the thinking about the appropriate police response” (p. 151).

Opponents of mandatory arrest policies believe that mandatory arrest policies put victims in great danger of retaliation from their partners. *Torrington vs. Connecticut* (1984) and *Sorichetti vs. New York* (1985) make police officers liable in not arresting domestic violence incidentedts, and removed the police department’s discretion to use different policies to ensure proper handling of domestic violence cases (Karuturi, 2001). Another criticism is disempowerment of the victim. The police have no choice but do arrest, even if the situation is ambiguous in terms of who is the offender and who is the victim. In this case, the police may make dual arrests in order to fulfill the requirements of the law. The dual arrest decision disempowered the victim even if the arrested victim is eventually released without being charged. Arrest may prevent her from gaining protective custody if she seeks to stop abusive relations in the future. In addition to this, arrest sometimes may result in unwanted interventions by the Department of Social Services. DSS interventions sometimes may hurt battered women (Han, 2003). To solve this unintended consequence of mandatory arrest policies, advocates of mandatory arrest started to work on modifying arrest policies to require police officer to arrest only the “primary aggressor”, and not the victim who used violence for self-defense purposes.

3.3 Implementation of Mandatory Arrest Policies on Domestic Violence

Despite conflicting evidence with regards to the effectiveness of mandatory arrest policies in preventing re-victimization, all states now allow police to arrest, without a warrant, without witnessing the crime, with probable cause. More than twenty five states, including Washington DC., have mandated arrest laws for domestic violence offenders (Leigh, 2000). The renewed Violence against Women Act (VAWA 2000) has secured more funds to support mandatory arrest policies

through STOP grants. More than one third of US police departments referred to the positive empirical results of research that arrest deter future violence as a reason to implement mandatory arrest policies in domestic violence cases (Zorza, 1992). Police forces often traditionally make an arrest as a last resort, but after adoption of mandatory arrest policies, this tradition was replaced with written policies and state laws requiring arrest as the sole police recourse. Nationally, this big shift from large discretionary power to strict arrest policies have resulted in a 70% increase from 1984 to 1989 in arrests for domestic violence incidents (Schmidt & Sherman, 2000).

3.4 Evaluation of Mandatory Arrest Policies on Domestic Violence Cases

Police departments started to implement mandatory arrest policies by the early 80s. Since that time researchers have tried to assess mandatory arrest policies by focusing on the relationship between arrest and offender behavior. The question was simple: Do mandatory arrest policies deter offenders? Table-1 summarizes seven randomized policing experiments on domestic violence. Sherman and Berk's Police Foundation funded experiment in Minneapolis is the first and most publicized study on the issue of policing on domestic violence. In this study, "recidivism rate" was the dependent variable, and one of the independent variables was "arrest on domestic violence". They evaluated 314 domestic violence cases over a 6 months period to compare recidivism rates within the group of options implemented by police. The options were mandatory arrest of offenders, separating the offender and victim for a while, and advising the couple at the police officers' discretion. Results showed that the recidivism rate after mandatory arrest was substantially lower than either separating parties or officer mediation (Sherman & Berk, 1984). Although researchers have noted some problems and cautioned policy makers in implementing arrest policies, the study has received unexpected national attention and has been credited in the nationwide pro-arrest movement on domestic violence (Hirschel & Hutchison, 2003).

After two years of Minneapolis experiments, the National Institute of Justice has funded five other studies in Omaha, Nebraska; Milwaukee, Wisconsin; Charlotte, North Carolina; Colorado Springs, Colorado; and Miami (Metro-Dade), Florida to see if the findings of the Minneapolis experiment could be replicated in different settings.

