

5-6-1999

Policy Analysis of Wisconsin's Domestic Violence Mandatory Arrest Law

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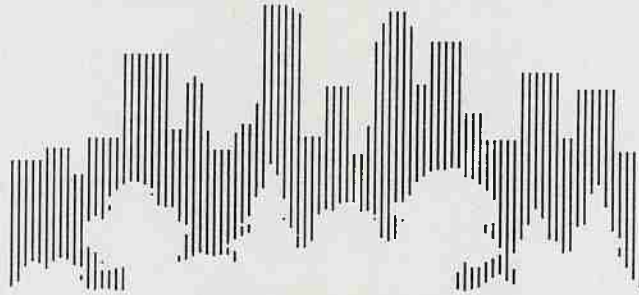
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**MASTERS IN SOCIAL WORK
THESIS**

Holly C. McAbee

**Policy Analysis of Wisconsin's Domestic
Violence Mandatory Arrest Law**

1999

**MSW
Thesis**

Thesis
McAbee

**POLICY ANALYSIS OF WISCONSIN'S DOMESTIC
VIOLENCE MANDATORY ARREST LAW**

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Submitted in partial fulfillment of
the requirement for the degree of
Master of Social Work

AUGSBURG COLLEGE
MINNEAPOLIS, MINNESOTA

MAY 6, 1999

**MASTER OF SOCIAL WORK
AUGSBURG COLLEGE
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CERTIFICATE OF APPROVAL

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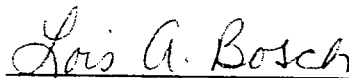
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Date of Oral Presentation: May 6, 1999

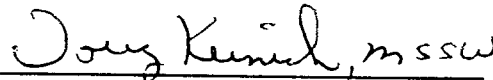
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Thesis Reader, Doug Kunick, M.S.W.

ACKNOWLEDGMENTS

I would like to thank the following individuals for all of their time, patience and expertise throughout the thesis process: My thesis advisor, Sharon Patten and my thesis committee readers, Lois Bosch and Doug Kunick.

ABSTRACT

POLICY ANALYSIS OF WISCONSIN'S DOMESTIC VIOLENCE MANDATORY ARREST LAW

POLICY ANALYSIS

HOLLY C. MCABEE

MAY 6, 1999

Content Description: This exploratory paper is an attempt to examine the factors that led to the criminalization of domestic violence. Beginning with an overview of the history of reform movements to end family violence, the report then reviews the factors that influenced the enactment of mandatory arrest policies in Wisconsin, as well as across the United States. The last sections critically examine existing research on the deterrent effects of arrest. Research suggests that arrest may have some deterrent effects on different offender subgroups, however, may be a relatively weak sanction and deterrent effects may be short term. The greatest point of intervention appears to be in the implementation of the law. Unintended consequences of mandatory arrest policies are identified and alternative approaches are discussed. Existing gaps in the literature are identified and suggestions for future research are provided. Finally, the report addresses the implications of domestic violence has on social work practice.

TABLE OF CONTENTS

CHAPTER 1:	INTRODUCTION.....	1-3
	RESEARCH QUESTIONS.....	2-3
CHAPTER 2:	DESCRIPTION OF POLICY.....	4-8
	HISTORY OF THE PROBLEM.....	8-21
	DEFINITION OF THE PROBLEM.....	21-26
CHAPTER 3:	LITERATURE REVIEW.....	27-42
CHAPTER 4:	POLICY GOALS AND OBJECTIVES.....	43-44
	VALUES AND ASSUMPTIONS OF POLICY.....	44-47
CHAPTER 5:	ASSESSMENT AND ANALYSIS.....	48-65
CHAPTER 6:	RECOMMENDATIONS.....	66-68
	IMPLICATIONS FOR SOCIAL WORK.....	69-70

CHAPTER ONE

INTRODUCTION

The highest probability today of being assaulted, for both men and women, occurs in one's own home (Straus, 1990). One in six Americans experience one or more physical assaults by a spouse each year (Straus & Gelles, 1990). Though domestic violence can and does transcend all economic, social and religious factors of society (Felder & Victor, 1996), the risk of being assaulted falls predominantly on women, rather than their male counterparts.

In the United States today, a woman is beaten by her husband or boyfriend every 15 seconds (FBI, 1991). Each year, approximately 2 million women are severely assaulted by male partners (American Medical Association, 1992). Even more alarming, this means that if every woman victimized by domestic violence in 1989 were to join hands, the string of women would span from New York to Los Angeles and back again (U. S. Senate Judiciary Committee, 1990).

Women are more likely to be killed by their intimate partners than by total strangers (Crowell & Burgess, 1996). Crime data from the FBI indicate that approximately 1500 women are murdered each year by husbands or boyfriends (1993).

Physical injuries resulting from domestic assaults alone cause approximately 100,000 days of hospitalization; 28,700 emergency room visits; and 39,900 visits to a physician (Meyer, 1992). Domestic violence costs the nation \$67 billion dollars annually. The cost to victims is currently estimated at \$450 billion a year (Meyer, Miller, Cohen & Wiersema, 1996).

The statistics that are available on the frequency and severity of domestic violence are likely to reflect under-reporting, as victims are often reluctant to report their intimates to the police (Dutton, 1988; Williams & Hawkins, 1989). It is estimated that less than half of all incidents of violence perpetrated against women by intimates are reported to the police (Bachman, 1994).

In one period alone, from 1967 to 1973, battering men killed 17,500 women and children in the United States (Jones, 1994). The frequency of victims sustaining severe injuries, the chronic, escalating nature of domestic violence and the potential for lethality raise serious questions that warrant extensive investigation. As the criminal justice system can often be the primary vehicle through which victims seek relief and perhaps some semblance of order, the application, development and effectiveness of intervention methods lends itself to insights regarding this socially egregious problem.

The purpose of this study is two-fold. This study will assess and analyze the underlying factors which led to the development of Wisconsin's Mandatory Arrest Law for Domestic Violence and examine the current trends that are occurring and how they impact the effectiveness of the law.

RESEARCH QUESTIONS

What were the underlying factors and intentions underlying the development of mandatory arrest policies for domestic violence? Specifically, what led to the development of Wisconsin's Mandatory Arrest Law? What are the current trends that are occurring in relation to mandatory arrest and how do they impact the effectiveness of the

law in achieving intended goals and objectives?

CHAPTER TWO

DESCRIPTION OF THE POLICY

In part, as an outgrowth of the historical pervasiveness of domestic violence, the Wisconsin Legislature passed 1987 Wisconsin Act 346 on April 21, 1988, effective the 1st day of April, 1989. A copy of Wisconsin Act 346 appears in Appendix A. This law, which became known as Wisconsin's Mandatory Arrest Law for Domestic Violence, provides numerous definitions, as well as various key provisions which will be outlined in this section.

Wisconsin Act 346, now Chapter 968 of the Wisconsin Statutes, separated the crime of domestic violence from that of violence perpetrated by strangers. As defined in Chapter 968, "domestic abuse" is defined to mean any of the following engaged in by an adult person against his or her spouse, former spouse, adult relative, an adult with whom the person resides or formerly resided or against an adult with whom the person has a child in common: intentional infliction of physical pain, physical injury or illness, intentional impairment of physical condition, sexual assault or a physical act that may cause the other person to reasonably fear imminent engagement in conduct described previously [s. 968.075 (1)(a), Stats.].

Under the domestic abuse arrest law, a law enforcement officer must arrest and take a person into custody if the officer has reasonable grounds to believe that the person is committing or has committed domestic abuse and that the person's actions constitute the commission of a crime. In addition, the officer has to have a reasonable basis for believing that continued domestic abuse against the alleged victim is likely and/or there is

evidence of physical injury to the victim [s. 968.075(2)(a), Stats.]. If the law enforcement officer's reasonable grounds for belief that domestic abuse has been committed is based on a report of an alleged domestic abuse incident, the officer is required to make an arrest only if the report is received within 28 days after the incident is alleged to have occurred.

Under the domestic abuse law, each law enforcement agency is required to develop, adopt and implement written policies regarding arrest procedures for domestic abuse incidents. These policies must include, but may not be limited to statements that emphasize that an officer "should arrest" and take a person into custody if the officer has reasonable grounds to believe that the person is committing or has committed domestic abuse and that the person's actions constitute the commission of a crime. When the officer has reasonable grounds to believe that domestic abuse has been committed, the officer does not have to arrest both persons, but should arrest the person whom the officer believes to be the "primary physical aggressor." In determining the primary physical aggressor, the officer is to consider the intent of the section to protect victims, the relative degree of injury or fear inflicted on the persons involved and any history of domestic abuse between the persons, if that history can reasonably be ascertained by the officer. Finally, policies must include a statement that a law enforcement officer's decision as to whether or not to arrest may not be based on either the consent of the victim to any subsequent prosecution, the relationship of the persons involved in the incident or solely upon the absence of visible indications of injury or impairment [s. 968.075(3)(a)1., Stats.]. Under the domestic abuse law, a law enforcement officer is immune from civil and criminal liability arising out of a decision to arrest or not arrest an alleged domestic

abuse offender if the officer's decision is made in a good faith effort to comply with the law [s. 968.075(6m), Stats.].

Law enforcement agency policies must also include a procedure for written reports where no arrest is made. The reports must include a written statement as to why an arrest was not made. The reports must be sent to the district attorney's office in the county where the acts occurred, immediately after the investigation of the incident has been completed, for review to determine whether the person involved in the incident should be charged with the commission of a crime [s. 968.075(4), Stats.].

The mandatory arrest law also provides a "no contact" provision which prohibits contact between the arrested offender and the victim for 72 hours following the arrest, unless the victim signs a written waiver. Under the "no-contact" provision, the arrested person is required to avoid the residence of the alleged victim and, if applicable, any premises temporarily occupied by the alleged victim. The arrested person must also avoid contacting or causing any other person to contact the alleged victim, other than law enforcement officers and attorneys for the arrest person and alleged victim [s.968.075(5)(a) 1., Stats.]. If a law enforcement officer has reason to believe that a person has violated the "no contact" requirements, the officer is required to arrest and take that person into custody [s. 968.075 (5)(a) 2., Stats.].

The arrested person must be informed orally and in writing of the "no contact" provision requirements, the consequences of violating the requirements and the possibility of an increased penalty for domestic abuse crimes committed during the 72 hours after the arrest unless there is a signed waiver. An acknowledgment stating that he

or she has received notice of the requirements, consequences and the increased penalty provisions of the no-contact provision must be signed by the arrested person. Notice must also be given orally and in writing to the arrested person if the victim signs a waiver [s. 968.075(5)(b) 2., Stats.]. In addition, notice of the no contact requirements and the possibility of, procedure for and effect of a waiver of these requirements must also be provided to the victim [s. 968.075(5)(d)., Stats.].

The arrested person's release from custody following a domestic abuse arrest is conditional upon his/her signed agreement to refrain from any threats or acts of domestic abuse against the alleged victim or other person [s. 968.075 (6), Stats.]. The domestic abuse law provides an increased penalty enhancer for any domestic abuse acts which are committed during the 72 hours immediately following an arrest for a domestic abuse incident, regardless of whether or not there has been a waiver signed by the victim. The maximum terms of imprisonment for that crime may be increased by not more than two years. Also, if the domestic abuse offense is a misdemeanor, the increased penalty changes the status of the offense from a misdemeanor to a felony [s. 939.621, Stats.]. The victim of the subsequent domestic abuse crime does not have to be the same individual of the domestic abuse incident that resulted in the arrest.

The law also requires district attorney's offices to develop, adopt and implement written policies encouraging the prosecution of domestic abuse offenses. The policies must include, but not be limited to the following: A policy indicating that a prosecutor's choice not to prosecute a domestic abuse incident should not be based on the absence of visible indications of injury or impairment, upon the victim's consent to any subsequent

prosecution of the other person or upon the relationship of the persons involved in the incident [s. 968.075(7)(a), Stats.]. Further, when any domestic abuse incident is reported to the district attorney's office, including a report from a law enforcement agency where no arrest was made, a charging decision by the district attorney should, absent extraordinary circumstances, be made not later than two weeks after the district attorney has received notice of the incident [s. 968.075(7)(b), Stats.]. District attorney's offices are also required to submit an annual report to the Wisconsin Department of Justice which includes the number of arrests for domestic abuse incidents in their county and the number of subsequent prosecutions and convictions of the persons arrested for domestic abuse incidents [s. 968.075 (9), Stats.].

HISTORY OF THE PROBLEM

Violence, particularly against women, is not a new phenomenon. It seems throughout the eons of time, violence against women has existed. Even dating back to primitive times, stronger males naturally dominated weaker females. Man literally took his wife and ruled her by physical force (Jones, 1994).

The first known laws of marriage were formalized by Romulus, the founder of Rome, around 753 B.C.E. These laws required women to conform to their husbands entirely (Browne, 1987). In addition, the Romans had the most extensive legal definition(s) of a husband's traditional rights over his wife. For example, the husband was the guardian of his wife; as such the rights included the sole power to sell his wife and children into slavery or even put them to death (Pomeroy, 1975).

