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Stephanie Smith

Western Michigan University, ssmith_91906@yahoo.com

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Mandatory Arrest Policy Implications and Domestic Violence

Stephanie Smith
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Statement of Purpose:

I chose to do my honors thesis on the mandatory arrest policy regarding domestic violence. I will explore the history of domestic violence, the theoretical and ideological underpinnings of the policy, the research evidence that has been put forth regarding the policy and then offer my critical evaluation regarding the topic.

Mandatory arrest laws refer to the legal duty of police to make an arrest if the officer has reason to believe a domestic violence act has been committed. A domestic violence act can involve a new crime or violation of an order of protection or conditions of release (ehow.com/def.m.a.).

Domestic violence has always been a very complex issue for law enforcement. Domestic-related violence has been the leading cause of homicide for a lot of communities. It is a core social problem and it challenges the role of modern law enforcement policies and practices. The police have not always responded to domestic violence calls appropriately. Historically, domestic violence has been viewed as a “private matter” and not capable of being interrupted by government intervention. American law at one point recognized that the husband was the head of the household and that he had the right to dispense punishment on his wife. As we now know, most of those laws have vanished over the centuries, but they still have some residual effects, which still manifest themselves in the social norms and assumptions of modern day society (Mitchell pg. 241).

Society has expanded the role of government as a protector within the home and nowadays out of the home. Institutional transitions to new policies and procedures

frequently lag behind changes in society's way of thinking. This is true traditionally in cases of police departments where domestic violence is an ongoing issue. It is assumed that not every officer has accepted the change, thus causing a major amount of insensitivity to the victims of domestic violence. The dynamics of victimization have also contributed to the hesitancy of police agencies to handle domestic abuse victims appropriately. Victims and their abusers often confront officers, which leaves the officers to make a decision as to what intervention is needed. Some officers conclude that intervention is harmful and dangerous (Mitchell, pg. 244).

Recent studies have calculated that domestic violence makes up one fifth of all violent crime against women and women are injured about one half of the time. Women who have suffered assault at the hands of the accused are at high risks of developing mental illness and instability. Feminists and advocates for women first argued for the mandatory arrest policy because they believed that the police legitimized the assault by failing to take aggressive action against the perpetrator. The domestic violence debate started gaining political pressure, which led to most states and police departments on a national level implement the pro-arrest policies (Eitle pg. 574).

In an effort to combat intimate partner violence, state laws governing the warrantless arrest powers of the police in domestic violence cases have been greatly expanded over the past thirty years. All states have empowered the police to make warrantless arrests in cases of domestic violence, and some state statutes have sought to reduce police discretion by mandating specific actions be taken when responding to such incidents. The extent to which states have permitted the police to retain

discretion varies considerably. While some states allow police a great deal of discretion, many states require more aggressive intervention. While a mandatory arrest law states that an officer *must* make an arrest if (s)he finds probable cause to believe that an offense has been committed, a preferred arrest law instructs the responding officer that arrest is the appropriate response (Hirschel, Buzawa, Pattavina, Faggiani P. 255,256).

Theoretical and Ideological Underpinnings:

The theoretical foundation for the mandatory arrest policy comes from the idea of organizational theory to describe police actions and the way the law is enacted. The organizational theory tends to explain the officers' behavior and the way they handle a situation. Each department has a variety of goals that reflect broader political ideas in a community. According to Eitle (2002):

Organizational structures have three basic functions: (a) to produce outputs and achieve organizational goals; (b) to regulate the influence of individual variations on the organizations; (c) to exercise power, authority, and decision making (Eitle pg. 575).

