

## UK CENTER FOR RESEARCH ON VIOLENCE AGAINST WOMEN



*A key mission of the Center for Research on Violence Against Women is to ensure that the findings of quality research make it into the hands of advocates. This translation of research to practice ensures that science has an impact on the lives of women and children.*

*In 2010 the Center for Research on Violence Against Women conducted a survey with over 100 rape crisis and domestic violence advocates in Kentucky about what they needed to know from research to help them do their jobs. Advocates identified ten top issues. A series of ten briefs were prepared by the Center to answer the Top Ten Things Advocates Need to Know.*

### TOP TEN THINGS ADVOCATES NEED TO KNOW

1. What services do survivors of rape find most helpful, and what help do they say they need?
2. What type of sex offender is most likely to recommit their crimes? Incest offenders, rapists, or pedophiles?
3. What mental health issues are caused by experiencing intimate partner violence or sexual assault?
4. Do protective orders work? Who violates protective orders the most?
5. **WHAT IS THE IMPACT OF MANDATORY ARREST LAWS ON INTIMATE PARTNER VIOLENCE VICTIMS AND OFFENDERS?**
6. What are the most significant long-term health consequences of chronic sexual or physical violence?
7. What percentage of rape cases gets prosecuted? What are the rates of conviction?
8. Does treatment with intimate partner violence offenders work?
9. Does a report of intimate partner violence or sexual assault by a partner put a woman at risk of losing custody of her children?
10. How do women from different racial/ethnic backgrounds experience intimate partner violence (IPV) or sexual assault? Does race and ethnicity matter?

For more information on the Center for Research on Violence Against Women and to find PDFs of the Top Ten Things Advocates Need To Know Series, visit [www.uky.edu/CRVAW](http://www.uky.edu/CRVAW)

## QUESTION 5:

### WHAT IS THE IMPACT OF MANDATORY ARREST LAWS ON INTIMATE PARTNER VIOLENCE VICTIMS AND OFFENDERS?

#### REPORT AT A GLANCE

- Mandatory arrest refers to any state or local law or police policy which requires a police officer to make an arrest when responding to a domestic violence call if there is probable cause to believe any violence has occurred.
- Mandatory arrest policies have been shown to only slightly lower repeat offending rates, in particular for individuals who are married and employed.
- Arrest may actually increase the risk of retaliation by abusers with a prior history of violence, or among those who are unemployed and have little to lose.
- Mandatory arrest policies may be disempowering for survivors by discouraging them from calling the police. This is particularly true for minority women already weary of the fairness of the criminal justice system.
- Mandatory arrest policies has been shown to result in more women being arrested, often as cases of dual arrest where both offender and survivor are taken into custody.
- No-drop prosecution policies usually mean that the state or city presses assault charges against the domestic violence offender rather than the victim. The survivor's participation is not required.
- Research finds that no-drop policies are costly, not immediately protective, and may even have the opposite effect as intended by discouraging women from reporting future violence.

*In 2010 the Center for Research on Violence Against Women conducted a survey with over 100 rape crisis and domestic violence advocates in Kentucky about what they needed to know from research to help them do their jobs. Advocates identified ten top issues. This brief is one in a series of ten prepared by the Center to answer these top ten research questions.*

#### Introduction

The term "mandatory arrest" refers to any state or local law or police policy which requires a police officer to make an arrest when responding to a domestic violence call if there is probable cause to believe any violence has occurred, regardless of the wishes of the person assaulted. These types of policies are also called pro-arrest policies, or sometimes preferred arrest policies if officers are encouraged but not required to arrest a domestic violence offender. Mandatory arrest laws first appeared in the mid- 1980's immediately following an early domestic violence study called the Minneapolis Domestic Violence Experiment (1). This study found a much lower rate of repeat domestic violence if the police arrested the perpetrator when responding to a domestic violence call, compared to cases where no arrest was made. The Minneapolis study was frequently cited by government reports and national media articles at the time. The study's findings supported the cause of feminist activists who were pressing police departments around the country for not taking domestic violence cases as seriously as other crimes. Importantly, the authors of Minneapolis Experiment study viewed their results as a first look at the effects of arrest, and several new studies in different cities attempting to repeat the results provided strong evidence that arresting a perpetrator did not actually cause a long-term decrease in domestic violence recurrence rates and that the benefits of arrest were modest at best (2, 3). Regardless, there continues to be an on-going debate among policymakers, advocates, and researchers about whether or not mandatory arrest policies can still be helpful to survivors of domestic violence.

This paper reviews some of the scholarship examining the impact of mandatory arrest laws and related policies (i.e., no-drop prosecution policies where victims cannot choose to drop charges).