The Romans were not unique in their beliefs, as permissible violence toward women was also replete throughout the Middle Ages. Literature of this time period confirms the use of violence in the family, as well as, in society as a whole (Gimlin, 1979). The Middle Ages were violent times and wife-beating was rampant. The wife was always subordinate to the husband and husbands continued to have the right to punish their wives in the event of any misdeeds (Langley & Levy, 1977).

Likewise, throughout Europe, the concept that women were property of their husbands and subject to their husband's authority continued to flourish (Langley & Levy, 1977). In essence, the husband was free to do that which he desired with all of the property he owned, including his wife, with little or no interference by anyone in authority.

English common law also deemed a husband and wife legally one entity, with women having no individual rights (Jones, 1994). English men therefore enjoyed this privilege of common law as a legal right, thereby permitting him the right to rule his family. In addition, this English law allowed the husband, if someone other than the husband assaulted his wife, to sue for damages much as he would were his other property injured and/or damaged, such as a prize cow or horse (Smart, 1989). British common law included a specific section regulating wife-beating which merely modified the weapons that a husband could use to legally chastise his wife. The old English law authorized the husband to chastise his wife with any reasonable instrument. The reformed law restricted the definition of a reasonable instrument which could be utilized to be that of "a rod not thicker than his thumb" (Davidson, 1977, p.14).

Likewise, in Wales, common law provided that a husband could beat a disrespectful wife a maximum of three strokes with a rod the length of his forearm and the thickness of his middle finger. In fact, the related legalist, William Blackstone, recorded the English “Rule of Thumb”, enabling a husband to chastise his wife with a whip rattan no bigger than his thumb in order to enforce the restraints of domestic discipline (Davidson, 1978; Langley & Levy, 1977). The law, in essence, construed a curtain of privacy for men surrounding domestic violence, for such acts were only a crime if committed against a man (Tanner, 1990).

The first meaningful reform against family violence in the history of the world was led by the Puritans in the mid 1600's. The Puritans felt that family violence, along with other forms of wicked deeds, threatened to disrupt their divinely sanctioned settlement. They enacted The Body of Liberties in 1641, which was the first law anywhere in the world condoning wife-beating. The law contained a provision that married women should be free from bodily correction or stripes by her husband (Crowell & Burgess, 1996). However, conditions in the American colonies were not demonstrably different than those in Europe and Wales. The legal system of the United States slowly evolved from the British system. Accordingly, so to, were husbands permitted to chastise their wives (Langley & Levy, 1977). Though the American colonies did put forth concerted efforts to protect people from public crime in 1740, the focus was solely on violence that originated outside of the family as wife beating was considered merely a “private”, moral crime (Crowell & Burgess, 1996).

Adaption of the English common law is further evidenced in the United States as

early as 1824 when a Mississippi Supreme Court ruled in Bradley v. State. In essence, the court stated that a husband should be permitted to “moderately chastise” his wife without subjecting himself to prosecutions for assault and battery. This court felt to do otherwise would discredit and shame the parties involved (Pleck, 1987).

The first English law providing penalties for acts of domestic violence was not enacted until 1853. The legislation, entitled, “Act for the Better Prevention of Aggravated Assaults Upon Wives and Children”, or the “Good Wives Rod”, was designed to prevent abuse against women and provided fines and prison terms up to 6 months for men convicted of beating their wives. The legislation was spawned by several factors. The feminist movement of the 1850's exposed abuses that occurred within the home and paved the entrance of women into the public world. Statistics on the number of assaults by men against women and children were published in 1852, reporting that one in six assaults occurred within the family. The article, the first of its kind, was cited in numerous articles throughout London and drew a great deal of public attention. Though flogging was advocated as a result of the findings, the principle was never enforced. At that time, Parliament had already passed a number of animal laws and were apparently compelled to extend the same protection to women and children. In addition, the legislation was enacted in response to great concern about the rising incidents of public crime and it was believed that punishing wife beating would help reduce other crime (Pleck, 1987).

In the United States, however, many states responded to wife beating by permitting the punishment, if not beatings, of wives to go unheeded and often similarly,

the judicial system often avoided taking any position whatsoever. As seen in The State v. Black, a North Carolina Court ruled that wife beating was a matter best left out of the courts. This North Carolina Court concluded that it should not interfere with the beating of a wife unless permanent injuries were inflicted or there was an excess of violence. Without such exceptions, the court concluded it would not invade the domestic forum or go behind the curtain. Seemingly, to further perpetuate this form of control over women, it was suggested that women were too flighty and biologically unable to decide and/or determine the right things to do (Langley & Levy, 1977). Thus, presumably, it was up to the husband to straighten the woman out from time to time and therefore his duty to administer these beatings thus, controlling his property for the presumed benefit and good of his wife.

Similarly, a North Carolina Supreme Court decision in 1874, upheld the husband's right to chastise his wife, stating in essence, that acts of beating a wife with a stick, pulling her hair, choking her, spitting in her face or kicking her to the floor were ancient privileges. The court further added that if no permanent injury had been inflicted, it was better to draw the curtain, shut out the public and leave the parties to forgive and forget. The court preferred to leave the parties to themselves as the best method of inducing them to live together as man and wife (Browne, 1987).

The ending of the Civil War in 1861 increased public consciousness of pain and suffering, generating the evolution of state intervention to protect minority rights and preserve domestic life. Various women's movements began to challenge male dominance. The government, as well as private organizations, began to broaden their

involvement in social and private affairs. Women's rights, particularly in relation to domestic abuse, were also touched by these changing times. A significant change is seen unexpectedly with an Alabama Court Ruling in 1871. The case, Fulgham v. State, which was deemed a landmark decision, determined that men no longer had any right to beat their wives (Pleck, 1987).

The second reform on family violence did not occur until the time period from 1874 to approximately 1890. A violent crime wave in the 1870's made the public fearful and reformers sought to control dangerous and violent lower-class men. During these times, family homicide rates were rising, as well as the number of incidences of family violence (Pleck, 1987). For the first time, the Societies for the Prevention of Cruelty to Children (SPCCs) was established by women's rights activists. SPCC's provided legal services for victims of battering and also initiated an effort on behalf of battered women and victims to regard family violence as a family problem, not a violation of criminal law. Before the founding of SPCC's, there were comparatively few secular or church courts that aided victims of family violence (Crowell & Burgess, 1996).

As the 19th Century came to a close, laws surrounding the treatment of women and children merely continued to evolve with little or no enforcement. By 1880, many states passed legislation restricting the right of men to chastise their wives. Few however, provided any type of punishment for men who exceeded the limits of the law (Pleck, 1987). The legal batterings of women remained permissible if the wife committed some offense deemed to be against the husband's authority (McCue, 1995).

In 1885, wife-beating became a law and order issue buried in arguments about the

best means through which to deter crimes. Politically, the majority favored interventions that deterred violent crime, rather than aiding victims. Though a bill imposing public whippings to punish wife-beaters was passed in three states, very few wife-beaters were ever punished and the whipping post was eventually abolished in all three states (Pleck, 1987).

The early 1900's marked the beginning of the Progressive Era. With it, many reforms regarding the family were instituted, which included the establishment of family courts or domestic relations courts across the United States. In addition, family or domestic relations courts were established in Buffalo, New York, in 1910 which exercised jurisdiction over criminal matters exclusively regarding the family. Although most large U.S. cities set up similar courts by the 1920's, domestic violence continued to be regarded as domestic difficulties rather than a violation of criminal law (Crowell & Burgess, 1996). In fact, the official policy of the courts was to urge reconciliation and discourage separation and divorce (Pleck, 1987).

This approach to family matters continued virtually for the next several decades until violent crime in the 1950's stimulated the "rediscovery" of family violence. As published, "Husband-Wife Homicides in 1956", cited in numerous articles, brought the issue of domestic violence into the forefront. This study, the first of its kind, examined 588 homicides and compared the ratio of wives killed by their husbands to that of their counterparts. It indicated that women were four times more likely to be killed by their husbands than vice versa (Pleck, 1987). The publication came at a time of great social revolution for women. It followed the women's suffrage movement in the early part of

the 20th Century, where women were increasingly becoming liberated from their more traditional Victorian roles. Furthermore, as increasingly large numbers of women had become employed in industry and labor during and following World War II, women's traditional roles changed drastically (Pleck, 1987).

The third major reform to end family violence occurred in the 1960's, which was a time of social turbulence and national reform. Social movements of the time emphasized analyzing the source of the problems that were being addressed (Pleck, 1987). The civil right's movement, along with growth in women's employment and education, led to the rebirth of the women's movement in the 1960's.

The major focus of the 60's was the issue of child abuse (Gil, 1970). Though public attention was focused on the home, the direct focus was placed on violence inflicted on innocent children. Violence was addressed in an extremely oversimplified reform, entitled "The Battered Child Syndrome". The passage of child abuse reporting laws increased public awareness, which in turn, led to an increase in reporting. As the extent of violence within the home unraveled, professionals began to realize that the issue was far more complex than they had originally believed. National surveys indicated that many different forms of violence occurred within the home than previously thought (Pleck, 1987).

Family violence continued to flounder in the shadows, with virtually no public discussion of wife beating from the turn of the century until the mid 1970's. Newspapers did not even begin to report on the occurrence of wife abuse until 1974 (Pleck, 1987). The women's liberation movement rediscovered wife beating in the 1970's and elevated

awareness of such to prominent social concern (Schechter, 1982). Police practices, because of easy documentation, were the first to be scrutinized, followed by social workers and emergency room personnel. Activists pressured the police, social agencies and federal and state government to respond to the problem. The women's movement, which relied on coalitions with representatives who favored other women's rights issues, were successful in passing new state laws (Pleck, 1987).

The Chiswick Center, established in England in 1971, was the first neighborhood center offering advice and support groups to women suffering from abuse, childcare, and a refuge for homeless women. Similar shelters soon became established throughout England, and hence, the "shelter movement" began. Media coverage of the shelter movement between 1975 and 1977 facilitated the growth of the movement in the United States spawning the establishment of the first women's refuge in the United States in St. Paul, Minnesota between 1972-1973 (Pleck, 1987).

The battered women's movement began in England in 1971, with the grassroots movement springing up in the United States in the mid-1970's (Pagelow, 1992). The re-emergence of the women's movement pointed out the huge amount of violence which seemed to be committed by men against women in general (Schechter, 1982). Grassroots efforts by victim advocates and former victims encouraged battered women to speak more openly about their predicament and to demand protection from the police and the courts. Furthermore, emphasis on victimization in the criminal justice system identified family violence as an important, complex phenomenon confronting the police and the courts (Parnas, 1967).

Womens' groups organized and formed special interest groups, including legislative advocacy groups, to begin to demand protection and response from the legal system. The groups, primarily grassroots efforts, were powerful and dedicated to their cause. "Never in American history had there been such an organization of crime victims, denied redress, established a de facto system of protection for themselves and other victims" (Jones, 1994, p.10).

In 1976, in response to what was becoming "standard" police practices, legal aid attorneys filed suit on behalf of battered women, particularly black battered women. The suit, Scott v. Hart, was filed against the police chief of Oakland, California for a breach of the statutory duty to arrest under the California Penal Code. A comprehensive settlement was approved by the court in November of 1978, which provided that no arrest-avoidance policies were to be used. The court retained jurisdiction for 3 years in order to monitor the implementation of the new policy and in response, the police department promised to make arrests when officers had probable cause to believe felonious acts occurred within the context of domestic violence (Felder & Victor, 1996).

Another civil lawsuit filed by 71 battered wives in 1978 against the New York City Police Department accused the police of denying assistance after the women had reported being assaulted by their husbands. As a result of the suit, the police department in an out-of-court-settlement in June of 1979, provided a proviso mandating the arrest of wife beaters when there was reasonable cause to believe the man had committed a crime. Moreover, it was stipulated that the police department would send one or more officers in response to every call from a woman who said her husband had assaulted her and/or

threatened her with assault (Fields, 1977).

Yet another landmark class action suit, Bruno v. Codd, was filed by a group of battered women against the New York Police Commission and the City of New York in 1980 for failure to enforce laws against men who committed domestic abuse. The trial judge ruled that the police, regardless of the severity of the charge, could not automatically decline to make an arrest simply because the assailant was either married or living with the victim (Felder & Victor, 1996).

The numerous civil class-action suits that were filed challenged equal protection rights for battered women. Courts increasingly ruled that battered women were entitled to equal protection and that law enforcement must provide that protection. This increased pressure on the legal system to change policies and recognize that violence perpetrated by intimates was a crime, regardless of whether the parties were married.

Accordingly, the President and Congress declared the elimination of violence in the home to be a national goal in the late 70's. Oregon became the first state to enact legislation mandating arrest in domestic violence cases when it adopted the Family Abuse Prevention Act, which served as a model for the nation. In 1978 Minnesota became the first state to allow probable cause (warrantless) arrest cases in domestic assault. Many states followed suit and enacted laws concerning wife abuse in the late 1970's, many of which repealed spousal immunity from torts and established more effective criminal court procedures. By 1980, all but six states had passed such laws (Crowell & Burgess, 1996).

