

2020

## Mandatory-Arrest Laws and Domestic Violence: How Mandatory-Arrest Laws Hurt Survivors of Domestic Violence Rather Than Help Them

Alayna Bridgett

Follow this and additional works at: <https://scholarlycommons.law.case.edu/healthmatrix>

---

### Recommended Citation

Alayna Bridgett, *Mandatory-Arrest Laws and Domestic Violence: How Mandatory-Arrest Laws Hurt Survivors of Domestic Violence Rather Than Help Them*, 30 *Health Matrix* 437 (2020)  
Available at: <https://scholarlycommons.law.case.edu/healthmatrix/vol30/iss1/11>

This Note is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in *Health Matrix: The Journal of Law-Medicine* by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

MANDATORY-ARREST LAWS AND  
DOMESTIC VIOLENCE: HOW  
MANDATORY-ARREST LAWS HURT  
SURVIVORS OF DOMESTIC  
VIOLENCE RATHER THAN HELP  
THEM

*Alayna Bridgett<sup>†</sup>*

CONTENTS

INTRODUCTION..... 438

I. BACKGROUND ..... 440

    A. *Sherman’s First Study*..... 440

    B. *The Violence Against Women Act*..... 444

II. STATE MANDATORY-ARREST LAWS ..... 446

    A. *May vs. Shall*..... 447

    B. *Definition of “Family Member”*..... 450

    C. *Definition of “Primary Aggressor”* ..... 451

III. MANDATORY-ARREST-LAW EFFECTIVENESS..... 454

    A. *Sherman’s Second Study*..... 455

    B. *Other Studies Evaluating the Effectiveness of Mandatory Arrest* ..... 456

    C. *Mental Harm*..... 460

    D. *Physical Harm*..... 461

IV. RECOMMENDATIONS ..... 464

    A. *Preferential Arrest*..... 464

    B. *Increased Outreach* ..... 467

CONCLUSION ..... 472

---

† J.D. Candidate 2020, Case Western Reserve University School of Law. I would like to thank all who made this note possible: Professor Sharona Hoffman, whose guidance, constructive criticism, and encouragement helped produce the piece of academic writing I am most proud of; Patrick Nusbaum, whose support during the writing process helped this note get written in the first place; and my family and friends for their support, encouragement, proofreading, and feedback.

INTRODUCTION

The well-intentioned efforts to help victims must be judged by their results, not our intentions. Thus what we need to do is to treat domestic violence as a subject for relentless research, testing a wide range of solutions, rather than simply assuming that punishment ‘works’.<sup>1</sup>

-Lawrence Sherman.

When Sara Schmidt reported her husband’s domestic abuse, she never could have imagined that just a week later she would be dead in her in-laws’ Wisconsin driveway.<sup>2</sup> After her murder, it came to light that Sara had endured abusive behavior from her husband of fifteen years for some time.<sup>3</sup> After several years of verbal and emotional abuse, his abuse allegedly turned physical on December 31, 2017.<sup>4</sup> That night, instead of attending a party to ring in the new year, Robert Schmidt held a gun to his wife’s head and raped her.<sup>5</sup> On January 2, 2018, Sara filed a police report stating that she no longer felt that she or her children were safe living with Robert, but did not specifically request that he be arrested.<sup>6</sup> Wisconsin is a mandatory arrest state, however, so investigators arrested Robert the same day.<sup>7</sup> On January 5, Robert was released on bond.<sup>8</sup> Around dinnertime four days later, Sarah pulled her van into her in-laws’ driveway to drop off the

- 
1. Belinda Luscombe, *When Not to Arrest an Abuser in a Domestic Violence Case*, TIME (Mar. 5, 2014), <http://time.com/12682/when-not-to-arrest-an-abuser-in-a-domestic-violence-case/> [https://perma.cc/P5MM-8C4V].
  2. Allison Dirr, *In 10 Days, A Husband’s Violence Escalated From A Brutal Assault to Murder in Public View*, POST CRESCENT (Aug. 13, 2018, 6:17 AM), <https://www.postcrescent.com/story/news/crime/2018/08/13/appleton-murder-suicide-robert-schmidt-escalated-10-days-assault/810055002/> [https://perma.cc/4Z3Z-ER2T].
  3. *Id.*
  4. *Id.*
  5. *Id.*
  6. *Id.*
  7. *Id.*
  8. *Id.*

couple's three children, but she was greeted by an irate Robert.<sup>9</sup> Robert pulled out a gun, forced Sarah into the passenger seat of the van and shot her to death before turning the gun on himself.<sup>10</sup> Their three young children were inside the house.<sup>11</sup>

For officers dealing with domestic violence, situations like these are common. In this area of Fox Valley, Wisconsin, the sheriff's office handled three situations similar to this one within a matter of months.<sup>12</sup> Wisconsin, like many states, has legislation that requires officers to arrest an alleged abuser when responding to calls or reports of domestic violence.<sup>13</sup> While these laws were once hailed as a solution to domestic violence across the country, recent studies have called the effectiveness of these laws into question.<sup>14</sup> Instead of protecting victims, these laws may be causing more harm to victims in the long run.

This Note argues that mandatory-arrest laws are not effective in protecting domestic violence victims. Part I will examine why

- 
9. *Id.*
  10. *Id.*
  11. *Id.*
  12. *Id.*
  13. WIS. STAT. ANN. § 968.075(2) (2016); *see also* ALASKA STAT. § 18.65.530(a) (2018); ARIZ. REV. STAT. ANN. §13- 3601(B) (2018); COLO. REV. STAT. § 18-6-803.6 (2019); CONN. GEN. STAT. § 46b-38b(a) (2018); D.C. CODE ANN. § 16-1031(a) (2019); KAN. STAT. ANN. § 22-2307 (b)(1) (2019); IOWA CODE ANN. §§ 236.12(2)(b) (2018); LA. STAT. ANN. § 46-2140 A(1) (2015); ME. REV. STAT. ANN. tit. 19-A § 4012 (5) (2019); MISS. CODE ANN. § 99-3-7 (3) (2017); NEV. REV. STAT. § 171.137 (2019); N.J. STAT. ANN. § 2c:25-21 (West 2019); N.Y. CRIM. PROC. LAW § 140.10(1) (2019); OHIO REV. CODE ANN. § 2935.032(A)(1)(a) (2019); OR. REV. STAT. §§ 133.055(2)(a), (b), (c), (d) (2019); 12 R.I. GEN. LAWS §§ 12-29-3(b), (c) (2014); S.C. CODE ANN. § 16-25-70; S.D. CODIFIED LAWS § 23A-3-2.1 (2015); UTAH CODE ANN. § 77-36-2.2 (2) (2013); WASH. REV. CODE ANN. §§10.31.100 (2)(a), (d) (2019).
  14. *See, e.g.*, Lawrence W. Sherman & Heather M. Harris, *Increased Death Rates of Domestic Violence Victims from Arresting vs. Warning Suspects in the Milwaukee Domestic Violence Experiment (MilDVE)*, 11 J. OF EXPERIMENTAL CRIMINOLOGY 1 (2015); Radha Iyengar, *Does the Certainty of Arrest Reduce Domestic Violence? Evidence from Mandatory and Recommended Arrest Laws* (Nat'l Bureau of Econ. Research, Working Paper No. 13186, 2007), available at <http://www.nber.org/papers/w13186.pdf> [<https://perma.cc/P4Q9-SR7J>].

states began adopting these laws. First, it will discuss a study by Lawrence Sherman indicating that mandatory arrest was the most effective means of deterring future violence in relationships plagued by domestic violence. It will then discuss the Violence Against Women Act and how its drafters relied on Sherman's study in deciding to allocate grant money to jurisdictions that enacted mandatory-arrest laws for domestic violence.

Part II will discuss the components of present-day mandatory-arrest laws and how variations in state statutes can change the effect that they have on victims. The first section will discuss the different forms of arrest statutes and how the words "shall" and "may" can change what is required under the statute. The second section will discuss when the term "family member" is used in the statute and the limits it can place on the ability of police to arrest suspects. Finally, it will discuss dual arrests and how including a policy of arresting the "primary aggressor" in an arrest statute can help eliminate them.

Part III will discuss the present effect that these statutes have on victims. It will first review Sherman's more recent study and other subsequent reports that argue that his findings in his original study were faulty. These studies indicate that mandatory arrest statutes are likely not as effective at protecting victims as originally thought. It will then discuss both the physical and mental harm victims may suffer as a result of these laws.

Part IV will develop recommendations as to changes that should be made to domestic violence arrest laws to best protect victims. It argues that jurisdictions should adopt laws that allow for guided police discretion by following the preferential-arrest model. It will also argue that police departments should provide more outreach programs to help victims. It will discuss two inventive methods developed in police departments: the "cocooning" method and the creation of domestic violence units in police departments that work hand in hand with victim advocacy groups to better respond to domestic violence calls.

## I. BACKGROUND

### A. *Sherman's First Study*

During the early 1970's and 80's, most police departments felt that instances of domestic violence were problems for the family

to work through, not the police.<sup>15</sup> Instead of viewing it as criminal conduct, officers felt that domestic violence was a normal method of “controlling” a spouse, and therefore was outside the scope of police intervention.<sup>16</sup> Most instances of domestic violence were characterized as misdemeanors, with arrests being a last resort rather than a common option.<sup>17</sup> Indeed, many jurisdictions barred arrests for any misdemeanor assault unless the act actually occurred in front of the officer.<sup>18</sup> As a result, there was little legal intervention to help curb the torment plaguing victims of domestic violence.<sup>19</sup>

Activism surrounding domestic violence began to increase in the mid-1970s.<sup>20</sup> Several clinical psychologists argued that there should be increased police intervention when officers respond to calls of domestic violence.<sup>21</sup> Several studies also publicized statistics on the actual rates of domestic violence in the country, prompting a battered women’s movement aimed at increasing domestic violence awareness.<sup>22</sup> These groups called for a more serious approach to domestic violence policy and a change in