Table – 1 NIJ Funded Arrest Policy Evaluation Experimental Studies on Domestic Violence Experiments. Adapted from (Farrington and Welsh, 2005)

<i>Publication, location</i>	<i>Initial sample</i>	<i>Conditions</i>	<i>Results (N)</i>	<i>Effect size d (%)</i>
Sherman and Berk (1984), Minneapolis	330 domestic violence suspects	E = arrest C = advise or separate	6 months rearrests: E 6.5% (93) C 14.8% (237)	0.52 (-56)*
Sherman et al. (1992), Milwaukee	1,200 domestic violence suspects	E = arrest C = warning	7-9 months rearrests: E 20.5% (624) C 23.2% (297)	0.09 (-12)
Hirschel et al. (1992), Charlotte	686 domestic violence suspects	E = arrest C = citation, advise or separate	6 months rearrests: E 18.2% (214) C 15.6% (436)	-0.10 (+17)
Berk et al. (1992), Colorado Springs	1,658 domestic violence suspects	E = arrest C = protection order, counselling, restore order	6 months rearrests: E 19.2% (421) C 19.3% (1,158)	0.00 (-1)
Pate and Hamilton (1992), Miami	907 domestic violence suspects	E = arrest C = no arrest	6 months rearrests: E 19.1% (465) C 20.6% (442)	0.05 (-7)
Dunford (1990), Omaha	247 domestic violence suspects (offender absent)	E = arrest C = no arrest	12 months rearrests: E 10.8% (111) C 20.6% (136)	0.42 (-48)*
Dunford et al. (1990), Omaha	330 domestic violence suspects (offender present)	E = arrest C = mediate or separate	6 months rearrests: E 11.9% (109) C 10.0% (221)	-0.11 (+20)

The Omaha study was conducted with 330 (offender present) and 247 (offender absent) domestic violence suspects and separated into two intervals- 6 months and 12 months. It was found that arrest was not much more effective than other intervention methods (Dunford, 1990; Dunford et al. 1990).

The Milwaukee experiment was conducted with 1200 domestic violence suspects. According to police, arrest was not a deterrent among 1200 domestic violence incidents reported to the domestic violence hotline. Researchers concluded that arrest had a differential effect depending on the abusers' employment or marital status. Results also demonstrated that arrest had short term effect on individuals who were employed, married, and white, but situation was vice versa for the people who were unemployed, unmarried, high-school drop-outs, and African American (Sherman et al. 1992).

In Charlotte, a domestic violence experiment was conducted with 684 domestic violence suspects. Results demonstrated that the recidivism rates of the arrest intervention of domestic violence

incidents did not differ from two other treatments; citation, advice or separation. Over all, official reports and victim reports at 6 months showed that arrest was not a deterrent. (Hirshchel et al. 1992).

The Colorado Spring study analyzed 1685 domestic violence suspects from official police records and victim interviews. Police data showed slight difference with employed offenders but not others. Victim interviews showed that arrest was a deterrent. Researchers also noted that arrest sometimes made things worse (Berk et al., 1992).

The Metro-Dade (Miami) study used both official police records and interviews with 907 domestic violence suspects as a sample. Victims' interviews and official data indicated less recidivism for arrested offenders at 6 months; victim reports at 6 months indicated less recidivism for employed suspects. However, employment status was significantly related to whether arrest was a deterrent. The results supported that arrest had effects on recidivism after 6 months (Pate & Hamilton, 1992).

NIJ's replication studies revealed conflicting results, but in general, arrest did not put forth a significant deterrent effect on domestic violence offenders as a whole. The studies also revealed that the deterrent effect of arrest diminished over time (Hirschel & Hutchison, 1992). Also, studies demonstrated that arrest had an individualized nature, and the effects varied depending on the offenders characteristics (Berk, 2003; Buzawa & Buzawa 2003).

After brief summaries of all the replication studies of the Minneapolis experiment, it is necessary to look in depth at the Minneapolis study in terms of its evaluation process. Sherman and Berk's Minneapolis Domestic Violence Experiment (MDVE) is an influential study to describe why replication is the gold standard of science. MDVE was a rigorous experiment funded by the Police Foundation, and conducted by Sherman and Berk. The study is considered to have been a well designed and executed experiment among criminal justice scholars. It is a randomized experiment which requires assigning units of analysis to the conditions randomly. In this experiment, the focus of study was recidivism among domestic violence offenders, and the unit of analysis was domestic violence offenders. The experiment used victim interviews and official records of subsequent police contact. Only misdemeanors were included in the study, which reduces its generalizability to felony cases including assault or rape.