In 1984, another landmark suit was filed on behalf of Tracey Thurman who was left permanently disfigured and partially paralyzed, resulting from her estranged husband

who repeatedly stabbed her while police officers stood by watching. Tracey sued the city of Torrington and 24 individual officers, advocating that the police department's policy of non-arrest in domestic violence situations was unconstitutional. She claimed a violation of her 14th Amendment rights, which state that no person should be denied the equal protection of the laws. Tracey was awarded \$2.9 million in damages and settled out of court for 1.9 million (Jones, 1994). Though the courts were beginning to respond to the injustices victims of family violence suffered, Tracey's case made it more apparent that law enforcement was still lagging and that more had to be done about this devastating social issue.

The history of reforms against family violence is not unlike that of other social movements in the United States in two ways. First, reforms against family violence have occurred in response to social and political conditions of their time, rather than worsening conditions in the home. The reforms have often been led by highly educated people that have offered various solutions to social problems that did not directly affect them. As with other social movements, the family violence movement has also suffered from limited resources, lack of funding and sparse programs. Reforms against family violence have also suffered from periods of sustained attention followed by periods of apathy (Pleck, 1987).

One aspect, however, has set reforms against family violence apart from other movements and has consistently made this social issue more controversial; the Family Ideal, which are distinct ideas and beliefs about the family, particularly family privacy, conjugal and parental rights and family stability. One of the crucial elements of the

Family Ideal, domestic privacy, was the belief that the family and the home should be distinct and separate institutions from the public world and the rest of society. Domestic privacy was believed to be valuable, yet fragile, therefore government was to refrain from intervening in it. Intervention in the home has historically been viewed as a violation of family intimacy. Even now, arguments can be made that the family has a constitutional right to privacy and that the home is the setting where intimacy can flourish, not in the public setting (Pleck, 1987).

The second element of the Family Ideal has been the belief in conjugal and parental rights. As discussed previously, the husband has historically possessed the right of correction or physical discipline with his wife and children. This right of correction has historically served as justification for assaults by husbands and parents. Even in current times, parents still have the right to physically discipline their children via spanking (Pleck, 1987).

The third element of the Family Ideal is the belief in the preservation of the family. Historically, women were thought to be dependent upon their family for their happiness and have been bound to marriage and their families by a sense of duty and obligation. In earlier times, as the feminist movements began, it was felt that the questioning by women of the sacrifices they had made would threaten family stability (Pleck, 1987).

Reforms against family violence have historically asserted that family violence is not a private issue, but rather a public matter. Reforms have offered remedies, including state interventions in the family, and have challenged the view that the family and

marriage should be preserved at all costs. Reforms have also asserted that women and children have rights and their individual liberties upheld and protected.

The success, or lack thereof, of family violence reforms has depended on how the reformers regarded the Family Ideal. Reforms that fiercely and openly criticized the Ideal were defeated. The most successful reforms have been politically circumspect and presented their remedies as a means of preserving the home. The use of personal influence, new definitions of family violence and reform coalitions have contributed to legislative success. The efforts deemed the most successful were interventions whose top priority was victim safety and those that facilitated and implemented concrete resources. Successful or not, in all the reform periods, small organizations and very dedicated individuals have made family violence a social issue that demanded public attention (Pleck, 1987).

DEFINITION OF THE PROBLEM

The most recent emergence of family violence as a social problem occurred as a result of three major trends in this era. The American family was seen as a tranquil system, often a solace from the rigors of daily life (Pleck, 1987). All three trends challenged this view and each proved the view disillusioned.

The first trend, the discovery of child abuse through medical and sociological research in the mid 60's, focused public attention on violence that occurred in the home (Gil, 1970). National surveys indicated that many different forms of violence occurred within the home than was previously thought (Pleck, 1987). As the extent of violence

within the home unraveled, professionals began to realize that the issue was far more complex than they had originally believed.

Second, the re-emergence of the women's movement helped make the use of physical force as a conflict resolution and control tactic within the home visible (Schechter, 1982). Domestic violence came to be defined as not simply physical violence, but a systematic pattern of domination and control (Pagelow, 1984). Domestic violence, once thought of as a series of isolated blow-ups, emerged as "a process of deliberate intimidation intended to coerce the victim to do the will of the victimizer (Jones, 1994, p.88). It became increasingly more apparent that a great deal of battering was hidden and that batterers utilize a wide range of abusive acts in order to gain control over partners. Acts utilized include psychological, emotional, sexual and physical abuse, which serve to control women through isolation and fear (Pagelow, 1984).

As battered women increasingly presented themselves to grassroots organizations, advocates and lobbying groups defined the range of services needed for victims of family violence as well as the limitations of the existing legal remedies available to victims. Grassroots organizations took a leadership role in initiating legislative change (Schechter, 1982). Advocates of battered women mobilized legal institutions for interventions with symbolic and general deterrent effects. The reforms also included goals of protecting women through the mobilization of extralegal services and the development of referral linkages. The inclusion of legal sanctions in a network of services helped to expand social control, designed to protect women victims. However, for legal institutions, the reforms focused on prioritizing a class of offenders and offenses for adjudication. Goals and

expectations differed in these two perspectives. In pursuing victim protection goals, legal institutions were asked to refocus their efforts on the protection of victims and the coordination of extralegal services.

The third trend occurred as the result of criminal justice research conducted in the 1970's, which identified family violence as an important and complex issue confronting the police and courts (Parnas, 1967). As public awareness of the seriousness of family violence increased, family violence became a public policy issue. Greater demands were placed on the police and the criminal justice system for greater protection for victims and more consistent enforcement of criminal laws (Lerman, 1981).

The Minneapolis Domestic Violence Experiment, a landmark study conducted in 1984, reported arrest to be the most effective way for law enforcement to deter violence in domestic abuse cases. Drawing heavily from the Minneapolis Experiment, the United States Attorney General's Office established a Task Force on Domestic Violence in 1984 to investigate the seriousness of domestic violence. The task force concluded, after studying the "darker side of American life," that the nation had much more work to do in dealing with domestic violence than had been done in the past. The report stated that domestic violence must be seen as a crime and that the legal response to domestic violence must be guided by the nature of the violent acts, not the relationship between the offender and the victim. The task force cautioned that the public must be aware of the nature of the problem as well as their obligations, as citizens, in combating it. The task force recommended developing strong coordinated responses to domestic violence and concluded by stating that if violence is always reported and the legal system always

responds, the deterrent effects will be swift and legal penalties great. Finally, the publication called for law enforcement and criminal justice agencies to recognize family violence as a crime and recommended arrest as the preferred response (Attorney General's Task Force on Domestic Violence, 1984).

As national awareness of family violence increased, individual states began taking steps to investigate the problem on a state level. In Wisconsin, a 1986 report published the following statistics:

- Nationally, 30% of female homicide victims are killed by family members or boyfriends
- Nationally, 70% of all emergency room assault cases are wife beatings; 20% of all emergency room visits by women are attributed to domestic abuse
- Each year an estimated 200,000 Wisconsin women are battered.

Another study cited in the report indicated that nationally, 75% of metropolitan police time is expended to respond to domestic abuse incidents; rural police and sheriff's departments estimate that more than 35% of their time is devoted to responding to such incidents (Wisconsin Governor's Council, et al., 1986).

According to Wisconsin Legislative Representative Shirley Krug, co-author of the mandatory arrest bill in Wisconsin, domestic violence was monitored in Wisconsin for several years following the release of the reports. During the monitoring period, Minnesota enacted the first mandatory arrest policy, with many states following suit. Following the lead of Minnesota, the Milwaukee Police Department enacted a pro-arrest policy, which encouraged arrest in domestic violence assaults, though did not mandate

arrest. The pro-arrest policy was successful in Milwaukee. It was felt that if a pro-arrest policy could be successful in Milwaukee, Wisconsin's largest metropolitan area, the policy could be enacted state wide and be successful (H. McAbee, personal communication July 12, 1998).

1987 Wisconsin Assembly Bill 224 (mandatory arrest), was drafted and sent to usual interest groups, including advocacy groups and law enforcement. An advisory council was appointed by the Governor to examine the implications and potential effects of the proposed bill. Though a majority of law enforcement agencies and programs for battered women throughout the state supported the proposed bill, the bill was met with opposition from the Wisconsin Coalition Against Domestic Violence (WCADV), the strongest lobbying group in Wisconsin for battered women. The WCADV expressed concern that arrest would place victims in greater danger of retaliatory violence from their partners following an arrest. Meetings were held to address concerns regarding the legislation and personnel from Representative Krug's office contacted several states that already had mandatory arrest policies in place. Their investigation found that many of the concerns were simply not the case in states with existing arrest policies (H. McAbee, personal communication June 12, 1998). The Wisconsin Governor's Advisory Council on Domestic Abuse concluded the examination by expressing support of the proposed legislation to members of the Assembly Committee on Criminal Justice and Public Safety (Wisconsin Governor's Council on Domestic Abuse, 1987). When it became apparent that the bill was going to pass, WCADV took a pro-active stance and mobilized resources to influence specific provisions of the legislation (Wanless, 1996).

Various interest groups, supporting and opposing the bill testified before the committee regarding the importance of potential impacts of the legislation.

Representative Shirley Krug, the driving force behind the creation of the legislation and revisions, thereof, provided the following committee testimony:

“ A great deal of recent evidence points to arrest as being the course of action most likely to reduce repeat (domestic abuse offenses)...” (Wisconsin Legislative Council [WLC], 1996, p.3)

“Don’t the police always arrest people suspected of violent assaults? The answer is that, sadly, they don’t, especially when the assault takes place in the home/family setting. A man’s home is his castle has been the rule of tradition. In many places, this tradition takes precedence when a law enforcement officer is deciding whether or not to arrest the perpetrator of a violent assault” (WLC, 1996, pg. 3-4).

“The traditional alternatives to arrest, counseling the parties or separating them temporarily have been shown to be far less effective in reducing repeat assaults. The argument that arresting an abuser increases the chance that violent retribution will be directed at the victim is simply not supported by the evidence” (WLC, 1996, p.4).

In response to the social problem of domestic violence, the domestic abuse and prosecution law was created by 1987 WI Act 346. Legislation was introduced in the 1989 and 1995 legislative sessions in response to suggestions for improving the administration and implementation of the law. The legislation, 1989 AB 249 and 1995 AB 229, was enacted as 1989 WI Act 293 which became effective May 8, 1990 and WI Act 304 which became effective on May 16, 1996 (WLC, 1996).

CHAPTER THREE

LITERATURE REVIEW

Historically, theories explaining the phenomenon of violence against intimates have attributed causal factors of violence to various variables. Though each individual theory is insufficient on its own and does not provide an integrated framework for understanding the phenomenon, it is imperative to examine the interplay of existing theories within the context of the dynamics of domestic violence (Fagan, 1996).

Individual models of violence, often characteristic of early research approaches, attributed domestic violence as resulting from individual pathology (McKenry, Julian & Gazazzi, 1995). More recent individual models attribute violent behavior primarily to individual characteristics of the perpetrator and to a lesser degree, to the victim (Dwyer, Smokowski, Bricout & Wodarski, 1995). Individual personality traits or disorders that have been suggested to play a role in the etiology of domestic violence include impulsivity, suspicion of others, antisocial behavior, compulsivity, low self-esteem, mental illness, substance abuse and the ability to ascribe/internalize blame (O'Leary, 1993). In addition, psychological disorders are known to be significantly present in men who are involved in higher levels of physical aggression than men in the general population (McKenry, et al., 1995). Though individual models of violence have been valuable in explaining domestic violence, they have not proven useful in identifying risk factors associated with violence (Dwyer, et al., 1995).

Sociological models of violence, on the other hand, attribute violence to social programming, rather than biological programming. Sociological models do not focus on

single characteristics of social life, but rather, the examination of social structures (Dwyer, et al., 1995), utilizing family dynamics to explain how social structures allow violence among partners. Specifically, the model emphasizes family structure, stress, transmission of violence from one generation to the next, and family interactional patterns (Gelles, 1993). While sociological models are valuable for their diversity, they fail to focus on one single aspect of social life and have limited use in identifying solutions (Dwyer, et. al., 1995).

The feminist theory of violence examines factors specific to violence perpetrated against women by male partners (Dobash & Dobash, 1979; Martin, 1981; Roy, 1976; Walker, 1984). This perspective emphasizes the historical tradition of patriarchal family, not as a discrete, measurable variable, but a multidimensional, complex system of male power in society. Patriarchy has two components; a structure wherein men have more power and privilege than women and one that exists within an ideology that legitimized this arrangement (Smith, 1990). Feminist theory suggests that husbands who subscribe to familial patriarchy ideals are more likely to assault their wives than husbands who do not subscribe to such ideals (Smith, 1990). Though feminist scholars are increasingly attributing violence against women to a patriarchal structure, the perspective provides only a single-variable explanation and does not offer an integrated framework for understanding violence (Dwyer, et al., 1995).