- 
15. See Jeffrey Fagan, *Criminalization of Domestic Violence: Promises and Limits*, NAT’L INST. OF JUSTICE 1, 3 (1995), available at <https://www.ncjrs.gov/pdffiles/crimdom.pdf> [<https://perma.cc/7PF8-68BM>].
  16. Deborah Epstein, *Redefining the State’s Response to Domestic Violence: Past Victories and Future Challenges*, 1 GEO. J. GENDER & L. 127, 128–129 (1999).
  17. Nick Keppler, *In Allegheny County, Domestic Violence Offenders Often Avoid the Most Serious Punishment*, PUBLIC SOURCE (Feb. 18, 2019), <https://www.publicsource.org/allegheny-county-domestic-violence-offenders-avoid-most-serious-punishment/> [<https://perma.cc/Y58P-CXWU>]; U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, NCJ 250231, POLICE RESPONSE TO DOMESTIC VIOLENCE, 2006–2015 (2017).
  18. Kathleen J. Ferraro, *Police Woman Battering*, 36 SOC. PROBS. 61 (1989).
  19. See *id.* at 61–62.
  20. JAMI AKE & GRETCHEN ARNOLD, A BRIEF HISTORY OF ANTI-VIOLENCE-AGAINST-WOMEN MOVEMENTS IN THE UNITED STATES 3 (2017).
  21. Nat’l Inst. of Justice, *Searching for Answers: Annual Evaluation Report on Drugs and Crime: 1992*, U.S. DEPT. OF JUSTICE, at 31 (1992).
  22. Fagan, *supra* note 15, at 12–13.

police intervention strategies.<sup>23</sup> As a result, the National Academy of Sciences issued a report calling for an assessment of current police policies and supported deterrence-oriented practices.<sup>24</sup> The National Institute of Justice took note and allocated funding for studies on the effects of deterrence-based policies.<sup>25</sup>

From 1981 to 1982, Lawrence W. Sherman conducted one such study evaluating the effectiveness of police responses to calls regarding domestic violence in Minneapolis, Minnesota.<sup>26</sup> This research sought to compare three different police approaches to domestic violence: arrest, an order for the suspect to leave the scene of the assault for eight hours, or some form of mediation at the officer's discretion.<sup>27</sup> Using a lottery system, officers employed one of these three methods when answering calls of misdemeanor domestic violence.<sup>28</sup> Victims were then subject to detailed follow-up interviews every two weeks for twenty-four weeks to see how the police response affected their lives.<sup>29</sup> A total of 314 case reports were evaluated.<sup>30</sup> Only 161 of the victims followed through with the 12 interviews.<sup>31</sup> During these interviews, Sherman looked for any indications that the individual arrested had repeated their domestic violence within the six-month period and determined if they had a prior criminal record.<sup>32</sup> He also looked at victims' perspectives and how their lives had changed due to the specific form of police response used.<sup>33</sup>

---

23. Clara Van Eck, *Changing the Message: Battered Women's Advocates & Their Fight Against Domestic Violence at the Local, State, and Federal Level, 1970s-1990s*, OLD DOMINION U. 1, 28 (2017).

24. Fagan, *supra* note 15, at 13.

25. ALFRED BLUMSTEIN & JOAN PETERSILIA, THE NAT'L INST. OF JUSTICE, 25 YEARS OF CRIMINAL JUSTICE RESEARCH 15-16 (1994).

26. LAWRENCE W. SHERMAN & RICHARD A. BERK, THE MINNEAPOLIS DOMESTIC VIOLENCE EXPERIMENT 1-8 (1984).

27. *Id.* at 4.

28. *Id.* at 2.

29. *Id.* at 3.

30. *Id.*

31. *Id.* at 5.

32. *Id.* at 6.

33. *Id.* at 7.

Through these interviews, Sherman concluded that individuals who were arrested had the lowest percentage of repeated violence (19%), compared to those given advice (37%) and those sent away (33%).<sup>34</sup> Police records concerning repeat offenders revealed similar statistics.<sup>35</sup> Further analysis indicated that these findings were the same across the board for all suspects regardless of race, employment, education, or criminal history.<sup>36</sup> Based on these findings, Sherman concluded that arrest was the most effective form of police action for purposes of deterring future domestic violence.<sup>37</sup>

Furthermore, Sherman found that arrest was most effective when the police listened to the victim's account of the domestic violence.<sup>38</sup> Out of 194 victims, 9% reported repeated violence when the police took the victim's statement, as opposed to the 26% who experienced repeated violence after an arrest where the police simply arrested the suspect.<sup>39</sup> Sherman argued that victims may be "empowered" by being able to give their account of the story.<sup>40</sup> He theorized that if police ignored a victim's statement, then the suspect may feel that the arrest was arbitrary and be less deterred from repeating violence in the future.<sup>41</sup> Because of these findings, Sherman encouraged jurisdictions to implement mandatory or preferred-arrest laws to help decrease instances of repeated violence by domestic abusers.<sup>42</sup> The study received a great deal of media attention, prompting a response from many police departments across the country.<sup>43</sup> While only fifteen jurisdictions had mandatory-arrest statutes on the books before

---

34. *Id.*

35. *Id.* at 6.

36. *Id.* at 7.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* at 8.

43. Luscombe, *supra* note 1.



this study was published, that number increased to twenty-three soon after publication.<sup>44</sup>

*B. The Violence Against Women Act*

Studies like Sherman's, and pressure from grassroots campaigns by women's groups, prompted Congress to take action.<sup>45</sup> The Violence Against Women Act (the Act) was first passed in 1994 and provided both a celebrated and controversial response to domestic and sexual violence against women.<sup>46</sup> The Act outlined funding initiatives and proposed policy measures that jurisdictions should implement in order to better address domestic violence,<sup>47</sup> including "the use of mandatory arrests of accused offenders."<sup>48</sup> The Act did not specify which provisions should be included in these laws. The only guidance it offered was to discourage the arrest of both the victim and abuser, and it explicitly argued that mediation should be prohibited in instances of domestic violence.<sup>49</sup> Furthermore, the Act indicated a preference for more aggressive prosecution policies.<sup>50</sup> This led to policies that allowed the prosecution of domestic violence cases regardless of whether the victim cooperated.<sup>51</sup> This Act incentivized the use of mandatory arrest because the jurisdictions that passed these types of laws would be eligible for federal grant

---

44. David Hirschel, *Domestic Violence Cases: What Research Shows About Arrest and Dual Arrest Rates*, NAT'L INST. OF JUSTICE (July 25, 2008), <https://www.ncjrs.gov/pdffiles1/nij/222679.pdf>. [<https://perma.cc/L4S9-X7Y8>].

45. *See* Kate Pickert, *What's Wrong With the Violence Against Women Act?*, TIME (Feb. 27, 2013), <http://nation.time.com/2013/02/27/whats-wrong-with-the-violence-against-women-act/>. [<https://perma.cc/9WPK-K76F>].

46. *Id.*

47. Violence Against Women Act, 42 U.S.C. § 13925 (1994).

48. Violence Against Women Act of 1991, H.R. 1502, 102nd Cong. (1991).

49. *See id.*

50. *Id.*

51. Pickert, *supra* note 45.

money.<sup>52</sup> However, there was nothing that identified how this money should be used.<sup>53</sup>

The Act was subsequently renewed in 2000 and 2005 with similar provisions relating to mandatory arrest.<sup>54</sup> It also included language emphasizing that the Act was not limited to the protection of women, but rather the protection of victims in general.<sup>55</sup> This was a direct response to several critics of the act who argued that the provisions painted all women as victims and all men as abusers.<sup>56</sup> Furthermore, the Act provided for more funding for research into the factors that lead to abusive behavior after several women's groups claimed that the Act was simply a surface-level fix to a much bigger problem.<sup>57</sup> Other problems arose in 2012 when the Act was again up for reauthorization.<sup>58</sup> Conservative Republicans opposed provisions extending services under the Act to undocumented immigrants and LGBT individuals.<sup>59</sup> The bill was not reauthorized until 2013; it still contained provisions encouraging the implementation of mandatory arrest statutes.<sup>60</sup>

---

52. Violence Against Women Act, 42 U.S.C. § 13925 (1994).

53. *Id.*

54. See *History of VAWA*, LEGALMOMENTUM, <https://www.legalmomentum.org/history-vawa> [<https://perma.cc/Q5SH-V9L4>] (last visited Jan. 27, 2020).

55. Violence Against Women and Department of Justice Reauthorization Act of 2005, H.R. 3402, 109th Cong. (2005).

56. Janice Shaw Crouse, *The Violence Against Women Act Should Outrage Decent People*, U.S. NEWS AND WORLD REP. (Mar. 19, 2012), <https://www.usnews.com/debate-club/should-the-violence-against-women-act-be-reauthorized/the-violence-against-women-act-should-outrage-decent-people> [<https://perma.cc/YCP6-QNGV>].

57. Violence Against Women and Department of Justice Reauthorization Act of 2005, H.R. 3402, 109th Cong. (2005); Crouse, *supra* note 56.

58. Kate Bolduan, *House Passes GOP Version of Violence Against Women Act Renewal*, CNN (May 16, 2012), <https://www.cnn.com/2012/05/16/politics/gop-violence-against-women/index.html> [<https://perma.cc/ESD5-TQKR>].

59. *Id.*

60. Violence Against Women Reauthorization Act of 2013, S. 47, 113th Cong. (2013).

Many states began implementing statutes with either mandatory or preferential arrest provisions soon after the Act was passed in 1994.<sup>61</sup> As time has gone by, however, researchers have questioned whether these measures have actually helped victims of domestic violence.<sup>62</sup> While the Act has increased rates of prosecution for these crimes, there is little evidence conclusively indicating that there has also been a decrease in violence.<sup>63</sup> Many proponents of the Act argue that the 64% decrease in intimate-partner violence between 1994 and 2010 was largely attributed to the push for stricter mandatory-arrest laws.<sup>64</sup> However, this drop occurred at the same time at which violent crime rates decreased dramatically nationwide.<sup>65</sup> Additionally, domestic violence is a severely under-reported crime, making statistical analysis particularly challenging.<sup>66</sup> Therefore, it is difficult to know the full effect that the Act had on domestic-violence rates.

## II. STATE MANDATORY-ARREST LAWS

While the Act prompted some states to implement mandatory-arrest laws, it did not give those states much guidance as to the contents of those laws.<sup>67</sup> What resulted was a stark disparity nationwide in laws governing officer conduct when responding to calls about domestic violence. Three distinct types of laws have developed: mandatory arrest, preference for arrest, and officer discretion.<sup>68</sup> Many laws also have language prompting

---

61. See Pickert, *supra* note 45.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. Violence Against Women Act, 42 U.S.C. § 13925 (1994); Violence Against Women and Department of Justice Reauthorization Act of 2005, H.R. 3402, 109th Cong. (2005); Violence Against Women Reauthorization Act of 2013, S. 47, 113th Cong. (2013).