The Minneapolis Police Department used an experimental system in domestic violence abuse calls. They distributed abusers to one of three different conditions; arrest, keep offender away from home for a while, or give offender some advice. The experiment involved 314 cases in total. Results showed that suspects who were arrested after a domestic violence incident occurred had the lowest recidivism rate when compared to the other two conditions for the six month follow-up period. Sherman and Berk (1984a, p. 267) reported that "the prevalence of subsequent offending including assault, attempted assault, and property damage was reduced by nearly 50 percent when the suspect was arrested."

Although Sherman and Berk cautioned policy makers not to uncritically embrace their studies' findings, after preliminary results of the study were published, the majority of law enforcement agencies embraced the mandatory arrest policy as a way of solving domestic violence. The US Attorney General recommended all police departments make arrests in all domestic violence cases no matter what the victim's will was. In the 90s more than 80% of all law enforcement agencies adopted mandatory arrest laws for domestic violence incidents (Maxfield & Babbie 2010).

There are some other studies on the implementation of mandatory arrest policies. Greenleaf's (1993) study showed that the number of arrest did not increase in southern jurisdictions after mandatory arrest policies were adopted. In New Jersey, arrest numbers on domestic violence incidents increased in the eight year period after the mandatory law's enactment, despite the decrease in the arrest numbers for violent crimes. It is also noted that reporting of domestic violence incidents remarkably increased by 51% (Ciraco, 2001). The increase in the arrest rate was more dramatic in Massachusetts than in New Jersey. In-service training that was given to local police had positive effects on processing domestic violence incidents, despite experienced officers' reluctant attitudes to arrest for domestic violence (Archer et al., 2002). Another comprehensive study was conducted in New York. According to the results of the study, recidivism occurred in 30% of domestic violence cases in nine month interval. Over all, studies suggest that the mandatory arrest policy is an effective tool in order to prevent repeat domestic violence incidents. The Newyork study also stresses some problems with the policy, such as a lack of policy for police forces in cases batterer has fled the scene (Family Protection and Domestic Violence Intervention Act of 1994, 2000).

Another focus of evaluation on arrest policies in domestic violence incidents is dual arrests. Researchers asked whether mandatory arrest policies increased dual arrests. In Connecticut, dual arrests constituted 33% of all domestic violence incidents (Martin, 1997). As is mentioned above in the Massachusetts example, proper training of police officers helped to reduce dual arrests in Massachusetts.

3. 5 Impacts, Outcomes, and Unintended Consequences

There are several benefits, problems, and unexpected consequences of having a mandatory arrest policy for domestic violence:

3. 5. 1. Benefits

- 1.Arrests deter domestic violence offenders. The deterrent effect of arrest in domestic violence cases has been proven in the Minneapolis Domestic Violence Experiment (Sherman and Berk, 1984). A most recent study suggests that arrest is highly influential in lowering the rate of re-committed violence (Maxwell, Garner & Fagan, 2001).
- 2.Households in states where arrest is mandated are less likely to suffer from domestic violence. Not only arrest but also other legislation, such as no drop policy, reduces the chance of domestic violence (Dugan, 2003).
- 3.Intimate partner violence decreased 21 percent from 1993 to 1998. Most of the mandatory arrest statutes were passed between these years (Rennison & Welchans, 2000).
- 4.The number of women killed by an intimate partner was stable from 1976 to 1993, and then declined 23 percent from 1993 to 1998 (Rennison & Welchans, 2000).