## *Effects of Mandatory Arrest Policies on Repeat Violence*

The Minneapolis Domestic Violence Experiment (1) was a groundbreaking study which showed a significant reduction in repeat domestic violence after an initial arrest. That study led quickly to development of mandatory arrest policies within police agencies across the country, so much so that within five years, thirteen states had enacted mandatory arrest policies for domestic violence offenders (4, 5). However, later studies building on this research discovered that arrest had different effects in different situations. Several studies found that arrest slightly lowered rates of re-offending, but was not always the best predictor of repeat offending.

An offender with more prior arrests was more likely to engage in repeat violence regardless of whether or not he was arrested (6), but arrest was a better deterrent for individuals who were married or employed, that is, those who had the most to lose by being arrested again (3).

Likewise, individuals with more prior assaults against their partner, and those who were drinking or using drugs at the time of the offense were more likely to re-offend regardless of how police had responded previously (7). Alarming, a few studies found that an arrest actually increased rates of repeat violence if the offender was unemployed or unmarried (8, 3). In sum, while continued evaluation of arrest efficacy is important for victim safety, it has also been noted that the purpose of arrest is, over and above the findings of evaluation research, a societal punishment for criminal conduct (4).

Research also provides evidence that mandatory arrest policies might not be consistently followed across jurisdictions. Across the U.S., the rate of arrest for intimate partner violence reports in places with mandatory arrest policies varied widely from 30%-75% of incidents (9, 10), and one study found that mandatory arrest policies increased the number of reports made to police, but did not significantly change arrest rates or the circumstances under which officers chose to make an arrest (11). In this particular study conducted over a five-year period in a southern city with a 40% African-American population, the survivor's preference was still

the best predictor of whether an arrest was made: if a survivor supported arrest the police arrested the offender 63% of the time, but if the survivor preferred no arrest the offender was only arrested 10% of the time despite the mandatory arrest policy (11).

### WHERE DOES KENTUCKY STAND?(33)

All states in the U.S. permit officers to make a warrantless arrest on domestic violence suspects based on probable cause that an offense occurred. However, Kentucky does not currently have any mandatory arrest laws or no-drop prosecution policies for most offenses. The only exception is that an officer is required by state law to make an arrest when there is probable cause to believe that a violation of a protective order has occurred (KRS 403.760).

- 22 states plus the District of Columbia have mandatory arrest laws requiring an arrest to be made if there is probable cause to believe an assault has occurred, and 33 states have mandatory arrest laws for the violation of a protective order.
- 6 states have preferred arrest laws encouraging officers to make an arrest if there is probable cause to believe an assault has occurred.
- The remaining 22 states have laws which permit officers to make a probable cause arrest at their discretion in domestic violence cases.

One criticism of the police-based mandatory arrest studies is that they do not examine all cases of domestic violence, since many assault cases are not reported to police. Using data from the National Criminal Victimization Survey (NCVS), a survey that asks a random sample of Americans about crimes they have experienced regardless of whether the incidents were reported to police, Felson and colleagues (7) found that arrest had an insignificant effect on reducing repeat assault by an intimate partner. However, reporting to police at all, regardless of whether an arrest was made, did significantly reduce the risk of additional assaults.

Another criticism of mandatory arrest policies has been that mandatory arrest disempowers survivors of abuse by taking away their ability to decide what is best for their own situation. Some scholars argue that mandatory arrest policies can prevent women from calling police for help because an arrest does not seem appropriate for their circumstances (12, 13). This issue is of particular relevance for women of color, since battered African-

American women express concerns about subjecting their partners to a justice system they perceive to be racist and discriminatory (14, 15), and battered immigrant women may fear that calling the police will endanger the immigration status of themselves or their partner (16).

A study in Kentucky examining barriers to help for rural women finds anecdotal evidence to support the disempowerment caused by women's concerns about mandatory arrest: one woman claimed that "women won't call the police because of the new domestic violence law that mandates automatic arrest of both the husband and wife for domestic violence" despite the reality that no such law exists in the state of Kentucky (17).

However, not all evidence suggests that mandatory arrest is disempowering. For example, a survey of women in a shelter found that around 85% were supportive of mandatory arrest policies, and the women surveyed were more likely to feel that mandatory arrest policies reduced the burden of responsibility for survivors (77%), rather than disempowering them (18%) (18).

### *An Unintended Consequence: Dual Arrest*

Research consistently shows across multiple studies that an unintended consequence of mandatory arrest policies is that more women are arrested in domestic violence cases in the places where these laws are enacted. This usually involves what is called a "dual arrest" where both domestic partners are arrested by the responding officer, but increases in female single arrest are also associated with the passage of mandatory arrest laws (9, 10, 19). A national study examining arrest practices in jurisdictions across 19 states found that the overall rate of dual arrest for intimate partner cases was low (1.9%), but varied widely by location (9). For example, a study of 4,138 family court cases in Connecticut one year after implementing mandatory arrest laws found that both the survivor and her abuser had been arrested in 33% of the cases (20). A California study found that while only 5% of felony domestic violence arrests were women in 1987 before pro-arrest policies were enacted, the proportion of

female arrests rose to 18% by 2000 (19). Mandatory arrest policies are linked to this increase, since research finds that more women are being arrested in domestic violence cases, while reported rates of intimate victimization of men has not increased (21).