68. See ALASKA STAT. § 18.65.530(a) (2018); ARIZ. REV. STAT. ANN. §13- 3601(B) (2018); COLO. REV. STAT. § 18-6-803.6 (2019); CONN. GEN. STAT. § 46b-38b(a) (2018); D.C. CODE ANN. § 16-1031 (a) (2019); KAN. STAT. ANN. § 22-2307 (b)(1) (2019); IOWA CODE ANN. § 236.12(2)(b) (2018); LA. STAT. ANN. § 46-2140 A(1) (2015); CAL. PENAL CODE § 13701(b) (2019); MASS. GEN. LAWS ANN. ch. 209a § 6 (7) (2007); MONT. CODE ANN. § 46-6-311 (2)(A) (2019); N.D.

the officer to identify the primary aggressor in cases of mutual accusations.<sup>69</sup> Others have provisions that specifically identify which individuals are able to claim that they are a victim of domestic violence<sup>70</sup>: Some laws limit the definition of “victim” to family members of the accused aggressor, while others have extended the definition to include dating partners or unmarried persons living in the same residence.<sup>71</sup>

A. *May vs. Shall*

Whether a jurisdiction has a mandatory-arrest, preference for arrest, or discretionary-arrest law depends on whether the statute contains—or omits entirely—the word “may” or “shall.” Statutes that contain “may”<sup>72</sup> allow the responding police officers the most discretion.<sup>73</sup> This approach assumes that the responding officer

---

CENT. CODE § 14-07.1-10 (2019); TENN. CODE ANN. § 36-3-619 (a) (2016); ALA. CODE § 15-10-3(8) (2018); DEL. CODE ANN. tit. 11, § 1904(A)(4) (2018); FLA. STAT. § 741.29 (2019); GA. CODE ANN. § 17-4-20(a) (2019); HAW. REV. STAT. § 709-906 (2) (2006); IDAHO CODE § 19-603 (6) (2019); MICH. COMP. LAWS § 764.15a (2019); N.C. GEN. STAT. § 15a-401(b)(1)(2) (2018).

69. See CAL. PENAL CODE § 13701(b) (2019); FLA. STAT. § 741.29 (2019); MD. CODE ANN., CRIM. PROC. § 2-204 (A)(1) (2007); OHIO REV. CODE ANN. § 2935.03(B)(3)(b) (2019).

70. See HAW. REV. STAT. § 709-906 1(a) (2006); 725 ILL. COMP. STAT. 5/112A-30 (2009); KY. REV. STAT. ANN. § 431.005(2)(a) (West 2012); ME. REV. STAT. ANN. tit. 19-A § 4012 (5) (2017); MICH. COMP. LAWS § 764.15a (2019); N.M. STAT. ANN. § 31-1-7(A) (2018).

71. See *Domestic Violence Arrest Policies by State*, AM. BAR ASS'N, [https://www.americanbar.org/content/dam/aba/images/domestic\\_violence/Domestic%20Violence%20Arrest%20Policies%20by%20State%202011%20\(complete\).pdf](https://www.americanbar.org/content/dam/aba/images/domestic_violence/Domestic%20Violence%20Arrest%20Policies%20by%20State%202011%20(complete).pdf) [https://perma.cc/SHK5-EASW] (last visited, Oct 3, 2018).

72. TEX. CODE CRIM. PROC. ANN. art. 14.03 (a)(4) (2015) (“Any peace officer may arrest, without warrant persons who the peace officer has probable cause to believe have committed an offense involving family violence.”).

73. See ALA. CODE § 15-10-3(8) (2018); DEL. CODE ANN. tit. 11, § 1904(A)(4) (2018); FLA. STAT. § 741.29 (2019); GA. CODE ANN. § 17-4-20(a) (2019); HAW. REV. STAT. § 709-906 (2) (2006); IDAHO CODE § 19-603(6) (2019); MICH. COMP. LAWS § 764.15a (2019); N.C. GEN. STAT. § 15a-401(b)(1)(2) (2018); MISS. CODE ANN. § 99-3-7 (3) (2019); NEB. REV. STAT. § 29-404.02(1) (2017); N.M. STAT. ANN. § 31-1-7(A) (2018).

will have the best ability to determine if an arrest is necessary or not.<sup>74</sup> To handle the situation properly, the officer will need to talk to the parties to see what exactly went on and make their own determination.<sup>75</sup> Overall, twenty-five states have this type of statute.<sup>76</sup>

The second type of statute is the pro-arrest statute that has been enacted in six states.<sup>77</sup> These statutes often do not include “may” or “shall” at all.<sup>78</sup> Instead, they simply state that arrest is the preferred action in the situation.<sup>79</sup> These statutes allow officers slightly more discretion than they would have in a mandatory arrest setting. Jurisdictions that employ this approach encourage arrests in domestic violence situations but ultimately leave the choice up to the responding officer.<sup>80</sup>

The final category is the mandatory-arrest law. These statutes contain the word “shall” in the provision, making it mandatory for police officers to arrest an individual when dispatched for domestic violence.<sup>81</sup> This is modified by the

---

74. April M. Zeoli et al., *Mandatory, Preferred, or Discretionary: How the Classification of Domestic Violence Warrantless Arrest Laws Impacts Their Estimated Effects on Intimate Partner Homicide*, 35 EVALUATION REV. 129, 132 (2011).

75. *Id.* at 133.

76. ALA. CODE § 15-10-3(8) (2018); DEL. CODE ANN. tit. 11, § 1904(A)(4) (2018); FLA. STAT. § 741.29 (2019); GA. CODE ANN. § 17-4-20(a) (2019); HAW. REV. STAT. § 709-906(2) (2006); IDAHO CODE § 19-603(6) (2019); MICH. COMP. LAWS § 764.15a (2019); N.C. GEN. STAT. § 15a-401(b)(1)(2) (2018); MISS. CODE ANN. § 99-3-7 (3) (2019); NEB. REV. STAT. § 29-404.02(1) (2017); N.M. STAT. ANN. § 31-1-7(A) (2018); OKLA. STAT. tit. 22, § 196(6) (2018); 18 PA. CONS. STAT. § 2711(a) (2019); TEX. CODE CRIM. PROC. ANN. art.14.03 (A)(4) (2015); W. VA. CODE § 48-27-1002 (a) (2010).

77. CAL. PENAL CODE § 13701(b) (2019); MASS. GEN. LAWS ANN. ch. 209a, § 6(7) (2007); MONT. CODE ANN. § 46-6-311 (2)(A) (2019); N.D. CENT. CODE § 14-07.1-10 (2019); TENN. CODE ANN. § 36-3-619 (a) (2016); ARK. CODE ANN. § 16-81-113(a)(1)(A) (2019).

78. MONT. CODE ANN. § 46-6-311(2)(A) (2019) (“Arrest is the preferred response in partner or family member assault cases . . .”).

79. *Id.*

80. *Id.*

81. ALASKA STAT. § 18.65.530 (A) (2018) (“An officer shall arrest a person when there is probable cause to believe that a crime of domestic violence has been committed in past 12 hours.”); *see also* ARIZ. REV. STAT. ANN. §13- 3601(B) (2018); COLO. REV. STAT.

“probable cause” standard. In order to comply with the Fourth Amendment under such laws, the Supreme Court held in *Brinegar v. U.S.* that officers may not make a warrantless arrest without first having probable cause.<sup>82</sup> The Court held that, “probable cause to arrest exists when the facts and circumstances known to the officer are sufficient to warrant a reasonably prudent person in believing that the suspect has committed or is committing a crime.”<sup>83</sup> The officer must believe that the individual being arrested is responsible for committing a crime.<sup>84</sup> Many jurisdictions allow their officers to base assertions of probable cause on evidence like injuries to a party, statements from witnesses, and even uncorroborated statements by a victim.<sup>85</sup> These laws have been enacted in twenty-two states.<sup>86</sup>

---

§ 18-6-803.6 (2019); CONN. GEN. STAT. § 46b-38b(a) (2018); D.C. CODE ANN. § 16-1031 (a) (2019); KAN. STAT. ANN. § 22-2307 (b)(1) (2019); IOWA CODE ANN. § 236.12(2)(b) (2018); LA. STAT. ANN. § 46-2140 A(1) (2015); ME. REV. STAT. ANN. tit. 19-A § 4012 (5) (2019); MISS. CODE ANN. § 99-3-7 (3) (2017); NEV. REV. STAT. § 171.137 (2019); N.J. STAT. ANN. § 2c:25-21 (West 2019); N.Y. CRIM. PROC. LAW § 140.10(1) (2019); OHIO REV. CODE ANN. § 2935.032(A)(1)(a) (2019); OR. REV. STAT. §§ 133.055(2)(a), (b), (c), (d) (2019); 12 R.I. GEN. LAWS §§ 12-29-3(b), (c) (2014); S.C. CODE ANN. § 16-25-70; S.D. CODIFIED LAWS § 23A-3-2.1 (2015); UTAH CODE ANN. § 77-36-2.2 (2) (2013); WASH. REV. CODE ANN. §§10.31.100 (2)(a), (d) (2019).

82. *Brinegar v. U.S.*, 338 U.S. 160, 171 (1949).
83. *Id.* at 175.
84. *Id.*
85. D.C. CODE ANN. § 16-1031 (a) (2019) (“ . . . probable cause to believe physical injury or the treat thereof has occurred.”); W. VA. CODE §§ 48-27-1002 (a), (b) (2010).
86. ALASKA STAT. § 18.65.530 (A) (2018); ARIZ. REV. STAT. ANN. §13-3601(B) (2018); COLO. REV. STAT. § 18-6-803.6 (2019); CONN. GEN. STAT. § 46b-38b(a) (2018); D.C. CODE ANN. § 16-1031 (a) (2019); KAN. STAT. ANN. § 22-2307 (b)(1) (2019); IOWA CODE ANN. § 236.12(2)(b) (2018); LA. STAT. ANN. § 46-2140 A(1) (2015); ME. REV. STAT. ANN. tit. 19-A § 4012 (5) (2019); MISS. CODE ANN. § 99-3-7 (3) (2017); NEV. REV. STAT. § 171.137 (2019); N.J. STAT. ANN. § 2c:25-21 (West 2019); N.Y. CRIM. PROC. LAW § 140.10(1) (2019); OHIO REV. CODE ANN. § 2935.032(A)(1)(a) (2019); OR. REV. STAT. §§ 133.055(2)(a), (b), (c), (d) (2019); 12 R.I. GEN. LAWS §§ 12-29-3(b), (c) (2014); S.C. CODE ANN. § 16-25-70 (2015); S.D. CODIFIED LAWS § 23A-3-2.1 (2015); UTAH CODE ANN. § 77-36-2.2 (2) (2013); WASH. REV. CODE ANN. §§10.31.100 (2)(a), (d) (2019).

