Mandatory Arrest Laws:
A Harmful Solution to Domestic Violence

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Introduction

With approximately 1.3 million women being victimized by an intimate partner each year and one in every four women experiencing domestic violence at some point in her life-time, domestic violence, also referred to as intimate partner violence, is considered a major public health issue (“Domestic Violence Facts”). Even after decades of increased activism and raised awareness by government agencies, the public and many nonprofit organizations, domestic violence still remains a serious problem within the United States.

In order to combat domestic violence, many states passed laws and legislation requiring police to make warrantless arrests in response to all domestic violence calls. Harvard scholar, Radha Iyengar, who has studied domestic violence related homicide and the effects of mandatory arrest policies for domestic violence, suggests that although these policies were created to help victims, the solution of mandatory arrests in domestic violence incidents, led to many negative consequences; putting many women in danger, rather than helping them (Iyengar). Though designed to deter violence by offenders, mandatory arrest laws make women more vulnerable to being arrested themselves, lead abuse in domestic violence disputes to become more severe, and deter women from reporting violence to police (Strout).
The mandatory arrest law, falling under the Violence Against Women Act (VAWA), though originally passed in 1994, has been reauthorized in 2000 and 2005. With the VAWA expiring in 2011, reauthorization of this act, including its mandatory arrest laws, is being advocated and promoted (“Violence Against Women Act Policy Issues”). As long as mandatory arrest laws exist, victims will continue to be affected by their negative consequences.
History of Mandatory Arrest Laws

Before looking at the effects of mandatory arrest laws, it is important to examine how these laws came about and what the intended purposes of these laws were. As it is widely known, domestic violence was not always seen as a public issue in the eyes of the law. It was often considered a private family issue, in which police did not get involved with or take seriously. However, this attitude began to change in the 1980’s because of two major events.

First, in 1984, domestic violence became an issue police were concerned with due to a landmark court case which held police responsible for failing to intervene in a domestic violence incident (Iyengar). In Thurman v. City of Torrington, the U.S. District Court of Connecticut ruled in favor of Tracey Thurman; who, when stabbed and attacked by her husband, sued the city because police ignored her many requests for help against her violent abuser. The court ruled that ‘such inaction on the part of the officers was a denial of the equal protection of the laws’ ("Domestic Violence: The Laws and Laws and the Courts - Landmark Legal Decisions"). This decision caused Connecticut to immediately change its laws on assaults by spouses. This also resulted in the creation of many new policies and increased the number of arrests for domestic violence throughout the country (Iyengar). Police and government officials were starting to become
aware and concerned with domestic violence at this point in time, realizing their inaction was no longer acceptable.

Secondly in 1984, a study was completed on the Minneapolis Police Department to test police responses to domestic violence calls. The results of the Minneapolis Domestic Violence Experience (MDVE), conducted by academic criminologists, Lawrence Sherman and Richard Berk, were reported in the April issue of the American Sociological Review. Sherman and Berk concluded that the level of repeated abuse within domestic violence incidents was reduced most significantly when officers arrested the offender in comparison to when officers counseled both parties involved or sent the offender away from the home for a few hours to cool down and blow off steam; as the table below shows (Sherman, and Berk).

![Figure 1. Percentage of Repeat Violence Over Six Months for Each Police Action](image)

(Iyengar).
This finding led government officials to believe arrest was the best method to deter further violence and to lower the level of abuse in repeat offenses. Ultimately the MDVE caused the Minneapolis Police Department to change their policies concerning domestic violence, allowing officers to make arrests when dealing with domestic violence. Other police departments followed their lead as they began to view domestic violence as a potential issue, leading them to use their discretion when responding to calls for help and intervening in violent situations between intimate partners (Iyengar).

However, after ten years, domestic violence was still on the rise and many police departments were not changing or enforcing their policies on domestic violence. As part of a way to fix this problem, the Violence Against Women Act was passed in 1994, establishing domestic violence as a crime. Through this act, the U.S Attorney General ordered all criminal justice agencies to treat it as a serious crime and to develop and enforce laws dealing with domestic violence. Along with the recognition of domestic violence as a crime, came funding for many domestic violence programs such as shelters, research studies, counseling, and training for law enforcement officials to name a few (“Violence Against Women Act Policy Issues”).
When the VAWA was passed there was an increase in judicial and law enforcement intervention, including the adoption of mandatory arrest laws. Mandatory arrest laws limited police discretion in determining whether or not a crime had been committed, and required police to make an arrest if probable cause suggested violence occurred (Strout). No longer were officers required to witness violence taking place in order to make an arrest, they simply had to have probable cause to believe violence had taken place or was likely to in the future in order to arrest an offender. These laws were enforced to control police behavior and guarantee victims an appropriate response from law enforcement agencies (Iyengar).

