

Do Mandatory Arrest and No-drop Prosecution Policies Empower Victims of Domestic Violence

A Methods Proposal

By

Candace Haggerty

University of North Carolina at Wilmington

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Introduction

Domestic violence against women is one of the most pervasive yet least recognized human rights abuses in the world. It is a pattern of intimidating behavior intended to exercise power and control over a person in an intimate relationship. Domestic violence includes many forms of abuse-physical, sexual, emotional, and psychological. Physical abuse may include any of the following: pushing, shoving, slapping, hitting, punching, kicking, inflicting serious harm, strangling or assaulting the victim with a weapon. Sexual abuse in an intimate relationship may include any form of forced sex or sexual degradation. Emotional and psychological abuse usually accompanies physical violence or is used alone as a way for the batterer to gain control over the victim.

Statistics from the U.S. Department of Justice (2001) show that from 1976-99 an intimate partner killed one third of all female murder victims. In 1998, the Bureau of Justice's National Crime victimization survey showed that an estimated 876,340 violence victimizations against women by intimate partners had occurred and that women were the victims of intimate partner violence five times more often than men. In North Carolina alone between 1994-97, there were 477 domestic violence homicides, 58% of which were against women (Rosenthal, 1998). Domestic violence in the United States is the leading cause of death and injury to women.

It wasn't until the 1970's that the public, law enforcement officials, and the criminal justice system became aware of domestic violence and the effects it has on its victims. In the past law enforcement officials and the criminal justice system treated domestic violence as a private family matter rather than a crime. In response to this, advocates for women's and victim's rights

began to push for policy changes that would establish domestic violence as a crime rather than a family crisis (cited in Ellis, 1987). Lobbying by these organizations has changed how the criminal justice system now responds to perpetrators and victims of domestic violence (Mills, 1998).

Since then, the criminal justice system has made major changes to accommodate the needs of domestic violence victims. Mandatory arrest and no-drop prosecution policies have been implemented in police departments and criminal justice systems across the nation to address the needs of domestic violence victims. Mandatory arrest policies require police to arrest the batterer when there is probable cause that an assault or battery has occurred or if a restraining order has been violated, regardless of a victim's consent or protestations (cited in Zorza, 1991). Mandatory prosecution removes the burden from the victim to prosecute the batterer and removes the victim's control over the decision to prosecute (Mills, 1998). Mandatory arrest laws compel police officers to make arrest, and no-drop prosecution policies prevent prosecutors from dropping domestic violence charges (cited in Cahn, 1992).

There has been much debate as to whether mandatory policies are effective in empowering victims of domestic violence. Sherman and Berk's (1984) study briefly addressed victim empowerment. However, none of the six-replication studies done by the National Institute of Justice tested the effect of mandatory arrest and no-drop prosecution policies on victim empowerment. Sherman & Berk's (1984) study showed a difference in recidivism rates when victims perceived police concern as compared to recidivism rates when victims did not perceive police concern. They believed that the recidivism rates decreased when victims perceived police interest because the victim felt empowered by the interaction. However, from their available data, Sherman and Berk were unable to test this hypothesis.

Some researchers feel that mandatory arrest and no-drop prosecution policies may actually work against empowering victims of domestic violence because it removes the power from the victim. Victim advocates would argue that battered women are too helpless to make appropriate arrest or prosecution decisions and/or are too fearful to affirmatively decide to press charges (cited in Braun 1996; Hanna, 1996). Mills (1998) suggests that we should continue to investigate whether mandatory arrest and no-drop prosecution policies empower victims of domestic violence, whether it reduces the number of violent incidents and under what circumstances.

Literature Review

Topics in Past Research

In the past, police attitudes were based on the belief that domestic violence was best handled within the family, and it reflected the widely held societal view that “domestic violence was a private family matter rather than a crime” (cited in Goolkasian, 1986, p.3). Mandatory arrest and no-drop prosecution “were introduced as an attempt to make police response to domestic violence more effective” (Hoyle & Sanders, 2000). Mandatory arrest laws compel police officers to make arrests, and no-drop policies prevent prosecutors from dropping domestic violence charges (cited in Cahn, 1992).

However, despite their prevalence and growing acceptance, few policy makers and women’s advocates groups considered the opinions of domestic violence victims when adopting these mandatory policies (Smith, 2000). What do victims of domestic violence want when they call the police and how should the police respond? Do domestic violence victims feel that these mandatory policies are effective in reducing violence by the offender and do these policies help to empower victims? These are just a few of the questions we should be asking when making

decisions about how to handle domestic violence situations. We should continue to examine the victim's preferences and opinions on mandatory arrest and no-drop prosecution policies.