It can be determined that the differences in organizational structure highly reflect the departmental performance. Eitle cites Mastrofski, Ritti and Hoffmesters' idea that there are three organizational models used to determine the officers decision making process: the rational model, the constrained rational model and the loosely coupled model. The rational model is bred out of the concept of bureaucracy. The more bureaucratization of the organizational structures the fewer leniencies to the individuals who occupy certain positions. When this model is administered to a police department it is clear that the

officers will most likely abide by the organizational goals and objectives and exert less discretion. The constrained rational model addresses the fact that bureaucratization is relevant in the organizational structure, but it does not intercept with the police officers behavior to the extent of the rational model. Constrain is present within the organization, but not so much that the behaviors are dramatically changed. The rational model would suggest that the mandatory arrest policy in the department would significantly increase arrests due to the idea of formalization. In such cases, the officers would make decisions based on the written guide of procedures laid out for them by the organization. The main difference between the constrained rational model and the rational model is the magnitude of influence the mandatory arrest policy would have on the police behavior (Eitle pg. 576). The loosely coupled model sort of encompasses the idea that the mandatory arrest policy would have no significant outcome between the likelihood of an arrest in domestic violence cases. It states that police officers would bend and stretch the rules to conform to their manner of policing and ultimately come up with their own conclusions to deal with the matter (Eitle pg. 577).

The political ideology that rests behind the mandatory arrest policy is the element of structural patterns and change. The criminal justice system was established within the nature of sociological and political science disciplines. Ideological values are the main factor when it comes to the development of the behaviors throughout the criminal justice system. We can trace the ideology behind the mandatory arrest law back to Packer's Crime Control Model. The model bases their method of operation of the apprehension of individuals and the conviction. According to Packer (1968):

The value system that underlies the Crime Control Model is based on the proposition that the repression of criminal conduct is by far the most important function to be performed by the criminal process. The failure of law enforcement to bring criminal conduct under tight control is viewed as leading to the breakdown of public order and thence to the disappearance of an important condition of human freedom (pg. 4). “The Crime Control Model, as we have suggested, places heavy reliance on the ability of investigative and prosecutorial officers, acting in an informal setting which their distinctive skills are given full sway, to elicit and reconstruct a tolerably accurate account of what actually took place in an alleged criminal event (pg. 7).

It can be concluded that the mandatory arrest policy rests within the principles of the conservative model of crime prevention. It is based upon the idea that one is supposed to abide by the law and that law enforcement and crime prevention should address current and potential violations. Crime, according to Conservatives is seen as a matter of incentives and deterrents. They would argue that this model is the solution to crime because it would increase the costs and reduce the opportunities for the commission of crime. It would then make the likelihood of an arrest much higher. This model compliments the “law-and-order” enforcement agenda and emphasizes the fact that crime is a matter of choice and opportunity. This model ultimately specifies that crime control is the most important aspect and that the exerting power is solely that of the police (White pg. 101).

Research Evidence

There have been several studies conducted regarding the mandatory arrest policy and it’s effectiveness. One of those experiments was called the Minneapolis Domestic Violence Experiment. The experiment was conducted by Lawrence Sherman the Director of Research at the Police Foundation and by the Minneapolis Police Department. The

National Institute of Justice funded the experiment. According to Sherman, “the experiment was done by police officers who agreed to give up their discretion in domestic assault cases and to take whatever action was dictated by a random system of employing arrest in some cases, mediation in others, and so on. This method attempted to ensure that those arrested, those advised, and those ordered out of the house were comparable in average age, education, income, rate of offending, percent black or white, and whether they were intoxicated (Sherman, NIJ Article pg. 2).

Since police practices varied from officer to officer, the arresting of an offender was the most consistent. The offender would most likely spend only one day in jail and then be released. When the officer used the separation technique it would often backfire and the offender would stay in the house and refuse to leave. When that happened the officers were instructed to arrest him. Advice and mediation was the police response that varied most widely. There would be some police officers that would spend time talking and putting time into the current domestic situation and others who would put in very little time. Police training was never enacted because they wanted to test the “typical” police approach to advice or mediation (Sherman, NIJ Article pg. 2).