The passage of mandatory arrest laws under the VAWA was influenced greatly by many court rulings in domestic dispute cases and the results of the Minneapolis Domestic Violence Experiment conducted by Sherman and Berk, which indicated that arrest was the best method police could use to reduce domestic violence. These laws were intended to control police behavior while deterring future violence and protecting victims; however, mandatory arrest laws had many unintended consequences that were overlooked when the VA-WA was passed. Despite these consequences, mandatory arrest laws are still in place today and have been reinforced by the reauthorization of the VAWA in 2000 and 2005 (“Violence Against Women Act Policy Issues”).
Concerns with MDVE

Although the Minneapolis Domestic Violence Experiment (MDVE) suggested arrests made in domestic violence disputes reduced future violence, the validity of this experiment was later called into question due to a violation in its random assignment. The National Institute of Justice funded many replications of this study as a result of these concerns (Strout). The results of the replicated studies were inconsistent with those of the original study and suggested levels of abuse varied among cities and were only reduced short-term, not long-term (Iyengar).

Also these replicated studies found that arrest was only a deterrent for employed of-fenders; arrest increased abuse among the unemployed (Strout). And according to the Bureau of Justice Statistics, people with lower annual incomes are at a risk three-times higher in experiencing intimate partner violence than people with higher annual incomes, making these individuals more likely to be negatively affected by the MDVE’s inaccurate findings and implications ("Domestic Violence Statistics"). With the MDVE being one of the main reasons many legislators were persuaded to support the VAWA and many states changed their policies for domestic violence and adopted mandatory arrest laws, its inaccuracy led to concerns and called for further examination of the effects these laws have on victims of domestic violence and intimate partner abuse.
Effects of Mandatory Arrest

At the time when mandatory arrest laws started to be adopted, there was indeed a need for change upon legislation within the United States. However, the solution of mandatory arrest laws to help fix the domestic violence problem in the country, has led to serious negative consequences, causing harmful problems for victims of domestic violence. Such consequences include women being arrested for domestic violence, escalations in the level of violence victims face, and reduced reporting by abused victims to police.

Arrests

With mandatory arrest laws requiring officers to make an arrest when responding to a domestic violence call, the officer must assess the situation and determine which party of the dispute is the offender ("RADAR: Respecting Accuracy in Domestic Abuse Report-ing" ). However, since officers are not required to witness the act of violence before making an arrest, many times officers do not know who the actual offender is. This confusion may lead officers to make a dual arrest and take both parties involved in the dispute into custody ("RADAR: Respecting Accuracy in Domestic Abuse Reporting" ). A 1998 study conducted in Los Angeles revealed that three times as many women were being arrested compared to less than twice as many men, due to the use of mandatory arrest laws (Strout).
To reduce the amount of victims being arrested because of dual arrests, many states required officers to receive training to better assess domestic violence situations. States adopted primary aggressor standards, in which officers must make a judgment and determine which party is the aggressor in a dispute (Strout). This gives officers some of the discretion back that they had lost when mandatory arrest laws were enacted; however, it still did not solve the problem. Since officers only need probable cause that violence took place or will in the future, and do not need to actually witness the act, it is difficult for them to determine who the primary aggressor is, especially since both men and women usually use physical force in disputes and both obtain injuries. Even with training, many officers cannot determine which party of a domestic dispute acted in self-defense and which party acted out of aggression ("RADAR: Respecting Accuracy in Domestic Abuse Reporting"). This may lead officers to inaccurately arrest victims of domestic violence, influencing the increase in arrests of female victims, while allowing actual offenders and abusers to remain free.

With an increase in arrests among females, came the unintended consequence of re-victimizing abused women. Often an arrest for victims meant the loss of rights and services abused women may receive. For example, once arrested a woman may lose her victim status and therefore be unable to obtain access to shelters or other assistance programs. She may also lose employment or
even custody of her children if arrested and labeled a primary of-fender (Strout).

Being arrested left women vulnerable and in danger of being re-victimized by both the criminal justice system and their abusers.

*Escalation of Violence*

Mandatory arrest laws also cause violence and abuse in relationships to escalate. Arresting batterers can provoke and cause abusers to become more violent towards their victims. Arrest may cause a backlash towards victims once the batterer is released. This is because once released, the batterer may become angry that he was arrested and then proceed to take his frustrations out on his partner (Iyengar). Though these tougher policies are sup-posed to help victims and protect them, often victims bear the costs of these increased penalties to abusers.