Concepts and Theories in Past Research

Some researchers believe that mandatory policies encourage police, prosecutors, and judges to treat domestic violence as a serious crime and that by relieving the victim from making arrest and prosecution decisions protects them from retaliation by their abuser (Smith, 2000). Other researchers feel that mandatory policies strip victims of the power to make decisions about police involvement, arrest, and prosecution (Smith, 2000). Ford & Regoli (1993) believe that victims who choose to prosecute under a drop-permitted policy may gain more security for themselves and why those who choose to drop the charges may be at a greater risk for increased abuse. They hypothesized that the preventative impact in drop-permitted cases is derived from the victim's personal power to drop the charges and her decision to proceed regardless of her option to drop. Hoyle & Sanders (2000) argues for an approach that empowers victims to make choices, which are less intimidating (by their circumstances) than is usual at the present time. They feel that victims have little agency and that the police and policy makers feel they know what is best for the victim. Mandatory laws and policies restrict the police and prosecutors as well as victims decision-making (Smith, 2000).

Methods Used in Past Research

Smith (2000) administered a survey to victims of domestic violence who resided in battered women's shelters in eight states who agreed to participate in the survey. One hundred surveys were mailed to the Coalitions against Domestic Violence of each state for distribution to

the battered women's shelters within the eight states. Victim advocates in the shelters then distributed the surveys to shelter residents, and the coalition recollected the surveys and mailed them to the author. An actual response rate was unknown because it was impossible to know the number of surveys actually distributed to battered women by victim advocates. Hoyle & Sanders (2000) drew upon fieldwork carried out in the Thames Valley Police area during 1996-97, which was designed to explore some of the issues raised by earlier studies on domestic violence and mandatory policies. Sixty-five women in three Thames Valley Police areas were interviewed. Thirty-two victims were drawn from a sample of all the cases reported during a six-week period in 1996. Twenty-one victims were comprised of women who had reported four or more domestic disputes during the previous 12 months prior to the beginning of the fieldwork. The remaining twelve victims were issued emergency panic alarms and were interviewed to assess the impact of these alarms on their feeling of safety.

Ford & Regoli (1993) conducted a randomized study of 480 men charged with misdemeanor assault of a conjugal partner and assigned the batterer to one of three tracks: (a) pretrial diversion to a counseling program, (b) prosecution to conviction with a recommendation of counseling as a condition of probation, or (c) prosecution to conviction with presumptive sentencing. Sherman & Berk (1984) evaluated 314 cases of misdemeanor assault over a 6-month period and compared recidivism rates. The efficiency of treatment was measured by follow up interviews with the victims throughout the following six months, and police department records of calls to the same address.

Measurements in Past Research

The primary purpose of Smith's (2000) survey was to ask participants a variety of questions concerning their use of legal interventions and opinions. Some of the questions asked of the participants were the following. Do victims support mandatory domestic violence interventions? Do they believe that adoption of mandatory arrest and no-drop policies will affect rates of reporting domestic violence to police or prosecutors? Will the adoption of the mandatory medical reporting laws affect victim's seeking medical attention for their injuries? Do victims believe that the interventions are either beneficial to themselves or others?

Hoyle and Sanders (2000) questioned their participants about their experience of and the police response to previous victimization. Sherman & Berk's (1984) experiment compared the recidivism rates for cases evaluated for misdemeanor assault and placed them in one of three categories: (a) mandatory arrest of batterers, (b) separating the batterer and victims for 8 hours, (c) advising the couple at the police officers discretion. Ford and Regoli (1993) also assigned participants, particularly men charged with misdemeanor assault to one of three groups: (a) pretrial diversion to a counseling program, (b) prosecution to conviction with a recommendation of counseling as a condition of probation, or (c) prosecution to conviction with presumptive sentencing.

Findings in Past Research

Smith (2000) found that the majority of the women in her experiment support the adoption of mandatory laws. Some women believed though that the laws would benefit others rather than themselves. Smith also found that a large percentage of victims reported that mandatory laws actually reduced their chance of reporting future incidents of domestic violence.

Hoyles and Sanders (2000) found that most of the women in their experiment said that the police coming out made no difference to future violence, although sanctions or restrictions imposed by the civil courts sometimes had. They also found out that police intervention in itself has not generally caused physical violence to cease, although it was often a necessary first step for later effective action. However, prosecution sometimes seemed to send a powerful message to the perpetrator. It seems prosecution may work on its own, but is more likely to have a deterrent effect when the victims combines it with complementary actions. Hoyles and Sanders (2000) research indicates that arrest and prosecution can give the victims the confidence to do something about violence, in particular to end the relationship, but it may have little or no effect unless it is coupled with further more directly supportive action.

