

State v. Clarke: One year later

Practitioner Comment
by Lisa Growette Bostaph, Ph.D.
Professor, Boise State University

Warrantless arrest in misdemeanor domestic violence (DV) cases has been the backbone of policing response to, and immediate safety for, victims for the past 30 years. There is long-standing, but not universal, research demonstrating its potential for reducing future violence¹. An entire generation of policing professionals has been trained in this practice. Warrantless arrest also results in suspect removal from the home providing a window of time for victims to access services without suspect interference. The Idaho Supreme Court's decision in *Clarke* changed all of that.

Following the *Clarke* decision, we conducted a series of focus group interviews to understand what effect(s) *Clarke* was having on response to DV.² Most jurisdictions were not prepared for the loss of warrantless arrest. Policing agencies are relying on citations or, in cases where they feel they can justify it, arresting under the felony statute. These have other unintended consequences; citations do not remove the suspect from the home and court appearance is not required for up to 21 days, leaving victims in potentially dangerous conditions without safe access to services. Arresting under the felony statute places an undue burden on the suspect with much more serious consequences than a misdemeanor conviction. Arrests can still be made by obtaining an electronic/telephonic warrant from a judge. However, some agencies are spending an additional 45–90 minutes attempting to obtain that warrant and requiring additional officers on scene, posing significant staffing problems for smaller agencies and agencies with higher call volumes. For others, electronic/telephonic warrants simply are unavailable due to either a lack of accessible judges/prosecutors after hours or broadband/cell service in more remote parts of the state. Finally, officers in some agencies were slow to adopt the new warrant processes.

These changes in policing response have other domino effects. Victims anticipate that officers will remove the suspect and protect them in the wake of an assault.³ Officers' inability to easily do that may result in decreased police legitimacy and reduced future reporting. Before *Clarke*, an arrest often resulted in notifying victim services, but with fewer arrests come fewer notifications, limiting victim access to needed services. Victim services report difficulty contacting or accessing victims to offer services because the suspect is still present in the home, potentially increasing the risk level for dangerousness or lethality.

While the *Clarke* decision has had significant and mostly negative effects on response to DV incidents, it also offers Idaho communities the opportunity think creatively and work

¹ Hyunkag Cho & Dina J. Wilke, *Does Police Intervention in Intimate Partner Violence Work? Estimating the Impact of Batterer Arrest in Reducing Revictimization*, 11(2) *ADVANCES IN SOCIAL WORK* 283 (2010).

² LISA M. GROWETTE BOSTAPH ET AL., *EMERGING ISSUES IN VICTIMIZATION: THE IMPACT OF THE CLARKE DECISION ON POLICING'S RESPONSE TO VICTIMIZATION* (Boise State University 2020).

³ *Id.*

collaboratively about how they can best meet the needs of victims while also engaging in evidence-based practices that reduce the likelihood of future violence.