The emphasis of research conducted in the 1970's and 1980's stressed the deterrent value of police actions. As society became increasingly more conservative, focus shifted toward punitive solutions for offenders (Buzawa & Buzawa, 1993). Deterrence theory

provided the theoretical framework that facilitated the revolution of the criminalization of domestic violence.

The concept of general deterrence has been utilized to theorize the effectiveness of legal sanctions as a form of crime control. Deterrence theory is based on the belief that human behavior is, to some degree, rational. Deterrence is conceptualized as a psychological process that an individual goes through before committing a crime. It is believed that individuals weigh the costs and benefits of committing the act in comparison to other alternative actions. The greater the individual's perception of certain, swift and/or severe legal sanctions, the greater the perceived cost and thus, the greater the chances of deterrence (Williams & Hawkins, 1986).

General deterrence theory distinguishes between formal and informal constraints. Informal sanctions are derived from social sanctions, such as the influence of arrest upon one's marriage, employment or social standing, while the possibility of arrest is considered a formal constraint (Sherman, 1992). Arrest is theorized to have specific deterrent effects, thus reducing recidivism in punished individuals. It is further theorized that arrest acts as a strong deterrent only among those who suffer informal social sanctions, such as feelings of embarrassment and shame resulting from the act of arrest (Herzberger, 1996).

One study explored the influence of perceptions of formal and informal sanctions on arrests for domestic violence. Results indicated that various indirect costs contributed to a general sense of fear about arrest. However, it is unclear whether an actual arrest would produce the same findings as the results were based on men's perceptions of

“hypothetical” arrest for domestic violence (William & Hawkins, 1989).

Another study attempted to identify conditions of individual consistency. Results did report a negative association between perceived certainty and self-reported involvement in crime, but little evidence that perceived certainty had such an effect (Paternoster, Saltzman, Waldo & Chiricos, 1983). Only one study reported evidence of significant negative associations between perceived severity of sanctions and crime (Grasmick & Bryjak, 1980).

There have been many criticisms of deterrence theories. The meaning of deterrent effect within the context of domestic violence has failed to be clearly defined (Williams & Hawkins, 1992). Recidivism has been narrowly defined, which has led to a narrow perspective on the effects of various interventions. Studies have considered domestic violence one phenomenon, rather than a complex issue with different motivational factors. Further, deterrence theories typically have not examined the effects of important factors, such as service provisions to victims (McCord, 1992). Finally, the reported research is academic, difficult to understand and is less accessible to clinicians and victim advocates (Lerman, 1992).

General deterrence theory, as other theories, is prone to problems of measurement and interaction. Most measures have vaguely distinguished between perceptions of certainty and severity, assuming that evaluation of severity is constant across respondents (Grasmick & Bryjak, 1980). In addition, most general deterrence studies have utilized cross-sectional designs, and correlated past crime involvement with current perceptions of sanctions. Sensitivity in research designs to the problem of temporal order has raised

serious questions about the accuracy of recall and correspondence or lack thereof, between what people say they will do and what they actually do (Williams & Hawkins, 1986).

Current research has attempted to broaden the concept of deterrence to include formal sanctions augmented by the imposition of informal sanctions. In this broadened concept, informal sanctions are categorized as stigma, attachment cost and commitment costs, with commitment costs arising from the individual's stake in conformity. However, few studies have tested this broadened concept of deterrence as it applies to domestic violence (Williams & Hawkins, 1986).

There have been numerous theoretical frameworks utilized to develop research models for domestic violence, all of which have been specific to diverse interest groups. Although violence in the home has been recognized as a societal issue, research conducted, as well as programs and policies that have been developed, has not followed a unified approach. For example, family violence research which identified the causes and remedies within individual perpetrators has had a strong value to criminal justice policy development, such that research on offenders has greater use in a system geared toward sanctioning and control of offenders. Research approaches based on feminist theories, such as emotional terror and explanations of violence based on a patriarchal social structure, have had little use in the criminal justice system where codified definitions determine prosecution (Fagan, 1988). Further, distinctions between physical and non-physical violence can lead to very different conclusions about behavioral change and the impact on law reform (Fagan & Wexler, 1985). Other family violence research has

focused on identifying explanations as well as interventions that will decrease the risk of reoccurrence for victims (Fagan, 1988).

The result has been many parallel approaches of addressing interventions to end domestic violence, with each utilizing different research models and bodies of knowledge to foster its approach. Research conducted in one paradigm has had limited use in other social arenas and in essence, provided only a portion of the big picture. Research knowledge which has fit within existing social organizations and structure of the criminal justice system has led to significant changes in both policy and practice. However, knowledge that has not fit has been excluded from policy development, which has led to significant gaps in policy development, particularly in victim safety (Fagan, 1988).

As research increasingly has emphasized the deterrent effects of police interventions, focus has shifted to law enforcement's response to domestic violence. Historically, law enforcement has been the only social agency available to victims of violence all hours of the night and day (Hutchison, Hirschel & Pesackis, 1994). However, the most frequent complaints of victims have been that police did little or nothing helpful when and if they responded to domestic calls (Martin, 1976; Pagelow, 1980). Though arrest was rare, occurring in only 3 to 27% of all domestic disturbances (Elk & Johnson, 1989; Sherman & Berk, 1984), research indicates that law enforcement receives more calls reporting domestic violence than any other type of crime (Browne, 1995).

The traditional police response to domestic incidents was one of temporary order maintenance. This approach was advocated by the police command and followed by line personnel (Davis & Taylor, 1997). Domestic violence calls were often assigned low

priority (Lerman, 1983, 1984; Parnas, 1971; U.S. Commission on Civil Rights, 1982) and arrest was avoided except in cases resulting in severe injury (Martin, 1978). In essence, law enforcement would respond reluctantly to calls, attempt to restore order and peace between disputants and leave (Hutchison et al., 1994).

The traditional avoidance response of law enforcement has been attributed to several factors. First, violence within the home was considered to be a private, family matter (Davis & Taylor, 1997). Historically, the closer the relationship between victim and offender, the least likely an arrest would be made (Buzawa & Buzawa, 1993). In fact, previous research indicates that the majority of officers believed that they had no legitimate role in domestic disturbances (Breci & Simmons, 1987; Homant & Kennedy, 1985; Walter, 1981). Intervening in family disputes was not regarded as “real police work” by law enforcement, but rather, more as social work, hence undesirable (Buzawa & Buzawa, 1990; Parnas, 1971).

In addition, officers learned that victims often give incomplete and untruthful accounts of the situation and officers learned to be wary and skeptical (Buzawa & Buzawa, 1993). Female victims were often perceived to be uncooperative and officers felt that taking formal action against the abuser would be a waste of time because the victim would be unlikely to follow through with prosecution (Parnas, 1967; U. S. Commission on Civil Rights, 1982). Further concern existed that taking action against the abuser would negatively effect the rest of the family that was financially dependent on the abuser (Parnas, 1967).

Prior to mandatory arrest, law enforcement’s role was limited in responding to

domestic disturbances by arrest procedures, or lack thereof, and their individual application of non-formalized value judgments. Respectively, arrest could be made for acts that occurred in the officers' presence and those incidents where officers believe the acts were serious enough to warrant a battery charge. Inevitably, however, principally spurred by the frequency and severity of violent domestic confrontations, law enforcement also groped for direction. In the absence of clear prolongations, domestic violence cases were often handled differently than cases which, under the same circumstances, would be deemed a crime. Therefore, law enforcement was often placed in an extremely difficult situation.

During the 1960's, the traditional order-maintenance approach in dealing with domestic violence was revised to include a more professional twist. Following recommendations set forth by the Attorney General's Task Force on Family Violence, police practices were revised to include mediation and crisis intervention. These methods were seen as more effective in dealing with families (Davis & Taylor, 1997). However, reservations developed in the 70's, due in part to difficulties of mediating between parties that are not of equal power status within the relationship. In addition, frequently when law enforcement left the residence, the husband would resume beating, leaving the wife frustrated and defenseless.

As information and knowledge was accumulated, society and its enforcers began to get important facts. Research indicated that repeated lectures and/or gentle advice given by police officers to batterers had no effect on domestic violence (Langley & Levy, 1977). The reservations surrounding mediation, coupled with research and infringement

of victim's right by the failure of police to enforce the law, led to the advocacy of arrest (Hutchison et al., 1994).

The revolution of the criminalization of domestic violence can be attributed to numerous factors previously discussed. The implementation of mandatory arrest policies for domestic assaults has been attributed to the landmark 1984 publication of the Minneapolis Domestic Violence Experiment. The study, funded by the National Institute of Justice, was conducted by the Police Foundation, and the first controlled, randomized test of the effectiveness of arrest for any offense based on general deterrence theory (Schmidt & Sherman, 1993). The Minneapolis Domestic Violence Experiment was designed as a test of specific deterrence theory. Police responses were randomly assigned and included arrest, some form of advice or mediation, or separation. The effectiveness of the different police interventions was measured by criminal justice data on the suspects, which indicated if law enforcement was called back out to the residence, as well as if a subsequent arrest was made. Victim data, which were designed to measure the frequency and seriousness of violence after each intervention, were collected in initial face to face interviews, as well as telephone interviews every 2 weeks for 24 weeks (Sherman & Berk, 1984).

Results indicated that domestic violence cases most frequently responded to by law enforcement were disproportionately unmarried couples with lower than average educational levels, disproportionately minority or mixed race and those who had prior violent incidents with police interventions (Sherman & Berk, 1984). Further, arrest data indicated that separation of the two parties produced the highest recidivism, arrest

produced the lowest and giving advice or mediating were indistinguishable from the other two effects. Arrest data also indicated that 26% of those separated committed a repeat assault, compared to 13% of those arrested. All of the police interventions effectively stopped the violence for a 24 hour period following the reunion of the couples. The authors concluded that arrest intervention “certainly did not make things worse and may well have made things better” (Sherman & Berk, 1984, p.269).

Despite the promising results of the research, the study had several limitations. First, the design only applied to simple (misdemeanor) domestic assaults, where both the suspect and victim were present when law enforcement arrived. Cases of life-threatening attacks of serious injuries labeled as felonies (aggravated assault) were excluded from the design for ethical reasons (Sherman & Berk, 1984).

Second, there was deviation from the initial design due to the likelihood that many officers failed to fully follow the experimental design. This is illustrated as follows: 99% of the suspects targeted for arrest were arrested, only 78% of those to receive mediation or advice did and only 73% of those to be sent away from the residence were actually sent away. Officer deviation from the design was also found in victim outcome measures in that follow-up efforts with victims only had a 62% completion rate. The officers involved in the study reported that they were less likely during the follow-up period to record an incident if the offender was not present at the scene. In terms of direct officer treatment interventions, the content of the advice or separation interventions is unclear.

Further, in terms of the research design itself, the outcome measures had uncertain construct validity as the measures more than likely reflect a large number of repeat

offenses. The authors point out that the impact for arrest in the outcome measure may be a reluctance on the part of victims to call the police as police intervention may have been undesirable. Finally, generalizability is questionable as Minneapolis is not representative of all urban areas (Sherman & Berk, 1984).

The authors reported no evidence that deterrence will work in general, but their findings indicated that swift imposition of a sanction (temporary incarceration) may deter male offenders in domestic assault cases. The authors clearly stated that they did not favor requiring arrests in all misdemeanor assault cases, but rather, favored a presumption of arrest policy; arrest should be made unless there are clear reasons why arrest would be counterproductive. Despite the authors' cautioning against mandatory arrest policies until further studies were conducted (Sherman & Berk, 1984), within 8 years, legislatures in 15 states and the District of Columbia moved to enact laws requiring police to arrest in all probable cause incidents of domestic violence (Schmidt & Sherman, 1993).

The results of the Minneapolis Domestic Abuse Experiment raised several important questions. Primarily, could law enforcement intervention, specifically arrest, be effective in dealing with domestic abuse? The results also warranted investigation into alternative interventions that could bring immediate relief (Schmidt & Sherman, 1993). In an effort to find support, or lack thereof, to these questions, and partly due to internal and external validity problems of the Minneapolis Experiment, the National Justice Institute funded six replication studies of the Minneapolis Experiment, which produced alarming results (Gelles, 1993).

The replication study in Omaha, Nebraska, also utilized a design model where

police utilized mediation, separation or arrest interventions when responding to domestic calls. Data were collected through official police data for new and subsequent arrest and via victim reported data through interviews at the end of the first week of the incident, and again 6 months later. Data specifically focused on three forms of repeated violence including: fear of injury, pushing-hitting and physical injury. Results indicated that the arrest of suspects and the immediate period of custody associated with arrest were not deterrent to continued violence as compared to separation, mediation. (Dunford, Huizinga & Elliot, 1990).