In the Minneapolis experiment by Sherman and Berk (1984), they found that within the six month follow up period after police intervention; the arrested offenders had the lowest recidivism rates against the same victims. They also found based on their interviews that recidivism rates following mandatory arrest were substantially lower than either physical separation or officer mediation. This research indicated that arrest appeared to prevent repeated domestic violence more effectively than either separation or mediation. They also found that arrest did lead to a short-term deterrent effect.

In their study on mandatory prosecution, Ford and Regoli (1993) found that the type of prosecution policy (no drop versus drop permitted) could affect batterer behavior. They found that when battered victims file charges under a drop permitted policy and do not drop the charges, they are at a lower risk for reabuse following adjudication when compared to victims who were subjected to a mandatory prosecution policy. However, victims in the drop permitted category who chose not to prosecute had the greatest risk of reabuse, even greater than those who

were placed in the no drop prosecution category. These findings show that mandatory policies do help in preventing subsequent abuse by the batterer and that most victims of domestic violence do support these types of policies.

Mills (1998) suggested that continuing to evaluate any causal relationship between prosecution policy and recidivism will inform policy decisions designed to protect women and prevent repeated abuse. She suggests that it will increase our understanding of how best to interrupt the cycles of abuse endured by women and allows us the opportunity to tailor interventions to the particular characteristics of survivors and their needs.

Methods

Research Question

Do mandatory arrest and no-drop prosecution policies empower victims of domestic violence and do they help reduce future violence, and under what circumstances? To answer these questions we need to test the effect of mandatory arrest and no-drop prosecution policies on victim empowerment and the effect of victim empowerment on reabuse.

Hypothesis

We should expect to find that victims who live in domestic violence shelters in communities in North Carolina that have implemented and adopted mandatory arrest and no-drop prosecution policies are more empowered and have a lower repeat of victimization than those that have not implemented and adopted mandatory arrest and no-drop prosecution policies.

Data Collection Method

Using a quasi-experimental design, we could interview 200 victims of domestic violence in communities with domestic violence shelters across the state of North Carolina, where mandatory arrest and no-drop prosecution policies have been implemented (experimental group). We could interview 200 victims of domestic violence in communities with domestic violence shelters across the state of North Carolina, where mandatory arrest and no-drop prosecution policies have not been implemented (control group). Using this experimental design will give us a better understanding of whether mandatory arrest and no-drop prosecution policies actually empower victims of domestic violence. We can look at the experimental group and the control group to determine which group was more empowered by mandatory policies and whether mandatory policies actually reduced future victimization.

Sampling

We will get access to the two groups by locating shelters across the state of North Carolina that will allow us to interview victims of domestic violence located in their shelters. We will inform them that any information collected on participants will be kept anonymous and no names of participants will be collected throughout the study. No information will be disclosed unless the life of the participant is endangered. We will let them know that the reason for collecting this data will be used to help determine if mandatory arrest and no-drop prosecution policies helped to empower victims of domestic violence.

Measurement

An interview could be conducted with the 200 victims of both groups soon after they enter the domestic violence shelter – say in 2-3 days to see what services were provided by the law enforcement officials, their response to the incident, the history of their relationship with the offender and the victims attitude towards law enforcement officials and the criminal justice system. An interview could be conducted with victims in the experimental group after the first scheduled trial date to discuss their experience with the criminal justice system. An interview would not be conducted with victims in the control group after the first scheduled trial date because the offender in this group might not be arrested. A follow up interview could be done 12-18 months later to see if the victims of both groups were victimized or received any kind of repeated abuse, any outside assistance received, court experience and their attitude about law enforcement officials and the criminal justice systems response to the incident. We could also ask them at this time whether they feel that mandatory arrest and no-drop prosecution policies helped them feel empowered. An experiment on empowering victims' of domestic violence could be used to measure whether the victim felt that there ability to choose (or not to choose) to prosecute leads to empowerment. It could measure to see whether victims feel like they have control over the situation when mandatory policies are in place. We could measure to see if mandatory arrest and no-drop prosecution effect reporting of future incidents. We could measure to see whether domestic violence victims feel empowered by such legal intervention, which was initially designed to reduce the number of incidents of violence and reabuse.