No state statute includes any language indicating that the officers should take what the victim wants into account when deciding whether to make an arrest.<sup>87</sup> This is designed to allow prosecution in situations in which the victim refuses to press charges against their abuser.<sup>88</sup> Removing this discretion was intended to diminish the burden placed on the victim.<sup>89</sup> The theory behind this is that the victim may feel psychologically trapped by the relationship or attached to their abuser.<sup>90</sup> While they may call the police in the first place, they may feel hesitant or afraid to ask for an arrest once the police arrive.<sup>91</sup>

*B. Definition of “Family Member”*

According to most mandatory-arrest laws, the relationship between the parties determines whether an assault is an act of domestic violence and mandates arrest.<sup>92</sup> Most domestic violence statutes provide that the violence must be perpetrated against a “family member,” a definition that changes with each jurisdiction.<sup>93</sup> However, this limitation can exclude some victims of domestic violence because the definition may not include their situation. Some of these statutes only cover what the term “family member” may traditionally bring to mind - those related to an individual through blood or marriage.<sup>94</sup> In these jurisdictions, individuals who are in dating relationships are not protected,

---

87. *Domestic Violence Arrest Policies by State, supra* note 71.

88. *See* Pickert, *supra* note 45.

89. Eric L. Han, Note, *Mandatory Arrest and No-Drop Policies: Victim Empowerment in Domestic Violence Cases*, 23 B.C. THIRD WORLD L.J. (2003).

90. *See id.*

91. *See generally* Iyengar, *supra* note 14, at 88–89.

92. *Domestic Violence Arrest Policies by State, supra* note 71.

93. GA. CODE ANN. § 17-4-20 (A) (2019); HAW. REV. STAT. § 709-906 (2) (2006); 725 ILL. COMP. STAT. 5/112A-30 (2009); KY. REV. STAT. ANN. § 431.005 (2)(a) (West 2012); LA. STAT. ANN. § 46-2140 A(1) (2015); MICH. COMP. LAWS § 764.15a (2019); MO. REV. STAT. §455.085.1 (2019); TEX. CODE CRIM. PROC. ANN. ART. 14.03 (A)(4) (2015); WASH. REV. CODE ANN. §10.31.100 (1) (2019).

94. GA. CODE ANN. § 17-4-20 (A) (2019); TEX. CODE CRIM. PROC. ANN. ART. 14.03 (A)(4) (2015).

whether they live together or not.<sup>95</sup> Some jurisdictions have attempted to address this deficiency by including those who are not married but are jointly residing in the same residence.<sup>96</sup> Others go as far as to include any individual who formerly resided in the same residence.<sup>97</sup> In these jurisdictions, an individual could be arrested for domestic violence against any current or former roommate.

While a great deal of domestic violence involves co-habiting or married couples, violence also occurs between couples who do not live together. Statutes that do not include individuals in dating relationships not living together miss an entire subgroup of victims who may suffer from domestic violence. Some jurisdictions consequentially include individuals who have a child together or are persons in dating relationships but are not living together.<sup>98</sup> This is the best approach when defining a “family member” because it includes a wide range of individuals who are victims of domestic violence.

*C. Definition of “Primary Aggressor”*

Officers may have difficulty deciding the best course of action when a call for domestic violence involves mutual accusations of abuse by the parties. Some may feel compelled to arrest both individuals—known as a “dual arrest”—if they each display signs of injury.<sup>99</sup> In dual-arrest jurisdictions, both the abuser and the victim are arrested, taken to prison, and charged with domestic violence.<sup>100</sup> Dual arrest can lead to the arrest of victims who did

- 
95. GA. CODE ANN. § 17-4-20 (A) (2019); TEX. CODE CRIM. PROC. ANN. ART. 14.03 (A)(4) (2015).
96. HAW. REV. STAT. § 709-906 (2) (2006); 725 ILL. COMP. STAT. 5/112A-30 (2009); LA. STAT. ANN. § 46-2140 A(1) (2015); ME. REV. STAT. ANN. tit. 19-A § 4012 (5) (2019); MD. CODE ANN., CRIM. PROC. § 2-204 (A)(1) (2007); MO. REV. STAT. §455.085.1 (2019); MONT. CODE ANN. § 46-6-311 (2)(A) (2019); NEV. REV. STAT. § 171.137 (2019); N.Y. CRIM. PROC. LAW § 140.10 (1) (2019); 18 PA. CONS. STAT. § 2711(a) (2019); S.D. CODIFIED LAWS § 23a3-2.1 (2019); WASH. REV. CODE ANN. §10.31.100 (1) (2019).
97. MICH. COMP. LAWS § 764.15a (2019); S.D. CODIFIED LAWS § 23a3-2.1 (2019).
98. KY. REV. STAT. ANN. § 431.005 (2)(a) (West 2012); MICH. COMP. LAWS § 764.15a (2019); S.D. CODIFIED LAWS § 23a3-2.1 (2019).
99. Hirschel, *supra* note 44.
100. *See id.*



not initiate the violence but did fight back against their abuser.<sup>101</sup> This can be damaging to victims who may begin to feel that they can no longer trust law enforcement to help them when they need it most.<sup>102</sup> Therefore, victims might not seek help when abused in the future.<sup>103</sup>

Some statutes explicitly provide for dual arrest.<sup>104</sup> Here, discretion is taken away from the officer, and both parties must be arrested.<sup>105</sup> The burden is then placed on a judge to determine which party is the victim in each case.<sup>106</sup> While this might be beneficial in some instances, it is not good for the system as a whole. Victims who injure their abuser in self-defense are routinely arrested, even though the system was designed to help them.<sup>107</sup> Because of this effect, providing for mandatory-dual arrest is not the best option.

States with mandatory-arrest laws have seen a substantial increase in the number of women arrested in connection with domestic violence.<sup>108</sup> In some areas, women account for nearly twenty percent of those arrested for domestic violence, a percentage that is actually higher than the estimated number of female abusers.<sup>109</sup> Studies indicate that over half of these arrestees are victims of domestic violence themselves.<sup>110</sup> Some researchers

---

101. Nat'l Dist. Attorneys Ass'n, *National Domestic Violence Prosecution Best Practices Guide*, WHITE PAPER 1, 19 (2017).

102. *Id.* at 13.

103. *See id.*

104. CAL. PENAL CODE § 13701(B) (2019) (“Dual arrests are discouraged, but not prohibited.”).

105. David Hirschel et al., *Explaining the Prevalence, Context, and Consequences of Dual Arrest in Intimate Partner Cases*, U.S. DEPT. OF JUSTICE 1, 4 (2007), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/218355.pdf> [<https://perma.cc/XWF8-NKY4>].

106. Hirschel, *supra* note 44.

107. Elizabeth M. Schneider, *Equal Rights to Trial for Women: Sex-Bias in the Law of Self-Defense*, 15 HARV. CIV. RIGHTS. – CIV. LIBERTIES. L. REV. 623 (1980).

108. David Hirschel et al., *Domestic Violence and Mandatory Arrest Laws: To What Extent Do They Influence Police Arrest Decisions*, 98 J. OF CRIM. L. AND CRIMINOLOGY 255, 259 (2007) [hereinafter *Influencing Police Arrest Decisions*].

109. Iyengar, *supra* note 14, at 88.

110. *Id.*

argue that this may be a result of dual arrests.<sup>111</sup> Dual arrest rates also depend heavily on the gender of those involved.<sup>112</sup> If the offender is female, it is three times more likely that police will also arrest the victim.<sup>113</sup> Dual arrest is also more likely if officers are dealing with a homosexual couple.<sup>114</sup> These statistics may indicate that there is still implicit-police bias and sex-role stereotyping when making arrests under these statutes.

In order to avoid dual arrest, many jurisdictions require officers to identify the “primary aggressor” in the situation.<sup>115</sup> The most common definition of this term is the individual who initiates the domestic violence in that instance.<sup>116</sup> Many jurisdictions have a list of factors they consider when working to establish the primary aggressor.<sup>117</sup> These can include the

---

111. *Influencing Police Arrest Decisions*, *supra* note 108, at 259.

112. Hirschel, *supra* note 44.

113. *Id.*

114. *Id.*

115. ALASKA STAT. § 18.65.530 (B) (2018) (“When there are mutual accusations, policy of determination of the primary aggressor.”); *See also* ARK. CODE ANN. § 16-81-113 (a)(2)(A) (2019); CAL. PENAL CODE § 13701(B) (2019); COLO. REV. STAT. § 18-6-803.6 (2019); FLA. STAT. ANN. § 741.29 4(b) (2019); GA. CODE ANN. §§ 17-4-20.1 (A), (B) (2019); LA. STAT. ANN. § 46-2140 B(1) (2015); MD. CODE ANN., CRIM. PROC. § 2-204 (B) (2007); MO. REV. STAT. §455.085.3 (2019); MONT. CODE ANN. § 46-6-311 (2)(B) (2019); OHIO REV. CODE ANN. § 2935.03 (A)(1)(a)(ii) (2014); R.I. GEN. LAWS § 12-29-3 (c) (2014); S.C. CODE ANN. § 16-25-70 (2015); TENN. CODE ANN. § 36-3-619 (b) (2016); UTAH CODE ANN. § 77-36-2.2 (3) (2013); WASH. REV. CODE ANN. §10.31.100 (2)(c) (2019).

116. The Advocates for Human Rights, *Determining the Predominant Aggressor*, STOP VIOLENCE AGAINST WOMEN, [http://www.stopvaw.org/determining\\_the\\_predominant\\_aggressor](http://www.stopvaw.org/determining_the_predominant_aggressor) [<https://perma.cc/JB4E-42PQ>] (last updated Dec. 26, 2018).