The replication study in Charlotte, North Carolina expanded the design model of the Minneapolis Experiment and included the issuance of arrest warrants in cases where suspects were not present when police arrived at the scene (Dunford et al., 1990). The study utilized city-wide sampling and employed the entire patrol division 24 hours a day. Data collected included victim reports based on interviews, as well as the number of new arrests and complaints for crimes committed as found in official police records. Results indicated that though arrest decreased the likelihood of continued violence within the 30 days following an arrest, violence was found to escalate over time and arrest was found to place victims in greater danger of subsequent assaults. Further, results from official records and victim interviews indicated that arrest and the immediate period of incarceration were not deterrent to subsequent violence. Suspects that were not on the scene when police arrived were issued arrest warrants, which resulted in lower rates of prevalence and frequency of repeat offending (Dunford et al., 1990).

Another replication study, conducted in Colorado Springs, Colorado, attempted to

contrast arrest vs. non-arrest with immediate professional counseling at police headquarters or the issuance of an emergency protection order for victims. Data were collected via victim reports from interviews and new offenses as recorded by police records. When the victim interviews were analyzed, a strong deterrent effect of arrest was found on subsequent assaults. However, analysis of official police records showed arrest had no deterrent effect on subsequent arrests (Berk, Campbell, Klap & Western, 1992).

The Metro-Dade replication experiment also utilized victim interviews and official police records to measure the deterrent effect of arrest. Victim interviews completed within weeks of the incident indicated that arrest was associated with reduction in the occurrence of and subsequent assaults by the same suspect on the same victim. Victim interviews conducted 6 months after the incident revealed a significant deterrent effect to be attributed to arrest. When analyzing official police data, arrest was only marginally short of significance. Further, the deterrent effect of arrest on subsequent assaults, as reported by officers after responding to calls, was not significant (Pate & Hamilton, 1992).

Attempts to replicate the study in Milwaukee, Wisconsin, utilized an expanded experimental design which included three interventions; arrest (11 hours in custody), short arrest (3 hours in custody) and no arrest (which included a standard police warning). The effectiveness of the interventions was measured from data collected in victim interviews and arrest data from law enforcement. Results indicated that arrest was not associated with the prevalence or rate of future violence. However, arrest did delay the average time until the next domestic incident. Further, arrest did interact with

employment status; the employed were less likely than the unemployed to recidivate.

A second analysis of the results of the Milwaukee data provided more controversial results. Short arrest (3 hours) was found to decrease the chance of repeat violence and was a greater deterrent to violence than no arrest, however, over the long run, short arrest actually increased violence rates (Sherman, et al., 1990).

The Metro-Dade Spouse Assault Experiment, which compared the effects of arrest versus non-arrest, was also conducted in an effort to replicate the results of the Minneapolis Experiment. The experiment, conducted from 1987 through 1989, utilized a randomized procedure to assign cases involving misdemeanor batteries. The research design included the following criteria for arrest; probable cause for misdemeanor spouse battery, no felony, victim and suspect both on the scene when law enforcement arrived, victim was not in immediate danger, victim was a female over the age of 18, officer was not assaulted by the suspect or victim and there were no outstanding warrants, injunctions or criminal protective orders for victims or suspects. Follow-up data included reports of victim interview data, obtained a few days after the incident, again at 6 months and new offenses recorded in police records. Results indicated that arrest had a significant deterrent effect among employed suspects, whereas, arrest led to significant increases in subsequent assaults among unemployed suspects. There were no differences with respect to marital status (Schmidt & Sherman, 1993).

The results of these experiments reported both deterrent and backfiring effects of arrest (Schmidt & Sherman, 1993). One conclusion following the replication studies was that arrest does not necessarily fail to work, but rather, arrest for the purpose of deterrence

may not always work (Buzawa & Buzawa, 1993). Arrest seemed to deter violence of employed abusers, but increased violence for abusers who were not employed. Arrest also deterred further violence with whites and Hispanics, but did not deter further violence among blacks. In terms of escalating violence, arrest was found to escalate violence among Black suspects in some cities compared to suspects of other races. The different results in different cities suggest that arrest has different effects on various suspects. A conclusion of the replication studies is that arrest does not necessarily fail to work, but arrest for the purposes of deterrence may not always work. The key may not be in the arrest itself, but the act of bringing the offender into the criminal justice system regardless of the means (Buzawa, 1990).

The only study conducted in Wisconsin to examine the effectiveness of mandatory arrest policies was conducted in 1989. The study closely examined arrest data as well as data collected from extensive victim interviews. The study found that overall arrest rates increased, particularly arrest rates for battered women. Further, arrests were increasingly made when only a marginal evidence of probable cause existed (Stafne, 1989).

The study concluded that implementation of the arrest law resulted in several unintended hardships. For example, abusive spouses have reportedly manipulated victims and law enforcement, calling the police on the victim to seek control and revenge. Battered women reportedly would not call the police again following the implementation of the new law. Battered women indicated fear of future violence and that intimidation by the batterers existed despite the “no-contact” provision (Stafne, 1989).

Victims also reported economic hardships as the results of the numerous domestic

abuse assessments, fines and bonds that came with mandatory arrest. Further, social and human service agencies reported more temporary placements on children, placing greater demands on the system.

Recommendations included amending the law to some degree, taking immediate steps to build long-range solutions, developing support systems for victims and re-educating key players, such as law enforcement. The report indicated that the law seemed to achieve more in the accountability (offender) component than in the protective component. The factors previously mentioned, along with multiple cases of domestic violence decreased to lesser charges, the report concluded that the greatest point of intervention would be in the implementation process (Stafne, 1989).

More recent research has found that arrest is an effective intervention in deterring subsequent domestic violence for 18 months. Further, when subsequent incidents did occur, they were more likely to occur with men who had previous contact with the police and were not arrested. Though subsequent incidents did decrease from arrest, the number of subsequent arrests did not decrease (Tolman & Weisz, 1995).

In addition to arrest recidivism, recent research also indicates that arrest may have a deterrent effect on domestic homicides. Under the enactment of policy, Quincy, MA, had only one domestic homicide in 10 years. San Diego reported a 70% decrease in domestic homicides in the five years following implementation of a mandatory arrest policy. Similarly, domestic violence incidents involving serious bodily injury in Connecticut dropped from 600 in 1987 to 500 in 1992 (Wanless, 1996).

CHAPTER FOUR

POLICY GOALS AND OBJECTIVES

In creating the mandatory arrest law for domestic abuse, policy goals addressed the legal and systemic problems that stood in the way of full application of such a law (Fagan, 1996). The Wisconsin Legislature set forth the intent underlying the development of the law: “The legislature finds that societal attitudes have been reflected in policies and practices of law enforcement agencies, prosecutors and courts. Under these policies and practices, the treatment of a crime may vary depending on the relationship between the criminal offender and the victim of the crime. Only recently has public perception of the serious consequences of domestic violence to society and to individual victims led to the recognition of the necessity for early intervention by the criminal justice system” (1987 WI Act 346, p.51).

The Legislature also wanted to create an official, uniform response to cases of domestic violence. The purpose, as set forth by the Legislature was two-fold. The first, to recognize domestic abuse as involving serious criminal offenses (1987 WI Act 346). Implementing specific and general deterrent threats to reduce the incidence of domestic violence will mobilize societal institutions to increase their range of formal and informal controls (Fagan, 1996). Mandatory arrest in domestic violence incidents made physical battering, or threat thereof, in intimate relationships, a crime against the state. Further, the criminalization of domestic violence cases was designed to increase the certainty and severity of legal responses (Zorza, 1992).

The second purpose of mandatory arrest is to provide increased protection for the

victims of domestic violence (1987 WI Act 346). Mandatory arrest forced the political mobilization of legal resources and institutions to protect victims as well as forced the development of protective interventions to ensure victim safety and empowerment (Fagan, 1996). Taking the perpetrators into custody allows the couple to separate, ensures that the violence does not continue or increase in severity and gives the victim time to seek help. Further, removing police discretion takes the pressure off the victim to decide whether or not to prosecute and increases the likelihood that responsiveness to victims needs will be greater (Buzawa & Buzawa, 1993).

The Wisconsin Legislature also set forth four underlying intentions in creating the mandatory arrest policy. The legislature wanted to create an official response to cases of domestic violence which would, in turn, stress the enforcement of laws, protect the victim and communicate the attitude that violent behavior is neither excused nor tolerated. Secondly, the legislature intended for criminal laws to be enforced without regard to the relationship of the persons involved. In addition, a further intent of the legislation was for district attorneys to document the extent of domestic violence incidents requiring the intervention of law enforcement agencies. Finally, the legislation specifically included a provision, encouraging law enforcement agencies to provide adequate training to officers handling domestic violence.

VALUES AND ASSUMPTIONS

The passage of mandatory arrest laws, and thus, criminal sanctions for domestic violence, signifies public intolerance for violence committed against partners. The laws

and mobilization of resources indicated society's rejection of domestic violence and also communicated a cultural message that domestic violence was no longer accepted, nor would it be tolerated (Fagan, 1996).

Humanitarian and women's rights activists pressured lawmakers to recognize that laws against assault and battery, which protected men from bodily harm at the hands of other men should also apply to women and children regardless if their assailant was their husband. The strongest underlying assumption that paved the path for the criminalization of violence against women is the fundamental right to bodily integrity and to freedom from intrusion. The right to be free from bodily harm and be secure in our persons is mentioned in The Bill of Rights, just as freedom of speech, freedom of assembly and freedom of religion. The right to freedom from bodily harm provides the moral foundation which underlies our laws against physical assault (Jones, 1994).

As civil and class-action suits were filed for and on behalf of victims of domestic violence, two issues were challenged. First, the historical "family ideals" value holds that family matters are private, rather than public matters of the state (Pleck, 1987). In essence, the legal concept of privacy was challenged. Domestic violence came to be seen as a public, not private matter.

Second, constitutional rights to due process and equal protection of the law were challenged. The equal protection clause of the 14th Amendment states that no person shall be deprived of life, liberty or property without the due process of the law. Historically, due process, similar to the equal protection provision, was designed to protect men from the state and those who act for the state from each other. This clause became a significant

argument in many suits filed against police departments. Victims argued that police departments' failure to protect them was a direct violation of their due process and equal protection rights. The courts ruled, however, that when the state invites or even directs citizens to depend upon agencies, such as law enforcement, for help or protection, they have already intervened in their lives. The courts ruled that it is the state's duty to take reasonable measures to protect individuals from other individuals regardless of their relationship. Thus, battering came to be defined as a violation of civil and human rights. Today, our society assumes that it is the task of government to keep peace among its citizens, keep them safe from the state itself, from enemies abroad and from one another so that all can exercise freedom and pursue happiness (Jones, 1994).

Another shift which affected the development and enactment of domestic abuse laws was the fundamental shift away from the traditional privilege of patriarchy. Specifically, as social reform focused on the prevention of child abuse, the best interests of the child took the forefront. While historically, the law assumed that decisions regarding an individual's best interest were always the same as what was felt to be in the family's best interest, today, it is clear that a woman's duty to her child should take precedence over her duty to her husband (Jones, 1994). As research and knowledge accumulated that illustrated the negative impact of domestic violence on children, the widespread belief shifted that living with brutality was no longer the wife's duty (Jones, 1994).

The underlying assumptions of the reforms that led to mandatory arrest policies were that family violence could be stopped through legal sanctions and that legal

sanctions were effective in decreasing violence (Fagan, 1996). The reforms were aimed at specific measures to stop the violence, mainly arrest. Further, the assumption that administratively removing officer discretion would actually lead to a change in officer's behaviors on the streets, thus a change in street level violence (Buzawa & Buzawa, 1996).

Proponents of mandatory arrest suggest that officers either do not have adequate knowledge on handling domestic abuse cases or actively disapprove of police interventions in such cases. It is assumed that the normal, proper use of discretion requires that officers act on his or her values and experience to make rapid interpretation of ambiguous facts, determine legal requirements and analyze possible consequences of actions. Implementing arrest policies tries to force change in behavior without necessarily changing officer attitudes. Attitudinal changes, then, would occur at some later point by training officers on the rationale of the policy and by conversion due to their immersion into the procedures (Buzawa & Buzawa, 1996). Therefore, the use of discretion itself, not the actual abuse, is the justification for preferring mandatory arrest policies (Berk & Loseke, 1980-1981).

CHAPTER FIVE

ASSESSMENT AND ANALYSIS

Arrest, by far, is the most prevalent form of legal control in the United States, with 14 million arrests made each year (FBI, 1989). It was anticipated that the enactment of mandatory arrest policies would generate a deterrent effect once it became public knowledge that law enforcement took batterers to jail (Jolin & Moose, 1997). As mandatory arrest policies were implemented across the United States, arrests for minor assaults increased 70% from 1984 to 1989 (Schmidt & Sherman, 1993). Despite the staggering increase, the efficacy of police response and arrest as an intervention is still inconclusive.

One problem in determining the effect mandatory arrest policies have had on domestic violence rates is that a change in police practices and attitudes must occur following the enactment of the policies. The assumption was that attitudinal change would occur with law enforcement following training and their immersion into the procedure. However, results are inconclusive. It is still unclear whether police departments are supportive of mandatory arrest policies and studies have not confirmed that long-term changes in police practices have occurred (Buzawa & Buzawa, 1996). Further, law enforcement training has been sporadic and inconsistent across departments. In some departments, no training occurred and officers were virtually unaware of new laws (Buzawa & Buzawa, 1990). Thus, the mandated training provision in mandatory arrest legislation, though sound in intent, has failed at the implementation stage. It has been suggested that even in 1994, the underlying assumption of law enforcement may be

that making arrests in domestic disputes is ineffective and counterproductive (Buzawa & Buzawa, 1996).