Length of Data Collection

We could begin collecting data the day victims enter the domestic violence shelter and could continue to collect the data for 12 to 18 months following the arrest and prosecution of the offender to determine if any further victimization by the offender had occurred.

Ethics

In our research, we promise to keep confidential any information received from the participants throughout the study. Women in domestic violence situations are usually in no condition to make decisions based upon their current situation and often live in fear of retaliation by the abuser. So it will be of utmost importance to keep any information we receive confidential and secure for all parties involved. No information will be disclosed to any party unless the life of the participant is endangered.

Boundaries of Study

One boundary of studying domestic violence victims is the difficulty in retaining participants. Many domestic violence victims leave shelters, move from place to place, and leave not trace of their whereabouts. So doing follow-up interviews after the arrest and prosecution might be difficult because of the participants unknown whereabouts. To address this problem we could ask the victim to provide us with a list of contacts with phone numbers and addresses who might know where we would locate them after the interviews such as parents, friends, or family members.

Anticipated Problems

Some domestic violence victims may not want to be a part of the study for various reasons. They may be afraid of retaliation by the abuser or feel that this type of study will not help them now or in the future. To address this we will let the participants know that any information they give us will be kept strictly confidential and will not be disclosed to another other parties involved.

Getting access to victims of domestic violence is another problem. Many domestic violence shelters do not give out any information on victims of domestic violence because of safety and security reason may refuse to let us study victims of domestic violence because of this. Another problem in dealing with domestic violence and its victims is getting the victims themselves, law enforcement officials, prosecutors, the criminal justice system, and offenders to cooperate in such a study. Many of these individuals do not want to participate in these types of studies because of the unique circumstances surrounding domestic violence. In order to overcome this we may need to write a detailed proposal explaining that this study will help future victims of domestic violence. By allowing us to interview the victims living in their shelter we will better be able to meet and understand the needs of domestic violence victims which will allows us to tailor specific interventions to the needs of domestic violence victims.

References

- Braun, I. (1996, February 5). Spouse battering case arrests. Los Angeles Times, p.B4.
- Bureau of Justice Statistics (2000). Homicide trends in the U.S. Intimate Homicide. Retrieved March 6, 2001, from the World Wide Web:
<http://ojp.usdoj.gov/bjs/homicide/intimates.htm>.
- Cahn, N.R. (1992). Innovative approaches to the prosecution of domestic violence crimes: An overview. In E. Buzawa & C. Buzawa (Eds), Domestic violence: The changing criminal justice response (pp. 161-180). Westport, CT: Auburn House.
- Ellis, D. (1987). Policing wife abuse: The contribution made by “domestic disturbances” to death and injuries among police officers. Journal of Family Violence. 2, 319-333.
- Ford, D.A. & Regoli, MR. (1993). The criminal prosecution of wife assaulters: process, problems, and effects. In N. Zoe Hilton (Ed), Legal responses to wife assault: current trends and evaluation (pp. 127-164). Newbury Park, CA: Sage.
- Goolkasian, G.A. (1986, November). Confronting Domestic Violence: The Role of Criminal Court Judges, National Institute of Justice, Washington, D.C.
- Hanna, C. (1996). No right to choose: Mandated victim participation in domestic violence prosecutions. Harvard Law Review. 109, 1850-1910.
- Hoyles, C. & Sanders, A. (2000). Police Response to Domestic Violence: from Victim Choice to Victim empowerment, British Journal of Criminology, 40(1), 14-36.
- Mills, L. G. (1998). Mandatory arrest and prosecution policies for domestic violence. Criminal Justice and Behavior, 25(3), 306-318.

National Crime Victimization Survey (2000). Special Report: “Intimate partner Violence” (NCJ-178247). Retrieved March 6, 2001, from the World Wide Web:

<http://www.ojp.usdoj.gov/bjs/pub/press/ipv.pr>

Rosenthal, Alan J. (1998). Domestic Violence Related Homicides: Statistical breakdown of male and female victims. Retrieved March 6, 2001, from the World Wide Web:

<http://domesticabuseawareness.org/nc.htm>.

Sherman, L.W., and Berk, R.A. (1984). ‘The Specific Deterrent Effects of Arrest for Domestic Assault’, American Sociological Review, 49, 261-72.

Smith, A. (2000). It’s my decision isn’t it? A research note on battered women’s perceptions of mandatory intervention laws. Violence against Women, 6(12), 1384-1402.

Zorza, J. (1992). Symposium on domestic violence: Criminal law: The criminal law of misdemeanor domestic violence, 1970-1990. Journal of criminal law & criminology. 83, 46-72.