Domestic violence is a reoccurring event and once the offender is released from police custody, it is likely that he will have daily contact with his partner or victim. This con-tact is unsupervised, allowing the offender to once again abuse and threaten his partner, since police are no longer present. Due to the contact between the two after an arrest, it is likely that abuse will continue (Fagan). Also, among men who are violent and abusive, the threat of punishment and arrest is unlikely to have a deterrence effect (Fagan). This is true especially among lower class, unemployed abusers who are not worried about the effects arrest will have on their social ties to the community (Iyengar).
Radha Iyengar completed a study on intimate partner homicide in which she analyzed the FBI Supplementary Homicide Reports from the years 1976 to 2003. Iyengar’s results showed that overall homicide rates have been on a decline (Strout). However, she suggests the decline in domestic violence related homicides is largely due to the multitude of resources that have become available to victims since awareness increased on domestic violence over the past few decades as a result of the VAWA, resources such as battered women shelters and abuse hotlines ("The Protection Battered Spouses Don't Need").

However, the results of Iyengar’s analysis also showed that the homicide level between intimate partners increased about 50% higher in states with mandatory arrest laws than in states without mandatory arrest laws. (The table below shows the increase within states with mandatory arrest laws.) States with mandatory arrest laws saw an overall increase in intimate partner homicide rates, whereas states where officers were not forced to make mandatory arrests did not. These results suggest that mandatory arrest laws for domestic violence increased the homicide rate between intimate partners within the states that adopted these laws (Iyengar).
Reporting

With only about one-quarter of all physical assaults, one-fifth of all rapes, and one-half of all stalking offenses committed against females by intimate partners being reported to the police each year, domestic violence is one of the most chronically underreported crimes ("Domestic Violence Facts"). After mandatory arrest laws were passed and enforced, victims soon realized that calling the police meant someone would certainly be arrested. This realization among victims caused them to contact police even less than they did before ("The Protection Battered Spouses Don't Need").
Due to the psychological and emotional effects of abuse, often times victims of intimate partner violence remain committed to their abuser and do not want him to be arrested or sent to prison once police become involved. Also, victims may fear that if their abusers are arrested and sent home after only a short period of time in police custody, they will be further abused and may even be abused more severely than if the police hadn’t intervened at all (Iyengar). In some cases, victims even fear that they will be arrested themselves, since mandatory arrest laws often lead to dual arrests or arrests of victims instead of their offenders (Strout).

Surveys of abused women reviewed by the agency RADAR (Respecting Accuracy in Domestic Abuse Reporting), revealed that women had higher satisfaction with police actions when officers complied with the women’s requests not to have their abusers arrested. Often women do not want their abusers to be arrested or taken into custody, they just want officers to stabilize the immediate situation and protect them from danger they are facing at that particular moment ("RADAR: Respecting Accuracy in Domestic Abuse Reporting"). However, mandatory arrest laws take away the ability of police officers to comply with women’s requests, making women less comfortable reporting abuse to police. Victims of domestic violence are stripped away of their ability to make decisions and control their own lives by their abusers. Furthermore, mandatory arrest laws re-victimize abused women when police take away their ability to choose whether
or not they want their abusers to be arrested or if they want charges to be dropped. In order to prevent this from occurring, women may decide not to call the police at all (Strout).

While concluding that states with mandatory arrest laws have higher homicide rates than states without mandatory arrest laws, Radha Iyengar also found that this increase in intimate partner homicide is partly due to the effects mandatory arrest policies have on victim reporting (Iyengar). She suggests these laws cause a decrease in reporting, which results in decreased police intervention. The lack of reporting also reduces the deterrent effect mandatory arrest policies were designed to have, leading offenders to abuse their partners more severely and in the end commit more homicides, knowing their victims are reluctant to call the police for help (Strout). Overall, the effects of mandatory arrest laws are dangerous for victims, making them less willing to contact the police for help and report abuse they are experiencing, and in return putting them in even more danger. Mandatory arrest laws do not deter offenders from abusing women; they deter women from reporting abuse (Iyengar).
Current Mandatory Arrest Laws

Since the passage of the Violence Against Women Act (VAWA) in 1994, many states have adopted mandatory arrest laws for domestic violence, requiring police offices to arrest abusers when probable cause suggests violence has occurred or is likely to occur in the future. The VAWA was reauthorized in both 2000 and 2005 with only minimal changes being made to it (“Violence Against Women Act Policy Issues”). One change came in the form of preferred/recommended arrest policies, in which officers were only recommended, not required to make arrests in such situations.

These policies, although suggested by some legislators, have not been adopted by many states, nor have they caused many states to weaken their domestic violence laws. In fact, since the first authorization of the act, six states changed their policies and actually began to require mandatory arrests of domestic violence offenders, increasing the number of states enforcing mandatory arrest laws (Iyengar). Therefore, even the reforms that have taken place within the VAWA have not put an end to mandatory arrest laws and have not stopped the negative consequences of these laws from effecting victims of domestic violence.