117. ALASKA STAT. § 18.65.530 (B) (2018) (“In determining whether a person is a principal physical aggressor, the officer shall consider (1) prior complaints of domestic violence; (2) the relative likelihood of future injury from domestic violence to each person; (2) the relative severity of the injuries inflicted on each person; and (4) whether one of the persons acted in defense of self or others.”); *see also* ARK. CODE ANN. § 16-81-113 (a)(2)(A) (2019); CAL. PENAL CODE § 13701(B) (2019); COLO. REV. STAT. § 18-6-803.6 (2019); FLA. STAT. ANN. § 741.29 4(b) (2019); GA. CODE ANN. § 17-4-20.1 (A), (B) (2019); LA. STAT. ANN. § 46-2140 B(1) (2015); MD. CODE ANN., CRIM. PROC. § 2-204 (B) (2007); MO. REV. STAT. §455.085.3

seriousness of injuries, the strength of both parties, criminal history of both parties, and the demeanor of parties.<sup>118</sup> Researchers have found that dual arrest rates are lower in states where these primary-aggressor provisions have been implemented.<sup>119</sup>

Critics argue that these provisions may also be biased against male victims of domestic violence whose abusers are female.<sup>120</sup> Factors like strength, skill and the demeanor of the parties can work against male victims who may be perceived to be more threatening because they are male.<sup>121</sup> Others argue that offenders may be able to manipulate a system that relies heavily on officers making a decision with little information at hand.<sup>122</sup> However, research indicates that primary-aggressor provisions do cut down on dual arrest and can be beneficial in the long run.<sup>123</sup>

### III. MANDATORY-ARREST-LAW EFFECTIVENESS

Researchers have conducted several studies to test the effectiveness of mandatory-arrest laws. However well-intended these laws were, these studies indicate that mandatory arrest may not be the appropriate public policy to apply to domestic violence.

---

(2019); MONT. CODE ANN. § 46-6-311 (2)(B) (2019); OHIO REV. CODE ANN. § 2935.03 (A)(1)(a)(ii) (2014); R.I. GEN. LAWS § 12-29-3 (c) (2014); S.C. CODE ANN. § 16-25-70 (2015); TENN. CODE ANN. § 36-3-619 (b) (2016); UTAH CODE ANN. § 77-36-2.2 (3) (2013); WASH. REV. CODE ANN. §10.31.100 (2)(c) (2019).

118. ALASKA STAT. § 18.65.530 (B) (2018); CAL. PENAL CODE § 13701(B) (2019); GA. CODE ANN. § 17-4-20.1 (A), (B) (2019).

119. Hirschel, *supra* note 44.

120. Deborah Vernon, Honors Thesis, *Has Society Created Social Injustice for Male Victims of Domestic Violence?*, UTAH ST. UNIV., at 12 (2017); Emily M. Douglas & Denise A. Hines, *The Helpseeking Experiences of Men Who Sustain Intimate Partner Violence: An Overlooked Population and Implications for Practice*, 26(6) J. FAM. VIOLENCE 473, 475 (Aug. 2011).

121. *See generally* Douglas & Hines, *supra* note 120.

122. Hirschel, *supra* note 44, at 260.

123. Sarah Smith, *In Connecticut, Calling for Help Carries Risks for Victims of Domestic Violence*, PROPUBLICA (Feb. 16, 2017), <https://www.propublica.org/article/in-connecticut-calling-for-help-carries-risks-victims-of-domestic-violence> [<https://perma.cc/FGC6-34V3>].

There are indications that, rather than protecting victims, these laws increase victims' mortality rates and incidents of intimate-partner homicide.<sup>124</sup> The subsequent sections analyze why these laws are generating more harm than good.

A. *Sherman's Second Study*

After Sherman's first study was published, several other researchers attempted to replicate his results.<sup>125</sup> However, none were able to do so.<sup>126</sup> Furthermore, Sherman's study was criticized for having too short of a follow-up period and thus it ignored the cyclical nature of domestic violence.<sup>127</sup> While it was based on deterrence theory, the study did not gather data on whether the offenders actually feared reoffending because of the arrest.<sup>128</sup> Studies in more recent years have evaluated the effects of mandatory arrest in two instances: those in which the victim reports the crime to the police and those in which the victim does not.

In 2015, just over forty years after his first study, Sherman published another study updating his findings.<sup>129</sup> Overall, he analyzed two different types of sources to come to his conclusions.

---

124. See Sherman & Harris, *supra* note 14, at 17.

125. Fagan, *supra* note 15; Anthony M. Pate & Edwin E. Hamilton, *Formal and Informal Deterrents to Domestic Violence: The Date County Spouse Assault Experiment*, 57 AM. SOC. REV. 691, 691 (1992).

126. See Sherman & Harris, *supra* note 14, at 1.

127. Domestic violence often follows a repeating cycle. This can involve several phases including a tension-building phase, an abusive incident, and a honeymoon phase. In the tension-building phase, victim may feel as if they are walking on eggshells. This phase can last for a few hours—or for months—depending on the relationship. The abusive incident occurs when the tension finally breaks. Usually, the abuser physically lashes out at the victim. Finally, in the honeymoon phase, the abuser may apologize or be extra affectionate to make up for the abuse. Once this phase is over, the tension-building phase begins again. See generally Jennifer Focht, *The Cycle of Domestic Violence*, NAT'L CTR. FOR HEALTH RES., <http://www.center4research.org/cycle-domestic-violence/> [https://perma.cc/L6LG-YG4V] (last visited Sept. 23, 2019); Jeffrey Fagan, *Cessation of Family Violence: Deterrence and Dissuasion*, 11 CRIME & JUST. 377, 387 (1989).

128. See generally Sherman & Harris, *supra* note 14.

129. *Id.* at 1–2.

First, he summarized subsequent research that was unable to replicate his original findings.<sup>130</sup> Instead, those studies found that, in some instances, mandatory arrest was either ineffective or doubled recidivism.<sup>131</sup> Second, he gathered data in cases where victims had reported their abuse to the police.<sup>132</sup> His own research suggested that more victims died in situations where police made an arrest than where police only warned the offending partners.<sup>133</sup> To gather data for his study, Sherman went back to the same area that he first studied in Milwaukee.<sup>134</sup>

The main effect he discovered was that victims died prematurely 64% more often in cases where the suspect had been arrested than when the suspect was just warned.<sup>135</sup> Heart disease was twice as likely for those who had a partner arrested than it was for those whose partner was warned.<sup>136</sup> However, Sherman is unable to provide any explanation for these findings. As of 2019, no other study has replicated Sherman's 2015 findings,<sup>137</sup> and thus his research is inconclusive. While Sherman's second study's findings may not be very clear, other studies have found more concrete evidence that mandatory-arrest laws are not effectively helping victims.<sup>138</sup>

*B. Other Studies Evaluating the Effectiveness of Mandatory Arrest*

Using arrest as a “one size fits all” intervention does not benefit all victims of domestic abuse in the same way.<sup>139</sup> Overall,

---

130. *Id.* at 2.

131. *Id.*

132. *Id.* at 2.

133. *Id.*

134. *Id.* at 3.

135. *Id.* at 6.

136. *Id.*

137. *See, e.g.,* Yoo-Mi Chin & Scott Cunningham, *Revisiting the Effect of Warrantless Domestic Violence Arrest Laws on Intimate Partner Homicides*, 179 J. PUB. ECON. 1, 9 (2019).

138. Iyengar, *supra* note 14, at 97.

139. Mary M. Cavanaugh & Richard J. Gelles, *The Utility of Male Domestic Violence Offender Typologies: New Directions for Research, Policy, and Practice*, 20 J. OF INTERPERSONAL VIOLENCE 155, 164 (2005).

other studies generally conclude that utilizing arrest has no significant influence on reducing long-term abuser recidivism.<sup>140</sup> For most abusers, any deterrent effect only lasted for a period of up to six months.<sup>141</sup> These studies also concluded that arrest has different effects for different types of offenders.<sup>142</sup> For batterers who are employed, have limited arrest records, and are in more “stable” environments, arrest had a greater deterrent effect.<sup>143</sup> Batterers who are unemployed, have more extensive criminal records, and are of lower socio-economic status experience little to no deterrent effect because of the arrest.<sup>144</sup> In some cases even, the arrest would lead the batterer to kill their partner soon after.<sup>145</sup>

To better understand offender reactions to different police intervention methods, researchers developed four predominant batterer typologies based on psychological traits.<sup>146</sup> The first

- 
140. Richard A. Berk et al., *Bayesian Analysis of the Colorado Springs Spouse Abuse Experiment*, 83 J. OF CRIM. L. AND CRIMINOLOGY 170, 198, 200 (1992); J. David Hirschel & Ira W. Hutchinson, *Female Spouse Abuse and the Police Response: The Charlotte, North Carolina Experiment*, 83 J. OF CRIM. L. AND CRIMINOLOGY 73, 85, 106 (1992); Lawrence W. Sherman et al., *The Variable Effects of Arrest on Criminal Careers: The Milwaukee Domestic Violence Experiment*, 83 J. OF CRIM. L. AND CRIMINOLOGY 137, 159–60 (1992).
141. Christopher D. Maxwell et al., *The Preventive Effects of Arrest on Intimate Partner Violence: Research, Policy and Theory*, 2 CRIMINOLOGY & PUB. POL’Y 51, 53 (2002); Hirschel & Hutchinson, *supra* note 140, at 106.
142. Pate et al., *supra* note 125, at 695; Douglas A. Smith et al., *Crime, Punishment, and Stake in Conformity: Legal and Informal Control of Domestic Violence*, 57 AM. SOC. REV. 680, 686 (1992); LAWRENCE W. SHERMAN, *POLICING DOMESTIC VIOLENCE: EXPERIMENTS AND DILEMMAS* 157 (1992).
143. Pate et al., *supra* note 125, at 695; Smith et al., *supra* note 142, at 686.
144. Sherman, *supra* note 142, at 163.
145. Pate et al., *supra* note 125, at 695.
146. Cavanaugh & Gelles, *supra* note 139, at 161; Amy Holtzworth-Munroe & Gregory L. Stuart, *Typologies of Male Batterers: Three Subtypes and the Differences Among Them*, 116 PSYCHOL. BULL. 476, 481 (1994); Matthew T. Huss & Anthony Ralston, *Do Batterer Subtypes Actually Matter? Treatment Completion, Treatment Response and Recidivism Across a Batterer Typology*, 35 CRIM. JUST. & BEHAV. 710, 711–12 (2008); Jeffrey M. Lohn et al.,

category consisted of family-only batterers.<sup>147</sup> These individuals are characterized by their lower severity of abuse, a lower frequency of abuse, lack of personality disorders, lower violence generally, and low to moderate rates of drug use and depression.<sup>148</sup> The second group is called borderline/dysphoric batterers.<sup>149</sup> These individuals have moderate to high rates of intimate-partner violence, moderate rates of general violence, moderate drug use, and do exhibit some personality disorders.<sup>150</sup> The third subtype is called the generally violent/antisocial batterers.<sup>151</sup> These individuals have moderate to high levels of intimate-partner violence, high rates of generalized violence, and exhibit antisocial disorders.<sup>152</sup> The final group is called the low-level antisocial batterers.<sup>153</sup> These abusers have moderate levels of family and general violence, substance abuse issues, and moderate levels of psychopathology.<sup>154</sup>

More recent studies have researched the relationship between arrests and the reoffending of individuals in these different

---

*Consistency and Accuracy of Batterer Typology Identification*, 20 J. FAM. VIOLENCE 253 (2005); Amy Holtzworth-Munroe et al., *Testing the Holtzworth-Munroe and Stuart Typology*, J. CLINICAL & CONSULTING PSYCHOL. 1000, 1000 (2000).