Mandatory arrest policies intended to remove officer discretion in arrests for domestic violence, partially in an effort to create an official, uniform response to domestic violence cases. However, an inconsistency that has been found in police departments following the enactment of mandatory arrest policies is the officers' failure to find reasonable and probable grounds to arrest (Buzawa & Buzawa, 1996). One study, following implementation of a policy that expanded officer's ability to make warrantless arrests, reported a 2500% increase in the number of arrests. Though an increase in the number of arrests was expected to occur, those arrested only accounted for 9% of the total domestic violence calls received. The difference between the enactment of the policy and the perceived arrests was attributed to the increased tendency of officers to find "reasonable and probable grounds" for an arrest (Jaffe, Wolfe, Telford & Austin, 1986).

This is also illustrated by a study conducted with the Minneapolis Police Department, a supporter of the use of arrests. The department acknowledged that in 1986, despite its mandatory arrest policy, only 3,645 arrests were made out of 24,948 total domestic calls. According to police, in 60% of these incidents, the officer disposed of the case through talk or mediation. Still, in other cases, officers responded, but failed to file the report required by the agency (Balos & Trotzky, 1988).

Inconsistencies in finding probable and reasonable grounds to make arrests in domestic violence cases suggests that the intentions of mandatory arrest policies are being undermined by officer interpretation of legal definitions. This misinterpretation directly

affects arrest rates and victim safety, but may also be indicative of a much greater implementation flaw; that domestic violence is still not being recognized consistently by law enforcement as a serious criminal offense. This, in turn, does not allow the message to be conveyed that violent behavior is neither excused nor tolerated. Due to the confusion of and inconsistency surrounding the legal definitions of probable and reasonable grounds to arrest as set forth by mandatory arrest policies, it may also be suggested that the training provisions set forth by the legislation have not been met.

Though mandatory arrest policies have removed discretion as an arrest factor, it may still be used in individual officer's decisions in interpreting legal definitions of reasonable and probable grounds. This has led to less consistency and predictability in officers actions and across jurisdictions, in contrast to the past when inaction and apathy were the widely shared norms. Thus, mandatory arrest policies are placing far more power in the hands of police departments, which have historically been unresponsive and unsympathetic to the needs of battered women (Buzawa & Buzawa, 1996).

While it would appear that the policy is being enforced in regard to the relationship between the persons involved, another outcome of inconsistent police discretion that occurred following the implementation of mandatory arrest policies was an increase in the number of dual arrests, where both parties are arrested. A survey done in Wisconsin indicated that 13% of the victims were arrested the year of the policy was enacted (Stafne, 1989). Other studies reported similar rates: 11% in Oregon, 18.8% in Connecticut (Victim Services Agency, 1988) and 13% in the first year of implementation with an increase to 25% in the following year. Other estimates indicate that 1/3 of all

arrests following the implementation of mandatory arrest policies were dual arrests and that in as much as 50% of the cases where arrests were made, the woman was charged (Victim Services Agency, 1988). Research that examined dual arrests in another program clearly illustrated that almost all of the women that were arrested for domestic violence actually committed the acts in self-defense (Hamberger & Arnold, 1990).

In response to such numbers, legislatures moved to eradicate the misinterpretation of the statute by adding a primary physical aggressor provision, which provides considerations for officers to take into account when determining who the “primary physical aggressor” was. Though the added definitions helped to decrease the incidence of dual arrests, it in turn, reintroduced the element of police discretion that the state first attempted to eliminate (Buzawa & Buzawa, 1996).

Mandatory arrest policies have also put increased pressure on law enforcement agencies to make increasing referrals and linkages to social service agencies in cases of domestic violence, which they are not asked to make in other types of crimes (Fagan, 1996). This, along with domestic violence cases competing with other patrol priorities for immediate attention, may lead to role and policy ambiguity, which may undermine law enforcement’s ability in pursuing either the victim’s protection or sanctioning the offender. Thus, domestic violence cases, especially those of low or no injury will not receive the highest priority compared to other incidents (Fagan, 1996).

Historically, “case screening” has been a criticism of law enforcement in relation to domestic violence. Researchers agree that only a minority of domestic assaults among intimates resulted in the dispatch of police officers. Cases were excluded through

dispatcher call screening and call prioritization, thus many calls involving a felony were re-categorized as minor family trouble calls (Buzawa & Buzawa, 1993). The implementation of mandatory arrest laws theoretically should have eliminated case screening. All cases of domestic violence should be recognized as a serious criminal offenses and the message that violence is neither excused, nor tolerated should be communicated. However, research still indicates that case screening is still occurring (Buzawa & Buzawa, 1996). One study found that police did not even respond to domestic calls in 12% of reported cases (Balos & Trotsky, 1988).

Theoretically, mandatory arrest policies are based on the premise that arrest penalties, occurring swiftly, will deter domestic violence. Thus, the enactment of such policies was also believed to increase the likelihood of prosecution of offenders (Buzawa & Buzawa, 1996). Historically, prosecutors were accused of disinterest in family violence, similar to that of law enforcement. Criticisms of prosecutorial actions include the failure to file charges or aggressively pursue convictions and sanctions against perpetrators (Fields, 1978; Lerman, 1986; Martin, 1976). Further, the high dismissal rates have been suggested to give police further incentives to not make arrests (Elliot, 1988).

One of the consequences of the low prosecution rates has been an increase in reluctance on the part of law enforcement to arrest perpetrators due to the belief that the amount of work invested in making an arrest would not lead to further legal action (Dutton, 1987; Ferraro & Pope, 1993). Low prosecution rates not only undermine deterrence by neutralizing the actions of police, but also decrease the likelihood of legal sanctions following arrest (Fagan, 1996), which is one of the primary goals of mandatory

arrest policies. This, in turn, has a profound effect on victims, who view the police and prosecutors as unwilling to protect them. Victims fear pressing charges will only increase the batterers's rage (Ferraro & Boychuck, 1992; Jaffe, Hastings, Reitzel & Austin, 1993). Consequently, all parties reinforce each other's inaction (Tolman, 1995). This further raises the question of whether the trauma to the victim caused by the drawn-out process of prosecution is worth the effort, especially given the low success rate of prosecution (Herzberger, 1996).

Prior to mandatory arrest policies, prosecution of offenders was often dependent upon the victim's willingness to press charges. However, states have a clear obligation to prosecute domestic violence cases regardless of the victim's wishes and are clearly compelled to prosecute potentially dangerous offenders in the interest of public safety (Friedman & Schulman, 1990). However, prosecution rates are low, occurring in less than 10% of misdemeanor cases (Ford, 1993). Further, the rates for convictions and sentencing are even less (Dutton, 1995). Such rates suggest that the most substantive sanctions, in most cases, remain the process of arrest (Fagan, 1996), however, arrest may have moved the element of discretion from the time of arrest to the point of prosecutorial screening (Davis & Smith, 1995).

In Wisconsin, as in many other states, district attorney's offices throughout the state are required to submit annual reports to the State Department of Justice indicating the number of arrests made each year. In Wisconsin, the data indicate the relationship of the victim and offender, if a weapon was used, as well as charging and dispositional statistics. However, the data does not delineate if arrest was "effective" in deterring

further episodes of domestic violence, nor does it take into account factors that influence the fluctuations in arrest rates. While the data may be useful in tracking the prevalence of domestic violence cases requiring police intervention, as well as the number of cases prosecuted each year, the data provide little insight into the effectiveness of interventions currently in place in regards to deterrence or recidivism (Office of Crime Victims Services, 1996).

Not only is the prosecution of family cases rarely successful (Herzberger, 1996); prosecution of non-family assaults often fails (Elliot, 1989). It is theorized that offenders have discovered that the penalties for domestic violence are small. Though arrest may have an independent effect in decreasing the likelihood of further violence, ultimately the responsibility for ensuring and imposing sanctions falls upon the prosecution and judiciary (Herzberger, 1996).

The City of Milwaukee utilized a policy that required victims be present for a charging conference held the day after the arrest. Prosecution of cases was dependent upon their presence. Only 20% of the cases were actually prosecuted under the policy. The other 80% were screened out. When the policy was dropped in January of 1995, and victims were no longer required to attend the charging conference, the rate of accepting cases for prosecution increased from 20% to 60 percent (Davis, 1995).

One study, based on victim reports, showed that any type of prosecutorial action lowered the risk of recurring violence 50% within 6 months of case settlement when compared to the level of pre-prosecution violence (Ford & Regoli, 1992). However, the most comprehensive prosecution study, the Indianapolis Domestic Violence Prosecution

Experiment, showed no significant protective effects from prosecution. Results did indicate a significant reduction in “severe” violence when the victim initiated prosecutorial actions as compared to the traditional summons and prosecution procedure (Ford, 1993). Many counties are developing special prosecution units which focus on the prosecution of domestic violence cases. However, despite the development of these units, few studies have documented the effects of prosecution on the control and/or reoccurrence of spousal assault (Fagan, 1996).

One of the trends occurring in this area is the addition of “no-drop” policies by prosecutors. Critics of no-drop policies suggest that they provide further disincentives for women to interact with the legal system, based on potential conflict between the victim’s goals and the goals of prosecution (Fagan, 1996). Proponents argue that no-drop policies remove the responsibility from the victim, thus making them less likely to be targeted for intimidation attempts from the offender. Prosecutors who remove the responsibility from victims are seeing increased victim cooperation and higher conviction rates (Hoctor, 1997). Further, few studies have documented the effects of prosecution on the control or reoccurrence of assault. Men with prior arrest records or who had a lengthy history of severe violence were more likely to reoffend if prosecuted, compared with men not prosecuted (Fagan, 1989; Sherman et al., 1991).

One study that investigated conviction rates following the implementation of mandatory sentencing found that the percentage of cases dismissed or acquitted more than doubled. Further, convictions became more difficult and it was found that mandatory penalties decreased the incentive for defendants to plead guilty. A smaller percentage of

those charged received a penalty than in the previous year before the enactment of the mandatory penalties (Carlson & Nidey, 1995). Although some level of sanctioning may result from arrest alone, deterrence ultimately results from the actions of the prosecution and judiciary, whose actions ultimately lead to substantive punishment.

Mandatory arrest policies send a strong message to the victim, the perpetrator and to society that domestic violence is a crime and that batterers will be held accountable for their actions. Further, such policies help to dispel the myths that domestic violence is rare, aberrant behavior (Eisenberg & Moriarty, 1991). Mandatory arrest has had many positive effects on victims of domestic violence. Arrest conveys the message to victims that someone cares and that the police will respond to their calls for help, which may empower victims. It is further suggested that calling the police is one of the first steps that victims take toward ending the abuse (Wanless, 1996). Police interventions also have been suggested to help victims develop the courage to leave an abusive situation or seek further help (Herzberger, 1996). Further, should the abuse continue following an arrest, victims may come to recognize that violence is deep rooted and thereby, give up hope for change in the relationship (Herzberger, 1996).

Arrest is theorized to interrupt the expected escalation of violence (Hector, 1997), thus protects the victim by assuring that the immediate violence will stop (Eisenberg & Moriarty, 1991). Further, victim safety is enhanced if batterers are held long enough to allow the victim to seek shelter (Goolkasian, 1986; Schechter, 1982). The separation also provides the opportunity for victims to consider, in safety and non-threatening circumstances, their situation and make decisions about their future (Wanless, 1996).

Mandatory arrest policies have also had negative, unintended consequences for victims of domestic violence. First, the enactment of such policies removed the decision for arrest from the victim's control (Wanless, 1996). By reporting the abuse, the victim may sense a loss of control in the legal process (Buzawa & Buzawa, 1990), which further erodes at the already suffering self-esteem of victims by contributing to a sense of helplessness from the loss of control. Though victims may want the abuse to stop, they lose control over the ensuing process once arrest is made. Further, once a woman realizes that she loses control over the arrest outcome, she may be deterred from calling the police in future incidents (Buzawa, 1982).

Policies have also had the unintended effect of decreasing the number of calls received by law enforcement for assistance. One study, following the enactment of more aggressive arrest policies, received fewer calls for assistance than before the policy was enacted. Evidence available did not indicate that the actual rate of domestic violence decreased, but rather, that victims were no longer calling the police for assistance. Yet other departments report an increase in the number of calls. Wisconsin, for example, received 27,942 calls reporting domestic violence in the first year of implementation. The following year, 32,200 calls were reported (Office of Crime Victim Services, 1994). Because violence between intimates has been shown to increase over time (Giles-Sims, 1983; Pagelow, 1984; Straus, 1986), unreported incidents not only eliminate the opportunity of offenders receiving formal sanctions, but also places women at an increased risk of sustaining injuries (Pagelow, 1984).