Arresting women who are reaching out for help for domestic violence can be detrimental to survivors' chances of receiving help. Research finds that battered women who have been incarcerated are significantly less likely to utilize the legal system for help with abuse (24), and that these women may be more likely to cope through substance abuse and become further involved with the criminal justice system (24, 25).

### *Mandatory or No-Drop Prosecution Policies*

Some jurisdictions have taken additional steps to strengthen the criminal justice response to domestic violence by implementing mandatory or "no-drop" prosecution policies, again with mixed results. Mandatory prosecution policies usually mean that the state or city presses assault charges against the domestic violence offender rather than the victim, and thus a survivor's participation is not required for prosecution to proceed.

Research evaluating mandatory prosecution policies identifies some positive impacts of this type of policy. Dutton (26) finds that mandatory prosecution "often leads to more effective court-mandated and monitored batterer-treatment programs" (27). One study found that even some survivors who did not want their own cases prosecuted were generally supportive of no-drop prosecution policies, because the survivor would not have to be responsible for bringing charges against her abuser (28). A study comparing a mandatory prosecution policy in Brooklyn, NY to a victim-supported prosecution policy in the Bronx, NY found at least one major benefit of mandatory prosecution for survivors. Most prosecuted cases were accompanied by the issuance of a protective order, and therefore re-arrest for domestic violence in Brooklyn was more likely to lead to a felony conviction and greater sentence for repeat offenders (28).

Scholars have suggested that to avoid liability for *not* arresting a dangerous perpetrator, police officers may be instructed to arrest all parties and let the legal system sort out the conflict (9, 12, 22, 24).

Research also identifies several weaknesses in the mandatory prosecution approach. In critiquing the study in Brooklyn, NY mentioned in the previous paragraph, Buzawa and Buzawa (27) point out that fully prosecuting every domestic violence case is very expensive for prosecutors and not particularly helpful for persons involved in the case.

Despite the mandatory prosecution policy only 5% of Brooklyn cases ultimately led to a conviction (27, 28). One study in Ohio found that domestic violence offenders who were prosecuted were less likely to be re-arrested than offenders that were not (29), but other evidence suggests that mandatory prosecution may simply "increase likelihood that reoffending will not be reported because victim preferences were not followed" (27, 30, 31).

Moreover, there is some concern that prosecution might not be a fast enough response to protect survivors from further abuse, since one study found that 44% of re-offending occurred before the first case had finished the legal process (32).

## Conclusion

In recent decades, the legal and criminal justice system has made significant strides in recognizing the seriousness of domestic violence, and implementing policies and practices which are intended to help women who are survivors of domestic abuse. However, these well-meaning policies have not always been as effective as advocates have hoped, and under certain circumstances may even make a situation worse for a survivor. Mandatory arrest policies have been shown to only slightly lower repeat offending rates, in particular for individuals who are married and employed. However, arrest may actually increase the risk of retaliation by abusers with a prior history of violence, or among those who are unemployed and have little to lose. Mandatory arrest may not be appropriate for all circumstances, and the presence of mandatory arrest policies may be disempowering for survivors by discouraging them from calling the police. This is particularly true for minority women, who may already have reservations about the

fairness of the criminal justice system. Likewise, the implementation of mandatory arrest policies has been shown by researchers to result in more women being arrested, often as cases of dual arrest where both offender and survivor are taken into custody, despite the fact that evidence does not show an increase of violence by women against intimate men.

Similar to mandatory arrest policies, mandatory or "no-drop" prosecution policies have also been implemented to try to improve the criminal justice response for survivors. Again, this approach has been shown by research to bring both benefits and drawbacks. Mandatory prosecution relieves survivors of the responsibility of pressing charges, and may lead to more offenders receiving treatment, the automatic issuance of protective orders, and greater penalties for repeat incidents of domestic violence. However, no-drop prosecution may also violate the wishes of survivors and prevent them from exercising control of their own situations. Research finds that no-drop policies are costly, not immediately protective, and may even have the opposite effect as intended by discouraging women from reporting future violence due to the ordeal of having a case unsuccessfully prosecuted against her will.

Mandatory arrest and prosecution policies, while a step in the right direction, are far from being a universally helpful and effective way to respond to domestic violence incidents. This is particularly true when considering the empowerment and protection of the survivor who may be forced against her will to participate in the legal system, much in the same way she has been forced against her will to endure violence in her life. While these policies have been helpful to some women, they have been harmful to others. When considering these types of policies, it is important to understand that not all domestic violence situations are the same and that a general policy may not be effective for everyone. Researchers, advocates, and policymakers should seek to make evidence-based decisions that consider all consequences of a proposed policy, including possible unintended consequences, in order to best act to empower and protect survivors.

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