147. Holtzworth-Munroe & Stuart, *supra* note 146, at 481; Richard R. Johnson & Wendi Goodlin-Fahncke, *Exploring the Effect of Arrest Across a Domestic Batterer Typology*, 66 JUVENILE AND FAM. COURT J. 15, 17 (2015).
148. Holtzworth-Munroe & Stuart, *supra* note 146, at 481–82; Johnson & Goodlin-Fahncke, *supra* note 147, at 17.
149. Holtzworth-Munroe & Stuart, *supra* note 146, at 482; Johnson & Goodlin-Fahncke, *supra* note 147, at 17.
150. Holtzworth-Munroe & Stuart, *supra* note 146, at 482; Johnson & Goodlin-Fahncke, *supra* note 147, at 17.
151. Holtzworth-Munroe & Stuart, *supra* note 146, at 482; Johnson & Goodlin-Fahncke, *supra* note 147, at 17.
152. Holtzworth-Munroe & Stuart, *supra* note 146, at 482; Johnson & Goodlin-Fahncke, *supra* note 147, at 17.
153. Holtzworth-Munroe et al., *supra* note 146, at 1007; Johnson & Goodlin-Fahncke, *supra* note 147, at 18.
154. Huss & Ralston, *supra* note 146, at 712; Johnson & Goodlin-Fahncke, *supra* note 147, at 18; Jill Thijssen & Corine de Ruiter, *Identifying Subtypes of Spousal Assaulters Using the B-SAFER*, 26 J. INTERPERSONAL VIOLENCE 1307, 1309 (2011).

subtypes.<sup>155</sup> Overall, arrest displays no significant effect on any of the batterer subtypes.<sup>156</sup> Arrest also increased the likelihood of future violence among the generally violent/antisocial and low-level antisocial batterer subtypes.<sup>157</sup> In those groups, 35.2% of batterers originally arrested were re-arrested for a new domestic violence charge within six months compared to the 7.9% who reoffended after being warned.<sup>158</sup> This suggests that when these types of batterers are arrested, they are more likely to react with retributive violence towards their partner.<sup>159</sup> Furthermore, the study argued that officers should consider batterer subtypes when deciding how to respond to domestic violence.<sup>160</sup> For example, those in the family-only subtype are just as deterred by warnings as they are by arrest, with a lessened risk of retribution towards the victim.<sup>161</sup> Therefore, arrest may not be necessary for these individuals. For those in the generally violent/antisocial and low-level antisocial subtypes arrest cannot work on its own.<sup>162</sup> Researchers have found that follow-up actions, such as better prosecution tactics, supervision of both the abuser and victim, abuser treatment, and victim empowerment, make it less likely that batterers will reoffend.<sup>163</sup> Mandatory arrest alone does not provide for these increased measures, with most batterers leaving police custody only after a few days and with little supervision after release.<sup>164</sup> To account for this, some researchers argue that increased pretrial interventions for those individuals actually

---

155. Johnson & Goodlin-Fahncke, *supra* note 147, at 16.

156. *Id.* at 26.

157. *Id.* at 26–27.

158. *Id.* at 24.

159. *Id.* at 27

160. *Id.*

161. *Id.* at 25.

162. *Id.* at 29; *see* Huss & Ralston, *supra* note 146, at 711, 721; Thijssen & de Ruiter, *supra* note 154, at 1310.

163. Christy A. Visher et al., *Reducing Intimate Partner Violence: An Evaluation of a Comprehensive Justice System-Community Collaboration*, 7 CRIMINOLOGY AND PUB. POLICY 495, 496 (2008).

164. *Id.*



arrested should be utilized in order to study their effects on different batterer subtypes.<sup>165</sup>

More recent studies also indicate that mandatory-arrest laws make it less likely that a victim will report their abuse.<sup>166</sup> Domestic violence victimizations are only reported by fifty-six percent of victims annually in the U.S.<sup>167</sup> In states with mandatory-arrest laws, this percentage can be even lower.<sup>168</sup> On average, about 582,000 domestic violence victimizations go unreported each year.<sup>169</sup> Victims who don't report domestic violence indicate that their decision to do so was informed by factors such as personal privacy, a desire to protect the abuser, their notion that the crime was minor, being financially dependent on the abuser, and fear of retaliation.<sup>170</sup> Accordingly, victims rarely cite just one reason for not reporting; "it's often a grim mosaic of psychological damage, fear, love and dependency."<sup>171</sup>

### C. *Mental Harm*

Research also recognizes that prolonged exposure to domestic violence can lead to mental disorders such as posttraumatic stress disorder (PTSD), depression, and anxiety.<sup>172</sup> An estimated sixty-four percent of those suffering from domestic violence will develop a type of PTSD in their lifetime.<sup>173</sup> It is also rare for victims to

---

165. Johnson & Goodlin-Fahncke, *supra* note 147, at 28.

166. Iyengar, *supra* note 14, at 89 n.14, 97.

167. BRIAN A. REAVES, U.S. DEPT. OF JUSTICE, POLICE RESPONSE TO DOMESTIC VIOLENCE, 2006–2015, at 1 (2017).

168. *Cf.* Iyengar, *supra* note 14, at 89.

169. REAVES, *supra* note 167, at 3.

170. *Id.* at 1.

171. Caitlin Russell, *States Have Different Policies on How They Approach Domestic Violence—and Many Don't Have Any Policies at All*, MUCKROCK (Oct. 18, 2017), <https://www.muckrock.com/news/archives/2017/oct/18/dv-policies/> [<https://perma.cc/L8Y9-3A8C>].

172. Mary Ann Dutton, *Pathways Linking Intimate Partner Violence and Posttraumatic Disorder*, 10 TRAUMA, VIOLENCE & ABUSE 211 (2009).

173. *Id.* at 212.

develop only PTSD.<sup>174</sup> Researchers estimate that forty-eight percent of domestic violence victims also report suffering from depression in conjunction with other psychological disorders.<sup>175</sup> Symptoms of these disorders can be exacerbated by factors such as the severity of the violence, length of exposure to that violence, and by how the victim perceives that violence or their lack of control over the situation.<sup>176</sup>

Mandatory-arrest statutes can exacerbate the severity of psychological disorders such as PTSD. Because these laws can reduce victim-reporting rates, they make it more likely that victim will stay in the abusive relationship for an extended period of time.<sup>177</sup> This extends the time that they will have to suffer violence. Extended exposure to violence can be a factor that worsens the severity of victim's symptoms over time.<sup>178</sup> Because domestic violence is cyclical, there is also a chance that the severity of the violence itself will increase the longer the relationship lasts.<sup>179</sup> If a victim is fearful of reporting, then staying in a relationship may feel like the only option for them. Their mental well-being may be worse off in the long run because any symptoms of psychological disorders will be worsened by any increasing violence.<sup>180</sup>

#### D. *Physical Harm*

Mandatory-arrest laws also increase the physical harm that victims suffer due to domestic violence.<sup>181</sup> While calling the police may end the immediate violence, there is a chance that the

---

174. *Id.*

175. *Id.*

176. MARGARET J. HUGHES & LORING JONES, SAN DIEGO STATE UNIV. SCH. OF SOC. WORK, WOMEN, DOMESTIC VIOLENCE, AND POSTTRAUMATIC STRESS DISORDER (PTSD) 5 (2000).

177. Zlatka Rakovec-Felser, *Domestic Violence and Abuse in Intimate Relationship from Public Health Perspective*, 2 HEALTH PSYCHOL. RES. 62 (2014).

178. *See generally* HUGHES & JONES, *supra* note 176, at 35.

179. *See Understanding Abuse*, U. MICH.: ABUSE HURTS, <http://stopabuse.umich.edu/about/understanding.html> [<https://perma.cc/Y6LP-8ZFZ>] (last visited Feb. 8, 2020).

180. *See generally* HUGHES & JONES, *supra* note 176, at 20.

181. Iyengar, *supra* note 14, at 88.

violence may increase in the future due to the abuser being arrested.<sup>182</sup> In a Huffington Post Article, Nour Naas recounted the story of her mother's exposure to domestic violence.<sup>183</sup> She wrote that the first time that her mother called the police on her father, "he had violently shaken her and had thrown a chair at her."<sup>184</sup> After her father returned from being arrested, he threatened to kill her mother if she ever called them again.<sup>185</sup> The next time the police were called to the house, Nour's mother was already dead in an alley, her father having shot her seven times in the chest.<sup>186</sup>

Situations like this are all too common. Studies indicate that the number of victim deaths due to domestic violence is higher in states with mandatory-arrest laws than states that either have preferred arrest or discretionary-based laws.<sup>187</sup> Some have argued that these laws are successful because deaths due to domestic violence have decreased nationally over the past twenty years.<sup>188</sup> However, researchers found that states with mandatory-arrest laws have a domestic violence homicide rate that is sixty percent higher than states with more discretionary laws.<sup>189</sup> This is likely a direct result of having mandatory-arrest laws on the books. Because victims are less likely to report their abuse, they will be stuck in the cycle of domestic violence for a prolonged period of time.<sup>190</sup> The cycle of domestic violence could then lead to their partner killing them after the violence reaches a certain point.<sup>191</sup>

---

182. *Id.* at 88 n.9.

183. Nour Nass, *When the Only Legal Option for Domestic Violence Victims is to Not Survive*, HUFF. POST (May 8, 2018, 5:46 AM), [https://www.huffingtonpost.com/entry/opinion-naas-domestic-violence-police\\_us\\_5af0645ce4b0c4f19324d6e4](https://www.huffingtonpost.com/entry/opinion-naas-domestic-violence-police_us_5af0645ce4b0c4f19324d6e4) [https://perma.cc/SL6R-8KRS].