The temporary separation while the offender is incarcerated and throughout the

no-contact period may cause a financial loss to victims who are often financially dependent on their partners. Opponents of mandatory arrest suggest that such policies force battered women to choose between ending the abuse and having food and shelter (Wanless, 1996).

In addition, mandatory arrest policies have been attributed to increasing costs for the criminal justice system. Agencies have had to budget for additional officers, jails, prosecutors, public defenders and court services. Further, it has been suggested that mandatory arrest policies may cause overcrowding of jails. Though costs may initially rise, if arrest does produce a deterrent effect, domestic abuse calls and cases should drop as recidivism rates decrease, ultimately resulting in cost savings (Wanless, 1996).

Community policing has become the trend in law enforcement interventions of the 90's (Rosenbaum & Lurigio, 1994) and has been shown to be effective in deterring domestic violence. Community policing has been regarded by its supporters as the "only form of policing available for anyone who seeks to improve police operations, management, or relations with the public (Eck & Rosenbaum, 1994, p.4).

The concept of community policing is more proactive based on police-citizen partnerships that attempt to solve problems before they evolve into serious incidents (Skolnick & Bayley, 1986). In this holistic approach, the usual focus on making arrests is replaced by attempts to mobilize relevant agencies to solve community problems, thus, public involvement defines priorities, as well as appropriate responses. The strongest component of community policing surrounds strategies to facilitate changes, including the creation and improvement of policies, the debureaucratization of police departments and

the integration of current management techniques (Buzawa & Buzawa, 1996).

A dual emphasis is placed on the importance of direct interactions with citizens as well as utilizing flexible responses to neighborhood crime (Davis & Taylor, 1997). It involves full-time, long term assignments (Greene & Taylor, 1988), places officers back on the streets (Greene & McLaughlin, 1993) and increases foot patrol in highly populated areas (Buzawa & Buzawa, 1996).

Though community policing appears to have many positive benefits, as well as substantial potential, this approach also has unintended consequences on domestic violence. First, the theoretical concept of community policing again focuses police efforts on crimes of public disorder, at the expense of crimes of private disorder, such as family violence (Buzawa & Buzawa, 1996). Further, the focus on attempts to mobilize relevant agencies to solve problems, rather than arrest, does not ensure legal sanctions in cases of domestic violence, nor does it promote victim safety. Further, though many of the current community policing programs have been funded through additional monies made available through the 1994 U.S. Crime Bill, concerns have been noted that the increase in officer foot patrol may detract from police ability to respond rapidly to victim calls for assistance. Upon loss of additional funding, the additional positions needed to implement community policing programs will fall back on individual departments. It is feared that departments will be forced to cut administrative and support services, or would be forced to fund the positions from other patrol operations (Buzawa & Buzawa, 1996).

Another concern noted surrounding community policing practices is the diversion of 911 calls to other sources. In some areas, billboards display suggestions of alternative

places people can call for assistance, rather than calling Emergency 911. The concern is that victims that are most likely to call may be those already hesitant to request assistance for fear their request will be minimized (Buzawa & Buzawa, 1996). Thus, though community policing has numerous benefits as well as consequences, research is needed that focuses specifically on the impact that problem solving, as opposed to arrest, crime in public places and the diversion of calls will have on domestic violence victims.

Current data suggest that system level interventions often called community intervention projects or coordinated community interventions (CCI's) are effective in deterring domestic violence. These projects, initiated by the battered women's movement, have the long-range goal of eliminating violence against women. The projects are based on the belief that battering is only one set of tactics that men employ to control women. Interventions address cultural and social structure supports for battering within interpersonal, family and societal contexts (Tift, 1993). The primary strategy of the intervention projects is to establish and maintain shelters and programs for battered women and their children. Interventions include: offering women a safe refuge from physical violence and encouraging women to examine life choices and promote self-definition, asserting the rights of individual battered women and promoting changes in criminal justice, legislative and social service policies in order to ensure the needs of battered women are met. Altering the official response to domestic violence also encourages other members of the community to counter the core cultural and societal structure supports for battering (Pence, 1989).

Another strategy of coordinated community interventions is to hold men

accountable for their use of violence, which is accomplished by pressuring judicial actors to respond to domestic violence as a crime rather than a domestic conflict. They strive to alter the official public response toward domestic violence and counteract legal support of battering (Pence, 1989; Pence & Shepard, 1988).

One study, which examined 3 small communities with CCI's in place, found that the intervention projects significantly increased arrest rates and convictions, as well as court mandates to treatment. The data further indicated that larger systems experience more difficulty coordinating these interventions than small systems. The data, did not, however, indicate the extent to which violence against women was reduced (Gamache et al., 1988).

An evaluation of a CCI in Nebraska found that post arrest sanctions had little influence on recidivism beyond the effects achieved through the initial arrest. Data suggested that certain post arrest sanctions might be associated with lower rates of recidivism (Steinman, 1988). A second study was conducted two years later to further investigate post arrest sanctions. Cases were compared before and after the implementation of a CCI. Results indicated that police actions alone, not coordinated with other sanctions, actually led to an increase in violence (Steinman, 1990). Other research has suggested that police visits to the home, combined with eventual arrest of the perpetrator, followed by court mandated treatment, was more likely than other combinations of criminal justice actions to end repeat incidents of violence (Syers & Edleson, 1992).

Comprehensive CCI's have been developed in Wisconsin, Minnesota, Colorado,

California and Washington. The Duluth Domestic Abuse Intervention Project (D.A.I.P.), based on an individual model of violence, recognizes domestic violence as an individual response to a social problem. The educational program assumes that the belief system underlying battering behavior is learned in our culture in families of origin. Rather than focusing on individual personality attributes of the batterers, the program is structured on empowering batterers to understand their patterns of abuse. An assessment of the program indicated that 6 months after the perpetrators had completed their involvement in the city's program, which included court-mandated education classes and group counseling, victims reported no subsequent violence (Pence & Shepard, 1988).

Another study, based on the program model of domestic violence intervention projects, worked directly with households to reduce the risk of future crime. Response teams include a police officer and a social worker dispatched to domestic complaints. This particular model is based on research in the United States that shows that those individuals that are victimized are at an increased risk for repeat victimization. The objectives of such interventions include increasing confidence in victims of domestic violence in law enforcement so they will call the police more readily when violence occurs, then linking victims to services. The long term goal of the projects is to reduce family violence.

One study examined the effectiveness of such a project. Response teams included a police officer and social worker, randomly assigned to households reporting domestic violence within two public housing police services areas in New York. The residences that received the follow-up visit were provided with public education information on

domestic violence as well as information on arresting the offender. Results indicated that victims from households with prior police contacts experienced the most serious violence. Victims who received the home visit intervention called the police more frequently, as did those victims who received public education. It was found that the victims were at an increased risk level especially high within 11 days following the incident (Lloyd et al., 1994). Households that were assigned to receive a home visit were more likely to report new violence to the police sooner than those who did not receive the home visit intervention. Victims with prior police involvement were more likely to use the services than those who did not have a history of police involvement. Further, 92% of the victims reported that they found the information on arresting the perpetrator useful (Davis & Taylor, 1997).

Some states have recently begun to experiment with community intervention projects where victim advocates work with law enforcement officials. In this case, advocates offer support and information to victims and encourage the pursuit of legal remedies (Steinman, 1990). Yet other states have combined law enforcement interventions with a social work perspective. Here again, advocates offer support, provide information to victims at the legal system and provide referrals to community services (Weisz et al., 1995).

Given the dual emphasis of CCI's, ensuring victim safety and promoting perpetrator accountability, at current time, they seem to be the most effective intervention to promote coexisting policy goals of mandatory arrest policies and may provide the means to implement the goals at an operational level. Further, CCI's may invoke the

informal social controls in which legal sanctions play an indirect role, which law enforcement cannot solely due because they are not trained for such and also because the roles would be contradictory.

Studies on batterers treatment indicates that many batterers have conditions such as impaired cognition and mental disorder (Dutton, 1995). The logic of deterrence is compromised among batterers whose behavior is patterned over time. Among violent men whose behaviors are increasingly spiraling out of control, the threat of punishment may be remote and inconsequential, under conditions of arousal and cognitive distortion. CCI's may allow for an approach that could better address the different factors of domestic violence, such as individual pathology, but also such factors as cultural biases, socio economic factors, etc.

Efforts to deter domestic violence have fallen predominantly on law enforcement, however, there is little research that has demonstrated that mandatory arrest has had its intended effects (Buzawa & Buzawa, 1996). Research has suggested that arrest may have short-term deterrent effects in different subgroups of batterers, depending on the nature of the crime, the size of the city and individual characteristics, such as marital and employment status (Fagan, 1996; Pate & Hamilton, 1992; Sherman et al., 1992); however, these effects may decay over time (Sherman, 1992). Few studies have analyzed the effects of legal sanctions within a framework on increasing severity of violence (Fagan, 1996).

Although research indicates that the most potent police visit to the home may be the first (Fagan, 1989), other research indicates that the threat of arrest may be a relatively

weak sanction (Carmody & Williams, 1987). There is little evidence of the long-term effects of non-arrest on domestic violence (Elliot, 1989). Although arrest numbers have increased, the sanctions in most cases simply remains the process of arrest (Fagan, 1996). Without prosecution and penalties, deterrence may not occur at all.

One of the difficulties in assessing the effectiveness of mandatory arrest policies are the competing goals of mandatory arrest policies, mainly, punishing offenders and protecting victims. Attempts to evaluate policy efficacy are met with weighing potential risks as well as trade-offs of punitive measures versus victim autonomy. At best, the competing goals may not necessarily be compatible. Further, this role ambiguity affects the performance of agencies, particularly in respect to their missions, ultimately undermining the effectiveness of pursuit of either goal (Fagan, 1996).

In addition, attention to the issue of domestic violence is often in direct competition with other crimes, such as homicide, which often are viewed as more severe. Factoring in the existence of limited resources and scarcity of funding, the result is not necessarily a weak policy, but rather, the weak implementation of a policy. The resulting unintended consequence, a weakening of criminal justice sanctions.

CHAPTER SIX

RECOMMENDATIONS

Despite the inconclusive research on the deterrent effects of domestic violence on further episodes of violence, returning to previous police practices and policies, such as non arrest, should be met with hesitation (Zorza, 1992). It is important to recognize that law enforcement alone, will not solve the problem of domestic violence. The criminalization of other crimes, such as homicide, without changing the core societal supports, has failed to decrease crime rates. Domestic violence is no different. Merely criminalizing the batterers and focusing community efforts solely on altering the legal response to battering, will not change the social or cultural context within which battering takes place and will have little, if any, sustained effect on the prevalence or incidents of battering (Tift, 1993).

Interventions should focus on implementing strategies which will have a direct impact on policy performance. Given that mandatory arrest is based on the theoretical framework that legal sanctions are certain and should occur swiftly, it would appear that due to the low occurrence of prosecution and conviction, the greatest point of intervention should focus on policies and procedures after the suspect is taken into custody. Thus, the role of prosecution and the judiciary is critical. In order to ensure that legal sanctions beyond the act of arrest do occur, sentencing guidelines for prosecution and the judiciary should be implemented, as well as monitored. Arrest without prosecutorial and judicial guidelines, as well as supportive services for victims, does not deter future violence (Welch, 1994).

Currently, the act of arrest facilitates primarily law enforcement intervention. Given the complex nature of domestic violence, over-utilizing one intervention, such as law enforcement, would be a grave injustice to addressing domestic violence. Research has indicated that social control is most effective when legal controls interact reciprocally with extra legal social controls, which suggests that the role of legal institutions may most effectively focus on the punishment of offenders and indirectly on the coordination of extra legal services to protect battered women (Fagan, 1996). While it is imperative that legal institutions are open and accessible to battered women, they should not take on the role of managing and coordinating services. If the primary focus of legal institutions is on deterrence and punishment, they can focus their efforts on interventions that will allow them to maximize their efforts (Fagan, 1996).

Given the inconclusive research on the deterrent effects of arrest, taking a narrow approach, such as focusing on arrest and sanctioning, does not necessarily ensure an increase in victim safety. Therefore, collaborative efforts, such as coordinated community interventions, may be the only way to ensure, as well as monitor, that the competing goals of victim safety and perpetrator accountability are met. Current research indicates that police action, in coordination with other criminal justice interventions, is a significant deterrent (Steinman, 1990). CCI's may provide the forum needed in order to address existing gaps in the system as well as the opportunity to monitor the disposition of domestic violence cases. Collaboration must occur and be coordinated between law enforcement, social service agencies, mental health services and the judiciary (Sherman, 1992). CCI's may allow legal institutions to maximize their efforts by managing and

coordinating services to battered women.

Further, collaborative efforts may help to deal with the weak social ties and unemployment that are associated with high risk offenders (Mignon & Holmes, 1995). Integrated systems of interventions and support are more likely to succeed rather than an over-reliance on any single facet of the system (Hutchison, Hirshel & Pesakis, 1994). All key players within the system, working together, can ensure that domestic violence cases are not “swept under the rug” and that consequences do occur swiftly.