3. 5. 2. Problems with the Policy

- 1.Sherman and Berk did not encourage mandatory arrest in every domestic violence incident. Rather, they raised concerns by saying, "It may be premature to conclude that arrest is always the best way for police to handle domestic violence and that all suspects in such situation should be arrested" (Sherman & Berk, 1984, pp. 261-272).

2. Police are less likely to discover a domestic violence incident in states where arrest is mandated. In other words, persons are less likely to call the police in cases of domestic violence if the arrest is certain (Felson, Messner & Hoskin, 1999). Between 1993 and 1998, about half of the domestic violence against women was reported to police (Rennison & Welchans, 2000).

3. In states with mandatory arrest laws, victims of domestic violence do not want to report the violence because of safety issues. Third parties, on the other hand, are significantly less likely to call police. That is, third parties who witness a domestic violence case do not want to be involved in a domestic violence dispute, if arrest is certain (Felson, Messner & Hoskin, 1999).

4. With mandatory arrest policy, the discretion of the officer and the preference of the victim are disregarded. It is the officer, however, who will decide the most appropriate action in a given situation. The ignorance of victim preference, on the other hand, constitutes a patriarchic stance of state government.

3. 5. 3. Unintended Consequences

1. The mandatory arrest policy can cause a dual arrest where police officers cannot determine who the primary aggressor is (Dugan, 2003). Research has demonstrated that the percentage of women arrested for domestic violence increased in many jurisdictions because of this dual arrest (Miller, 2001).

2. Another unintended consequence of the mandatory arrest policy is increase in murder incidents committed by intimate partner. Recent study done by a Harvard fellow Radha Lyengar shows an interesting consequence of mandatory arrest policy on domestic violence appeared after two decades which mandatory arrest policies became popular. According to his study results, "The number of murders committed by intimate partners is now significantly higher in states with mandatory arrest laws than it is in other states". (Lyengar, 2007)

3. Seeking protection from police puts the domestic violence victims in danger. Even though the national homicide rate declined after mandatory arrest, states with mandatory arrest policies have higher rates of wife homicide (Dugan, 2003).

4. Some police departments required their officers to make arrests in almost every situation to reduce civil cases. This type of police practice constitutes an unjust application of mandatory arrest laws where there is no probable cause to make an arrest (Dugan, 2003).

5. Arrest deters only married and employed suspects. Those who are not married and are unemployed become more violent after the first arrest (Dugan, 2003).

4. Evaluation and Implications

Mandatory arrest has always been debated in terms of its effectiveness. It is perhaps because of its rare character as one of the criminal justice policy that mandates police to make an arrest in response to a crime. Mandatory arrest laws do not recognize the discretion of police officers in misdemeanor domestic violence incidents. Various implications among police agencies, however, give way to an unjust application of laws.

For instance, there is no nation-wide standard in the application of mandatory arrest. In some cases, police make dual arrests just to make sure they catch the offender. However, such an application victimizes the victim again, whereas the policy should guarantee the safety of the victim.

Secondly, there are doubts about the overall success of the policy. In most studies, findings do not support the effectiveness of mandatory arrest in domestic violence incidents. There was a decline in the reporting of domestic violence incidents after mandatory arrest statutes had been passed by some states. Whatever the reasons are –fear of the offender or protecting the offender- victims do not want the police to intervene their domestic issues.

On the other hand, some pro-arrest social scientists, victims advocate groups, and even the federal government, support the mandatory arrest policy for an effective way to combat domestic violence. Advocates of mandatory arrest assert that the policy has a deterrent effect on repeated offenders. Therefore, they conclude, the policy should strictly be enforced to ensure the deterrence of domestic violence offenders. However, deterrence does not suffice to prevent crimes. If it did, the existing criminal justice system would have been able to reduce crime rates during the past three decades. The being tough on crime policy, for example, did not achieve a reduction in crime rates between the 1970s and the 1990s (Currie, 2003). Deterrence advocates miss a critical point in the problems of combating crime. That is, there may be some other variables which cause crime, other than those subject to deterrence. Therefore, to make policy based solely on deterrence may not ensure a reduction in a crime.