184. *Id.*

185. *Id.*

186. *Id.*

187. See Meghan A. Novisky & Robert L. Peralta, *When Women Tell: Intimate Partner Violence and the Factors Related to Police Notification*, 21 VIOLENCE AGAINST WOMEN 65, 67 (2015).

188. Pickert, *supra* note 45.

189. *Id.*; Iyengar, *supra* note 14.

190. Zlatka Rakovec-Felser, *supra* note 177.

191. *Cf.* Iyengar, *supra* note 14, at 88–89; Katie Zezima et al., *Domestic Slayings: Brutal and Foreseeable*, WASH. POST (Dec. 9, 2018),

Traumatic brain injuries can also develop as a side effect of physical abuse. For example, in April 1999, a woman named Carolyn received a call from her sister Paula's husband.<sup>192</sup> This call came after several months of not hearing from her sister.<sup>193</sup> Paula's husband told Carolyn that her sister was hurt and in the hospital.<sup>194</sup> What he didn't tell her was that Paula was in a coma because he had beaten her so badly that doctors had to perform emergency surgery to relieve pressure from her brain.<sup>195</sup> Now Carolyn has legal guardianship over her sister because of the lasting effects from her abuse.<sup>196</sup> In addition to developing a seizure disorder, Paula now has vertigo, memory loss, and cognitive issues that make it impossible for her to live on her own.<sup>197</sup>

Traumatic brain injuries can be common in domestic violence victims who are subjected to extended abuse.<sup>198</sup> One study looked at the prevalence of mild traumatic brain injuries in victims of domestic violence.<sup>199</sup> Out of the fifty-three individuals in the sample, forty-nine (ninety-two percent) indicated their abusers had a history of hitting them in the head or face.<sup>200</sup> Most participants reported "frequent and acute cognitive difficulties, including current problems with being easily distracted; forgetting appointments; having headaches; and having trouble concentrating, paying attention, remembering things, and doing

---

<https://www.washingtonpost.com/graphics/2018/investigations/domestic-violence-murders/> [<https://perma.cc/DH6U-SZ72>].

192. Sarah Kishpaugh, *Insult to Injury: Who's Left Out of the Picture When We Talk About Traumatic Brain Injury?*, BITCH MEDIA (Sept. 6, 2018, 10:20 AM), <https://www.bitchmedia.org/article/traumatic-brain-injury-and-intimate-partner-violence> [<https://perma.cc/RRJ5-3ARV>].

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. Helene Jackson et al., *Traumatic Brain Injury: A Hidden Consequence for Battered Women*, 33 PROF. PSYCHOL.: RES. & PRAC. 39, 39 (2002).

199. *Id.*

200. *Id.* at 41.

more than one thing at a time.”<sup>201</sup> The researchers indicated that these are all symptoms of a mild traumatic brain injury, which can worsen the longer an individual is exposed to the violence.<sup>202</sup> Because many victims are reluctant to call the police in mandatory arrest jurisdictions, this exposure can be longer than necessary.

#### IV. RECOMMENDATIONS

##### A. *Preferential Arrest*

Instead of mandatory arrest, statutes should follow a preferential-arrest model. One of the main problems with mandatory arrest is that it addresses domestic violence strictly as a crime without recognizing its place as a deeper social problem. However, providing for a complete police deference model may cause the system to revert back to the problems that caused jurisdictions to enact mandatory-arrest laws in the first place.

Preferential arrest statutes provide a middle ground between these two extremes. Under a preferential-arrest model, officers are encouraged to arrest an offender in specific circumstances, such as whether the victim was injured, whether a weapon was used, or if the offender violated a restraining order.<sup>203</sup> Even though officers may be encouraged to arrest, they can still decide not to arrest based on the situation at hand.<sup>204</sup> This type of statute is preferable for many reasons. The first is that it allows police to retain discretion.<sup>205</sup> Research has recognized that there are many

---

201. *Id.* at 41–42.

202. *Id.* at 43.

203. MONT. CODE ANN. § 46-6-311 (2)(A) (2017); N.D. CENT. CODE § 14-07.1-10 (2007).

204. MONT. CODE ANN. § 46-6-311 (2)(A) (2017); N.D. CENT. CODE § 14-07.1-10 (2007); ARK. CODE ANN. § 16-81-113 (a)(1)(A) (2007); CAL. PENAL CODE § 13701(B) (2019); MASS. GEN. LAWS ch. 209a § 6 (7) (2010).

205. MONT. CODE ANN. § 46-6-311 (2)(A) (2017); N.D. CENT. CODE § 14-07.1-10 (2007); ARK. CODE ANN. § 16-81-113 (a)(1)(A) (2007); CAL. PENAL CODE § 13701(B) (2019); MASS. GEN. LAWS ch. 209a § 6 (7) (2010).

ways to respond to domestic violence based on victim needs.<sup>206</sup> Victims also respond differently to different policing methods.<sup>207</sup> Under the preferential-arrest mode,, police retain the ability to evaluate different situations based on relevant factors.<sup>208</sup> These statutes also give more weight to the stories of the victim and the suspect.<sup>209</sup> That way, the victim can feel that their story is being heard and the suspect can feel that they are being treated fairly by the system.<sup>210</sup>

Montana’s domestic violence arrest statute reflects this approach.<sup>211</sup> The Montana Code provides that, “[a]rrest is the preferred response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order or other imminent danger to the victim.”<sup>212</sup> The first good component is that the statute indicates that arrest is the “preferred response,” not the mandatory response.<sup>213</sup> The statute also includes several instances that illustrate when arrest is the desired outcome.<sup>214</sup> Finally, it indicates that the jurisdiction has a policy of identifying the primary aggressor in the particular situation.<sup>215</sup> Rather than providing a definition for what a “primary aggressor” is, the statute includes several factors that officers should consider, for

---

206. See ULF HOLMBERG, POLICE INTERVIEWS WITH VICTIMS AND SUSPECTS OF VIOLENT AND SEXUAL CRIMES: INTERVIEWEES’ EXPERIENCES AND INTERVIEW OUTCOMES 19 (2004).

207. *Id.*; see also Pamela Blass Bracher, *Mandatory Arrest for Domestic Violence: The City of Cincinnati’s Simple Solution to a Complex Problem*, 65 U. CIN. L. REV. 155, 179 (1996).

208. Iyengar, *supra* note 14, at 86.

209. See Jennifer R. Hagan, *Can We Lose the Battle and Still Win the War?: The Fight against Domestic Violence after the Death of Title III of the Violence against Women Act*, 50 DEPAUL L. REV. 919, 976, 978 (2001) (discussing the weight of victims’ statements).

210. *Id.*; see also Bracher, *supra* note 207.

211. MONT. CODE ANN. § 46-6-311(2)(a) (2017).

212. *Id.*

213. *Id.*

214. *Id.* (“Arrest is the preferred response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim.”).

215. MONT. CODE ANN. § 46-6-311(2)(b) (2017).

example the prior history of violence between the individuals (if available), injuries, witness statements, and the apparent fear or lack of fear between the parties.<sup>216</sup> This is beneficial to the officers because it allows them to consider a wide range of factors. These factors also make it easier for officers to use their discretion to determine when arrest would be the appropriate response.

Proponents of mandatory arrest may argue that preferential arrest will only exacerbate the problems that caused mandatory arrest statutes to be enacted in the first place. They posit that, with increased discretion, police may not take domestic violence calls seriously and victims will not get the assistance they need.<sup>217</sup> However, research has indicated this attitude is no longer prevalent in police departments as it was previously.<sup>218</sup> Due to exposure of nationwide problems with domestic violence, jurisdictions have increased development of domestic violence training programs.<sup>219</sup> A majority of jurisdictions have written policies and procedures instructing officers how to react during domestic violence calls that promote consistency and best practices.<sup>220</sup>

While police training has improved since mandatory-arrest laws were largely enacted, it must improve further to ensure that preferential arrest laws work as well as possible. Currently, studies have shown that a majority of police academies only offer an average of thirteen hours of domestic violence training.<sup>221</sup> Many other matters, such as operations, firearms, self-defense, and the use of force, have far more hours of training dedicated to

---

216. MONT. CODE ANN. §§ 46-6-311(2)(b)(i) – (vi) (2017).

217. April Paredes et al., *Domestic Violence*, XIX GEO. J OF GENDER & L. 265, 288 (2018).

218. Angela R. Gover et al., *Law Enforcement Officers' Attitudes About Domestic Violence*, 20 VIOLENCE AGAINST WOMEN 1, 2, 8 (2011).

219. See MEG TOWNSEND ET AL., U.S. DEPT. OF JUSTICE, LAW ENFORCEMENT RESPONSE TO DOMESTIC VIOLENCE CALLS FOR SERVICE 35 (2006).

220. *See id.*

221. BRIAN A. REAVES, U.S. DEPT. OF JUSTICE, STATE AND LOCAL LAW ENFORCEMENT TRAINING ACADEMIES 7 (2013), available at <https://www.bjs.gov/content/pub/pdf/slleta13.pdf> [<https://perma.cc/B2UP-V6AK>].

them.<sup>222</sup> In studies, some officers have even reported confusion surrounding the complexities of domestic violence and “doubt in identifying the primary aggressor and probable cause.”<sup>223</sup> Continued training could therefore help officers who respond to these incidents better determine how to act.<sup>224</sup>

Expanding police training is not without its own challenges. Specifically, one of the main problems is inadequate state and federal funding. However, jurisdictions switching over from a mandatory to preferential arrest structure may be able to divert funds normally used for processing suspects to instituting better domestic violence training programs.<sup>225</sup> As police departments will likely have lower arrest rates, they will also likely have lower costs associated with arrest for domestic violence.<sup>226</sup>

### *B. Increased Outreach*

In order to provide a more effective response to domestic violence, police should also provide increased outreach and services to victims. While many services geared towards helping victims exist, many victims do not know how to access those services or may be too scared to seek help.<sup>227</sup> Furthermore, some may criticize the preferential-arrest model because there is a chance that officers may abuse their discretion or encounter a victim that does not want to go through with an arrest or prosecution of their case. Many argue that victims may not know what is best for them and that declining to press charges may exacerbate violence in the future.<sup>228</sup> A way to combat these problems is to increase police outreach to those victims that refuse to press charges or whose abuser is not arrested by the police.

---

222. Gregory B. Morrison, *Police Department and Instructor Perspectives on Pre-service Firearm and Deadly Force Training*, 29 POLICING: AN INT. J. OF POLICE STRATEGIES AND MGMT. 226, 228 (2005).

223. Gover, *supra* note 218, at 14.

224. *Id.* at 5.