Currently 23 states, including the District of Columbia, have mandatory arrest policies for domestic violence. These states are as follow: Alaska, Arizona, Colorado, Connecticut, District of Columbia, Iowa, Kansas, Louisiana, Maine,
Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Virginia, Washington, and Wisconsin (Hirschel). Of the remaining states, six states (Arkansas, California, Massachusetts, Montana, North Dakota, and Tennessee) have recommended or preferred arrest policies, in which arrest of offenders are recommended of police but not absolutely required (Iyengar). The remaining 22 states have discretional arrest provisions, in which officers have full discretion of whether or not to make an arrest. Although no states have changed their policies requiring mandatory arrests since the reauthorization of the VAWA in 2005, only one state, Arkansas, has changed its law from mandatory to preferred arrests, and not a single state has weakened or changed its law from mandatory or preferred arrest to discretionary (Hirschel).
Current Voices for Mandatory Arrest Laws

Much lobbying has not yet been done for or against domestic violence mandatory arrest laws. Support of these laws is controversial because research on the effects of these laws is lacking. When deciding whether or not to support the reauthorization of the Violence Against Women Act, most legislators do not even think about mandatory arrest laws. For example, legislators in Nevada, the most murderous state for women in the nation; a state with mandatory arrest laws for domestic violence, differ in their support for the VAWA. One of Nevada’s legislators, Harry Reid, supports and co-sponsors the reauthorization of the VAWA, whereas Nevada’s other legislator, Dean Heller, does not support it. Neither of these legislators, however, included mandatory arrest laws in their decision whether or not to support the passage of the VAWA (Nevada). In order for legislators and lobbyists to form opinions on this issue, they must be accurately informed with research and evidence on the effects of mandatory arrest laws.

The article, Police Response to Mandatory Arrest Laws, written in the Crime & Delinquency Journal in 1995, suggests that although mandatory arrest laws have gained support as one mechanism for reducing domestic violence, most police departments do not press for pro-arrest or mandatory arrest laws without appropriate training. It also explains that even once departments enact mandatory arrest policies, they are not fully enforced by officers. The majority of police
officers do not show support for mandatory arrest laws. Also, police officers that do enact these laws do so only because failure to arrest bears the risk of being labeled negligent or incompetent (Mignon & Holmes, 1995).

States are divided when it comes to whether or not they support mandatory arrest laws. For example, Paul Clark, author of Mandatory Arrest for Misdemeanor Domestic Violence, argues in this article that Alaska’s mandatory arrest policies for domestic violence are unconstitutional. He expresses that mandatory arrest laws violate the fourth amendment protections by requiring warrantless arrests (Clark, 2010). On the other hand, Machaela Hoctor, author of Domestic Violence as a Crime Against the State, argues there is a need for mandatory arrest laws in the state of California. She suggests criminalization is an inadequate response to domestic violence unless legislators enact laws to facilitate arrest. Hoctor favors abolishing warrant requirements for all domestic violence assaults not observed by officers and advocates for enacting mandatory laws that target primary aggressors in domestic assaults (Hoctor, 1997).

The report, Violence Against Women: Synthesis of Research for Advocacy Organizations, funded by the Department of Justice and published by the National Institute of Justice, acknowledges the controversy over mandatory arrest laws. The report examines the negative effects of mandatory arrest laws but also explains that there are no such findings that provide a rationale for abandoning arrest as a policy
option for domestic violence. This federal report concluded that more empirical research is called for to better address the issue of mandatory arrest laws for domestic violence (Hagan & Postmus, 2003).
Future of Mandatory Arrest Laws

With the VAWA expiring in 2011, reauthorization of the act is now being advocated and promoted, with the Violence Against Women Office at the Department of Justice spending between $30 to 50 million each year on grants to encourage mandatory arrest laws (Iyengar). The VAWA is expected to be reauthorized without meeting any hesitation. If reauthorized, the VAWA will continue to provide victims with helpful support and funds necessary to obtain resources and assistance in response to domestic violence, such as shelters and awareness programs (“Violence Against Women Act Policy Issues”). However, the VA-WA will also continue to provide victims with harmful support from law enforcement in the form of mandatory arrest laws; support that, although is appreciated for its effort to deter violence, only causes more problems for victims of domestic violence.

Domestic violence is a public health issue in the United States that needs to be regulated by legislation; however, researchers, such as Radha Iyengar, suggest mandatory arrest laws, currently falling under the VAWA, are harmful solutions that cause more problems. In order to protect and help the 1.3 million women being affected by domestic violence each year, funding and encouragement towards mandatory arrest laws must be stopped and mandatory arrest laws must be abolished. No longer can the negative consequences caused by mandatory arrest
laws be overlooked when government agencies promote these laws and legislators reauthorize the VAWA. Furthermore, mandatory arrest laws must not exist in the future as a solution to successfully and safely combat domestic violence.
Works Cited