Instead of mandatory arrests, discretionary arrest may be used in misdemeanor domestic violence incidents. Police need not arrest the offenders in misdemeanor domestic violence incidents as long as the situation indicates otherwise. An arrest separates even the non-aggressive offender from home, leaving the family members without financial support.

Discretionary arrests for domestic violence can also be enforced in conjunction with other criminal justice and community-based policies. Before making an arrest, the courts may order protection orders for an offender to keep him away from the victim. No drop policy which is mandate prosecution of a domestic violence offender, no matter what victim's wishes is, on the other hand, can secure the safety of the victim for a long time. The issues of what policy should be enforced in what situations in domestic violence cases should depend on the victim's preference, the police officers' discretion, and the exceptional condition of each situation, but not on a mandatory arrest laws.

5. Conclusion and Discussion

After all, one question needs to be asked: Is mandatory arrest a wise policy to solve the recidivism in domestic violence incidents? I believe the question can not be answered by looking at the results of research studies which examine the statistical relationship between arrests and recidivism. There is a need to look at this problem from different perspectives such as the demographic, situational, attitudinal, and multiethnic. The multi socio-ethnic nature of domestic violence is a particularly important factor in domestic violence. For example, families with Eastern ethnic backgrounds have closer connections with their relatives. Once domestic family problem arises there, mediators are more likely to the solve problem, unlike the individualized families with Western ethnic backgrounds. Such kinds of ethnic differences make mandatory arrest policies more complex, since they may not work in all cases or sometimes make matters worse.

It is clear that domestic violence is considered to be a crime. Not only police attitude; but also the public's perceptions of domestic violence have shifted dramatically from being considered as a private matter, to being considered as a crime, even last three decades. A variety of factors influence

police response, including who calls the police, who is present, when the police arrive, the offender's behavior, types of crime, seriousness of injury, use of a weapon, use of force against the police and the possibility of future violence. These factors that influence arrest a domestic violence offender are very similar to the criteria used in any kinds of crime. Once the police find probable cause in any kind of incident, they are obliged to make an arrest, just as it is the case in any kinds of crime. It is understandable why police departments were pushed twice to make an arrest for domestic violence at the beginnings of this policy shift, but it is now non-sense to force police departments to make mandatory arrest for a domestic violence offender in the light of the evidence from three decades of the criminalization of domestic violence.

There are several alternatives to pro-arrest policies. Some states apply these alternatives in combination with their pro-arrest policy:

1.Crisis intervention or mediation policy would be beneficial when no injury is involved (Erez, 2001). In this approach, police intervene only when the domestic violence situation requires a criminal investigation. Police may set up crisis intervention units and may employ social workers and counselors who are trained for crisis intervention.

2.Continuous coordination between police, judiciary, and social services. Even though police make an arrest, a fearful victim may drop her complaint in front of the prosecutor. A No drop policy as , in this sense, is a complimentary policy with arrest. May have equivalent deterrent effect. No drop, however, some say, is a disregard of victim's preference when victim does not want any judicial case (Dugan, 2003).

3.Community coordinated responses are useful. Hotline advocates and volunteers, counseling agencies, legal advocates, and shelter providers may protect the victim from immediate violence (Dugan, 1999).

4.Protection orders are another set of protective measures that could ensure the safety of a victim and her children. However, arrest and protection orders are complimentary policies. When a domestic violence offender violates a protection order, he should be arrested by the police.

5.Programs for repeated offenders. Habitual offenders may be treated early before they commit further violence.

6.Mandatory arrest can be considered as a crime control policy, but the long-term incapacitation felony domestic violence offenders be implemented as a tougher crime control policy.

7.Training of law enforcement officers is an essential part of preventing domestic violence. It is critical to think about law the enforcement response to domestic violence incidents. A good step to do this is to train all the participants in the criminal justice system in terms of how to handle domestic violence cases in light of their sensitive nature.

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