225. *See generally* NAT’L CONFERENCE OF STATE LEGISLATURES, *Citation in Lieu of Arrest*, NCSL (Mar. 3, 2019), <http://www.ncsl.org/research/civil-and-criminal-justice/citation-in-lieu-of-arrest.aspx> [<https://perma.cc/MVA8-P52Z>].

226. *Id.*

227. *See* Zlatka Rakovec-Felser, *supra* note 177, at 62–63.

228. *See generally* Jackson, *supra* note 198, at 43–44.



There are many programs that police departments can implement in order to achieve this goal.

One such program is implementing dedicated follow-up protocols for victims of domestic violence. Studies have found that seventy-six percent of agencies report doing follow up interviews with victims of domestic violence after an encounter with the police.<sup>229</sup> Most of the time, the individuals following up are victims' advocates, detectives, or the original responding officer.<sup>230</sup> However, there is little information on how these follow ups are conducted. The best method would likely be an in-person interview rather than a phone call. With an in-person follow up, an officer would better be able to determine how the victim is faring and whether abuse is ongoing.

In 2006, officers in High Point, North Carolina were dispatched to a domestic disturbance between Darin Jackson and his ex-girlfriend Annjanette Lloyd over a set of hair clippers.<sup>231</sup> Six hours later, police received a call from Lloyd's neighbor who had been woken up by Lloyd's eight-year-old son.<sup>232</sup> When the police arrived, he told them that Jackson had broken into the house and stabbed his mom.<sup>233</sup> Police discovered Lloyd lifeless inside the house with sixty-three stab wounds and head trauma.<sup>234</sup> When Jackson was arrested, he seemed to show no remorse.<sup>235</sup> Officers would later become frustrated after learning from a background check that Jackson had been arrested five days earlier for punching Lloyd over a television.<sup>236</sup> Jackson had only spent

---

229. The Police Executive Research Forum, *Police Improve Response to Domestic Violence, But Abuse Often Remains the 'Hidden Crime'*, 29 SUBJECT TO DEBATE 2, 6 (2015) [hereinafter *Police Research Forum*].

230. *Id.*

231. John H. Tucker, *Can Police Prevent Domestic Violence Simply By Telling Offenders to Stop?*, INDY WEEK (Nov. 13, 2013, 4:00 AM), <https://indyweek.com/news/northcarolina/can-police-prevent-domestic-violence-simply-telling-offenders-stop/> [<https://perma.cc/H4XN-F29V>].

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.*

one night in jail and was released.<sup>237</sup> Not only that, but social services had filed several domestic violence reports on the couple throughout their relationship.<sup>238</sup>

It was in response to situations like these that the High Point police department developed a method called “cocooning.”<sup>239</sup> Under this method, victims are encouraged to surround themselves with people who are aware of the domestic violence and know the abuser’s identity.<sup>240</sup> Police then ask for the contact information of individuals within the victim’s security network so that they can contact them in case they are unable to reach the victim directly.<sup>241</sup> Victims are also encouraged to appoint a “proximity informant” or an individual who is aware of their schedule from day to day and is in contact with them.<sup>242</sup> This individual should be able to see when something is out of the ordinary and contact the police if anything is wrong.

This system in High Point has proven effective at saving lives.<sup>243</sup> In one instance, a neighbor saw that the victim’s car was still in the driveway at a time where it was unusual for it to be there.<sup>244</sup> The neighbor was also able to see the victim’s ex-husband’s car parked down the street.<sup>245</sup> Because the neighbor was the victim’s proximity informant, they were able to call the police, who arrived to find the victim’s ex-husband threatening

---

237. *Id.*

238. *Id.*

239. *Police Research Forum, supra* note 229, at 8.

240. *See generally* Marty A. Sumner, *High Point, NC Focuses on Offenders to Deter Domestic Violence*, BATTERED WOMEN’S JUSTICE PRO., <https://www.bwjp.org/resource-center/resource-results/north-carolina-offender-focused-deterrence.html> [<https://perma.cc/9VK6-JKQQ>] (last visited Mar. 16, 2020); John Buntin, *How High Point, N.C., Solved Its Domestic Violence Problem*, GOVERNING (March 2016), <https://www.governing.com/topics/public-justice-safety/gov-domestic-violence-focused-deterrence.html> [<https://perma.cc/55V5-RZB3>].

241. Sumner, *supra* note 240.

242. *Id.*

243. *Police Research Forum, supra* note 229, at 8.

244. *Id.*

245. *Id.*

to kill her.<sup>246</sup> In that case, the police were able to get the suspect to surrender instead of finding another casualty of domestic violence.<sup>247</sup> While this may not be the proper solution in all cases, increased community and police department awareness of where actual threats of domestic violence are can help save lives and keep victims safe.

Other police departments have taken a different approach by designating specific units with a goal of fighting domestic violence within their community.<sup>248</sup> Specifically, the Citrus Heights police department in California developed a program called the Domestic Violence Response Team (“DVRT”).<sup>249</sup> This program involved detectives and patrol officers from the police department along with victims’ advocates from a local victims’ advocacy group.<sup>250</sup> These individuals all train together with the police department to respond to domestic violence calls.<sup>251</sup> The department developed a three-tiered response for officers and advocates to follow when responding to domestic violence.<sup>252</sup> In the first tier, advocates will ride with officers to incidents.<sup>253</sup> In the second tier, advocates will stay on call and respond to an incident if prompted by an officer.<sup>254</sup> In the third tier, incidents are not as severe and do not require an immediate response.<sup>255</sup> Here, advocates will go to the victim’s residence and follow up

---

246. *Id.*

247. *Id.*

248. *Id.*

249. *Id.*; Jacqueline Fox, *Compassion Through Action*, CITRUS HEIGHTS MESSENGER, <http://www.citrusheightsmessenger.com/articles/2018/0221-Compassion-Through-Action/index.php?ID=4499> [<https://perma.cc/HQ5D-2V2E>] (last visited Mar. 17, 2019).

250. Kelly Kultys, *Quick Response: How Domestic Violence Response Team Works to Help Victims*, THE INTELLIGENCE (Feb. 3, 2019, 5:00 AM), <https://www.theintell.com/news/20190203/quick-response-how-domestic-violence-response-team-works-to-help-victims> [<https://perma.cc/7SP5-T95V>].

251. *Id.*; Fox, *supra* note 249.

252. *Police Research Forum*, *supra* note 229, at 8.

253. *Id.*

254. *Id.*

255. *Id.*

with them the next day.<sup>256</sup> For each call, the dispatch officer will determine what tier the call is and inform victim's groups accordingly. In each tier, victims' advocates will supply the victims with information about their services and other information to help the victim deal with domestic violence and hopefully leave the relationship in the future.<sup>257</sup>

This program has been very successful.<sup>258</sup> In Citrus Heights, before the program was enacted, eight percent of victims were using victims' services.<sup>259</sup> Presently, department studies have shown that seventy-two percent of contacted victims follow up and receive services from the local victims' advocacy group.<sup>260</sup> Other police departments across the country have also begun utilizing the DVRT model to help victims within their jurisdictions.<sup>261</sup>

This system is beneficial for many reasons. First, it recognizes that not every instance of domestic violence is the same. By implementing a tiered system, officers and advocates can tailor their response to the situation that they are called to. Second, it brings together the efforts of police departments and victims' advocacy groups. By combining the efforts of both organizations, victims can get support from two different places instead of one. They get both the legal support of the police department and the emotional and medical support of the victims' advocacy groups.

---

256. *Id.*

257. *Id.*

258. *Id.* at 9

259. *Id.*

260. *Id.*

261. See Elizabeth Sauter, *Domestic Violence Response Team*, HILLSBORO, OREGON, <https://www.hillsboro-oregon.gov/departments/police/programs/domestic-violence-response-team> [<https://perma.cc/D5UE-R8LZ>] (last visited Mar. 16, 2019); Libor Jany, *\$100,000 State Grant to Fund New Minneapolis-Based Domestic Violence Pilot Program*, STAR TRIBUNE (Mar. 12, 2019), <http://www.startribune.com/100-000-state-grant-to-fund-new-minneapolis-based-domestic-violence-pilot-program/507060932/> [<https://perma.cc/W7N6-PLA8>]; Mark Heyne, *New Domestic Violence Emergency Response Team*, CINCINNATI PUB. RADIO (Nov. 14, 2017), <https://www.wvxu.org/post/new-domestic-violence-emergency-response-team#stream/0> [<https://perma.cc/9JUB-5DU9>].

Finally, this approach gives victims better access to and understanding of the services available to them. In more traditional jurisdictions, it is the police officers who are supplying victims with information about the places that can provide them support.<sup>262</sup> Then it is left entirely up to the victim to reach out and secure the services themselves.<sup>263</sup> By having a victims' advocate come with the police officer, the victim is more likely to respond to the information and gain a better understanding about how they can use those services than they would from an officer alone.

### CONCLUSION

As more research is done on domestic violence as a whole, jurisdictions across the country have begun to take it seriously as a crime rather than as a private family problem. While these developments are important, law enforcement's reliance on mandatory-arrest laws as a solution is misguided and more harmful to victims overall. Domestic violence is not a crime that can benefit from a "one size fits all" solution. As research has indicated, the psychology behind each domestic abuser can differ along with their responses to different types of police intervention. When arrest is used in isolation, the laws that were meant to help victims instead put them in increasing danger.

This does not mean that arrest should never be used in domestic violence situations. Instead, arrest cannot work as a deterrent to domestic abusers alone in most situations. If arrest is to be used, police departments need to develop further procedures in order to protect victims from any further retributive abuse. The solutions utilized in Citrus Heights and High Point are good examples of police departments implementing new and inventive solutions to the dangerous effects that arrest can have on a domestic violence situation. In these jurisdictions, the police are involved in getting victims help and attempt to stay ahead of any further violence.

While these procedures are a step in the right direction, further research is still needed. There is a dearth of information

---

262. Metropolitan Police Department, *The Police Can Help in Domestic Violation Situations*, DC.GOV, <https://mpdc.dc.gov/page/police-can-help-domestic-violence-situations> [https://perma.cc/EQ2K-WKRF] (last visited March 4, 2020).

263. *Id.*

on how different policing methods fare in different areas. Individuals in low socio-economic areas may not respond to a method that works in a middle-class area. Furthermore, studies should be conducted to see how these methods fare with individuals of different races, genders, and sexual orientations. More information on the subject would help jurisdictions still implementing mandatory-arrest laws to view domestic violence as not just a crime, but also as a complex social issue.