The inconclusive research on domestic violence warrants the need for further, more extensive studies. Longitudinal studies on domestic violence are rare (Gelles, 1993). The absence of data on victims and perpetrators for prolonged periods of time has led to huge gaps in existing literature. Longitudinal studies are needed that specifically examine long-term arrest data to determine the effects of arrest, as well as collecting victim data in order to ensure the decreases in arrest rates are not due to victim reluctance or unwillingness to call law enforcement. Studies are needed that explore and break down perpetrator subgroups in order to test the differing effects of legal sanctions on different offender subgroups (Fagan, 1996). Further, research on the points of implementation, such as prosecution and adjudication is limited. Data should utilize various measurements, collected from the point of arrest until case disposition and focus on the specific point or points when deterrent effects do occur with arrest.

Finally, given the lack of a unified approach in the theoretical frameworks utilized to develop research designs, theories need to be integrated and expanded in order to develop one unified theory explaining domestic violence. Without a unified theory

explaining domestic violence, strategies and interventions tend to become fragmented and less effective (Dwyer et al., 1995). Knowledge on the limits of criminal sanctions for serious violence, escalation of violence and its prediction value of victim risk and recidivism should be integrated into the research which influences criminal justice and social policies on domestic violence (Fagan, 1988).

IMPLICATIONS FOR SOCIAL WORK

Domestic violence raises important issues for social workers. The voluminous research from diverse paradigms, compounded by the absence of a commonly accepted explanatory theory of domestic violence, in addition to the distorting influence of societal biases, norms and perceptions, have lead to difficulties in the interpretation of violence. Further, these factors make it difficult for practitioners to establish a firm knowledge base on domestic violence, which complicates assessment and intervention approaches (Dwyer et al., 1995).

Nonetheless, it is imperative to integrate research and theoretical explanations to practice methods. Therefore, practitioners who adhere to individual models of violence would advocate approaches such as crisis intervention, cognitive therapy, victim support, educational groups and batterers rehabilitation. On the other hand, supporters of sociological models would advocate family system interventions, such as safe housing and counseling in shelter programs. Finally, socio-structural model supporters would strive to pursue legislative and/or policy change in order to enhance the status of women in society (Dwyer et al., 1995).

The complexity of the nature of domestic violence makes simplistic solutions impractical. Domestic violence solutions must include multiple components within a holistic framework. An ecological approach has been suggested as the most useful avenue for change effort in dealing with domestic violence for several reasons. First, it provides a framework for multi-level interventions. In addition, it also builds upon the person in the environment perspective fundamental to social work practice. This approach incorporates a systems approach to change and impacts at the micro, meso and macro levels (Dwyer et al., 1995). This approach also correlates with social work's commitment to individual and social change.

Regardless of the framework utilized, practitioners should understand that each individual case has its own set of causal factors. Utilizing approaches that seem useful to other clients and issues may be ineffective and could potentially place the victim at an increased risk of danger (Dwyer et al., 1995). In developing a definition of the problem, cultural and societal implications must be considered. The definition will become central to change efforts and interventions should flow from the statement of concern.

Practitioners must raise their own consciousness about the different forms of abuse and assume the responsibility for learning about the climate of control that exists within violent relationships (Golden & Frank, 1994).

APPENDIX A

STATE OF WISCONSIN

1987 Assembly Bill 224

Date of enactment: April 21, 1988
Date of publication*: May 2, 1988

1987 Wisconsin Act 346

AN ACT to create 939.621 and 968.075 of the statutes, relating to arrest, domestic abuse and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Legislative intent and purpose. (1) The legislature finds that societal attitudes have been reflected in policies and practices of law enforcement agencies, prosecutors and courts. Under these policies and practices, the treatment of a crime may vary widely depending on the relationship between the criminal offender and the victim of the crime. Only recently has public perception of the serious consequences of domestic violence to society and to individual victims led to the recognition of the necessity for early intervention by the criminal justice system.

(2) The legislature intends, by passage of this act, that:

(a) The official response to cases of domestic violence stress the enforcement of the laws, protect the victim and communicate the attitude that violent behavior is neither excused nor tolerated.

(b) Criminal laws be enforced without regard to the relationship of the persons involved.

(c) District attorneys document the extent of domestic violence incidents requiring the intervention of law enforcement agencies.

(d) Law enforcement agencies be encouraged to provide adequate training to officers handling domestic violence incidents.

(3) The purpose of this act is to recognize domestic violence as involving serious criminal offenses and to provide increased protection for the victims of domestic violence.

SECTION 2. 939.621 of the statutes is created to read:

939.621 Increased penalty for certain domestic abuse offenses. If a person commits an act of domestic abuse, as defined in s. 968.075 (1) (a) and the act constitutes the commission of a crime, the maximum term of imprisonment for that crime may be increased by

not more than 2 years if the crime is committed during the 24 hours immediately following an arrest for a domestic abuse incident, as set forth in s. 968.075 (5). The 24-hour period applies whether or not there has been a waiver by the victim under s. 968.075 (5) (c). The victim of the domestic abuse crime does not have to be the same as the victim of the domestic abuse incident that resulted in the arrest. The penalty increase under this section changes the status of a misdemeanor to a felony.

SECTION 3. 968.075 of the statutes is created to read:

968.075 Domestic abuse incidents; arrest and prosecution. (1) **DEFINITIONS.** In this section:

(a) "Domestic abuse" means any of the following engaged in by an adult person against his or her spouse, former spouse or adult relative or against an adult with whom the person resides or formerly resided:

1. Intentional infliction of physical pain, physical injury or illness.

2. Intentional impairment of physical condition.

3. A violation of s. 940.225 (1), (2) or (3).

4. A physical act, or a threat in conjunction with a physical act, which may cause the other person reasonably to fear imminent engagement in the conduct described under subd. 1, 2 or 3.

(b) "Law enforcement agency" has the meaning specified in s. 165.83 (1) (b).

(c) "Relative" means a parent, grandparent, step-parent, brother, sister, first cousin, nephew, niece, uncle, aunt, stepbrother, stepsister, child, stepchild, father-in-law, mother-in-law, daughter-in-law or son-in-law.

(2) **MANDATORY ARREST.** Notwithstanding s. 968.07, a law enforcement officer shall arrest and take a person into custody if:

* Section 991.11, WISCONSIN STATUTES 1985-86: **Effective date of acts.** "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

(a) The officer has reasonable grounds to believe that the person is committing or has committed domestic abuse and that the person's actions constitute the commission of a crime; and

(b) Either or both of the following circumstances are present:

1. The officer has a reasonable basis for believing that there is a possibility of continued violence against the alleged victim.

2. There is evidence of physical injury to the alleged victim.

(3) LAW ENFORCEMENT POLICIES. (a) Each law enforcement agency shall develop, adopt and implement written policies regarding arrest procedures for domestic abuse incidents. The policies shall include, but not be limited to, the following:

1. Statements emphasizing that:

a. In most circumstances, other than those under sub. (2), a law enforcement officer should arrest and take a person into custody if the officer has reasonable grounds to believe that the person is committing or has committed domestic abuse and that the person's actions constitute the commission of a crime.

b. When the officer has reasonable grounds to believe that spouses, former spouses or other persons who reside together or formerly resided together are committing or have committed domestic abuse against each other, the officer does not have to arrest both persons, but should arrest the person whom the officer believes to be the primary physical aggressor. In determining who is the primary physical aggressor, an officer should consider the intent of this section to protect victims of domestic violence, the relative degree of injury or fear inflicted on the persons involved and any history of domestic abuse between these persons, if that history can reasonably be ascertained by the officer.

c. A law enforcement officer's decision as to whether or not to arrest under this section may not be based on the consent of the victim to any subsequent prosecution or on the relationship of the persons involved in the incident.

d. A law enforcement officer's decision not to arrest under this section may not be based solely upon the absence of visible indications of injury or impairment.

2. A procedure for the written report and referral required under sub. (4).

3. A procedure for notifying the alleged victim of the incident of the provisions in sub. (5).

(b) In the development of these policies, each law enforcement agency is encouraged to consult with community organizations and other law enforcement agencies with expertise in the recognition and handling of domestic abuse incidents.

(c) This subsection does not limit the authority of a law enforcement agency to establish policies that require arrests under more circumstances than those set forth in sub. (2).

(4) REPORT REQUIRED WHERE NO ARREST. If a law enforcement officer does not make an arrest under this section when the officer has reasonable grounds to believe that a person is committing or has committed domestic abuse and that person's acts constitute the commission of a crime, the officer shall prepare a written report stating why the person was not arrested. The report shall be sent to the district attorney's office, in the county where the acts took place, immediately after investigation of the incident has been completed. The district attorney shall review the report to determine whether the person involved in the incident should be charged with the commission of a crime.

(5) CONTACT PROHIBITION. (a) 1. Unless there is a waiver under par. (c), during the 24 hours immediately following an arrest for a domestic abuse incident, the arrested person shall avoid the residence of the alleged victim of the domestic abuse incident and, if applicable, any premises temporarily occupied by the alleged victim, and avoid contacting or causing any person, other than attorneys for the arrested person and alleged victim, to contact the alleged victim.

2. An arrested person who intentionally violates this paragraph shall be required to forfeit not more than \$1,000.

(b) 1. Unless there is a waiver under par. (c), a law enforcement officer or other person who releases a person arrested for a domestic abuse incident from custody less than 24 hours after the arrest shall inform the arrested person orally and in writing of the requirements under par. (a), the consequences of violating the requirements and the provisions of s. 939.621. The arrested person shall sign an acknowledgment on the written notice that he or she has received notice of, and understands the requirements, the consequences of violating the requirements and the provisions of s. 939.621. If the arrested person refuses to sign the notice, he or she may not be released from custody.

2. If there is a waiver under par. (c) and the person is released under subd. 1, the law enforcement officer or other person who releases the arrested person shall inform the arrested person orally and in writing of the waiver and the provisions of s. 939.621.

3. Failure to comply with the notice requirement under subd. 1 regarding a person who is lawfully released from custody bars a prosecution under par. (a), but does not affect the application of s. 939.621 in any criminal prosecution.

(c) At any time during the 24-hour period specified in par. (a), the alleged victim may sign a written waiver of the requirements in par. (a). The law enforcement agency shall have a waiver form available.

(d) The law enforcement agency responsible for the arrest of a person for a domestic abuse incident shall notify the alleged victim of the requirements under

par. (a) and the possibility of, procedure for and effect of a waiver under par. (c).

(e) Notwithstanding s. 968.07, a law enforcement officer shall arrest and take a person into custody if the officer has reasonable grounds to believe that the person has violated par. (a).

(6) **CONDITIONAL RELEASE.** A person arrested and taken into custody for a domestic abuse incident is eligible for conditional release. Unless there is a waiver under sub. (5) (c), as part of the conditions of any such release that occurs during the 24 hours immediately following such an arrest, the person shall be required to comply with the requirements under sub. (5) (a) and to sign the acknowledgement under sub. (5) (b). The arrested person's release shall be conditioned upon his or her signed agreement to refrain from any threats or acts of domestic abuse against the alleged victim or other person. The person is not eligible for release on his or her own recognizance pursuant to a citation issued under s. 800.02 or 968.085.

(7) **PROSECUTION POLICIES.** Each district attorney's office shall develop, adopt and implement written policies encouraging the prosecution of domestic abuse offenses. The policies shall include, but not be limited to, the following:

(a) A policy indicating that a prosecutor's decision not to prosecute a domestic abuse incident should not be based:

1. Solely upon the absence of visible indications of injury or impairment;
2. Upon the victim's consent to any subsequent prosecution of the other person involved in the incident; or
3. Upon the relationship of the persons involved in the incident.

(b) A policy indicating that when any domestic abuse incident is reported to the district attorney's

office, including a report made under sub. (4), a charging decision by the district attorney should, absent extraordinary circumstances, be made not later than 2 weeks after the district attorney has received notice of the incident.

(8) **EDUCATION AND TRAINING.** Any education and training by the law enforcement agency relating to the handling of domestic abuse complaints shall stress enforcement of criminal laws in domestic abuse incidents and protection of the alleged victim. Law enforcement agencies and community organizations with expertise in the recognition and handling of domestic abuse incidents shall cooperate in all aspects of the training.

(9) **ANNUAL REPORT.** (a) Each district attorney shall submit an annual report to the department of justice listing all of the following:

1. The number of arrests for domestic abuse incidents in his or her county as compiled and furnished by the law enforcement agencies within the county.
2. The number of subsequent prosecutions and convictions of the persons arrested for domestic abuse incidents.

(b) The listing of the number of arrests, prosecutions and convictions under par. (a) shall include categories by statutory reference to the offense involved and include totals for all categories.

SECTION 4. Nonstatutory provisions. Each law enforcement agency and each district attorney's office shall develop written policies under section 968.075 (3) and (7) of the statutes, as created by this act, so that the policies are in effect on or before April 1, 1989.

SECTION 5. Effective dates. This act takes effect on April 1, 1989, except as follows:

- (1) The creation of section 968.075 (3) and (7) of the statutes and SECTION 4 of this act take effect on the day after publication.

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