When the experiment was completed they found that of the arrested offenders, half of them were likely to commit repeat violence as the non-arrested offenders. After they interviewed the victims, they found that 18 percent of all the offenders repeated their violence, while only 10 percent of the arrested offenders repeated it. Sherman (1984) states that:

The results of the experiment seem to indicate that a policy of arresting many or most of domestic assailants will spare many victims from future violence. However, all social science research has limitations and leaves questions unanswered in which this project is no exception (Sherman NIJ Article pg. 3).

Some of the main concerns about the Minneapolis Experiment were whether or not the victims were threatened or discouraged from calling the police due to being attacked again by the same offender. The offender could have committed an act of violence against the victim again, but because of the power that the offender might exert over the victim they might disclose that from the interviewer, therefor affecting the official measurement. Another possible error in the findings is that the arrest policy could stop the victim from calling the police in fear that their spouse would be taken to jail. Sometimes the victims would call the police looking for mediation and advice to reduce the tension between them, but would not anticipate anyone going to jail. The thought of their companion being prosecuted swayed their decision to call for emergency help. All in all those possible errors could have distorted the findings of the research. Although the Minneapolis experiment found evidence supporting the arrest of the offender, Sherman believes that the study was too small to be able to produce useful information for other jurisdictions (Sherman, NIJ Article pg. 3).

Another study that was conducted on mandatory arrest policies was the Charlotte Experiment. They acted with similar criteria as the Minneapolis experiment. Charlotte tested the effectiveness of police response to the abuse by three categories. The first was the advising of and the possible separation of the couple. Number two was the issuing of a citation to the offender and the third was the arrest of the offender. The law in North

Carolina provides the police officer legal authority to arrest an abuser for a misdemeanor offense committed within the officer's presence. They also have the authority to arrest an offender if they have probable cause that a misdemeanor offense has been committed even if they did not witness the act. This experiment was more intense and utilized the entire police force. They also worked 24 hours a day. The criterion for the experiment was that the cases must have been classified as a misdemeanor offense. Certain offenses, such as a felony conviction and outstanding warrants would not fall under one of the three categories. In those cases an arrest was mandatory so the other two treatments weren't options. In the misdemeanor cases, the requirement falls within range so the police were empowered but not required to make an arrest. The Charlotte Police Department also had other criterion, by choosing to do the research on female victims and male offenders (Hirschel, Hutchinson pgs. 83,89).

The Charlotte North Carolina experiment, according to Hirschel and Hutchinson (1992) determined that:

The result of the Charlotte experiment are decisive and unambiguous, and indicate that arrest of misdemeanor spouse abusers is neither substantively nor statistically a more effective deterrent to repeat abuse than either of the other two police responses examined at this location. Based on thorough analysis of the data from official police records of rearrests, as well as from intensive interviews with victims of spousal abuse, there is no evidence that arrest is a more effective deterrent to subsequent abuse (Hirschel, Hutchinson pg. 115).

Portland, Oregon's police bureau was another department that implemented the mandate arrest policy. In 1995 the Portland Officers recorded the amount of domestic violence incidents they had received, and the total number of occurrences was 6,400. Amongst all

the calls, the officers only arrested about 48% of the offenders, about (3,022) of these cases. The Abuse prevention Act of 1977 is what governed the initial police response in the first place. According to Jolin and Mooses' (1997) article:

It's enactment made Oregon the first state in the nation to mandate arrest for misdemeanor domestic crimes and for restraining order violations. After some initial reluctance to accept a legal mandate that limits their discretion, most officers came to accept the pro arrest policy as the standard response to domestic violence (pg. 284).

Since Portland Oregon's, police agency is based off of the community policing model, they went forward with the already mandate and created the Domestic Violence Reduction Unit which brought many more domestic violence cases through the criminal justice system. This enabled an entire system regarding policing domestic violence.

This research was eventually analyzed two years later , and the results concluded that although a fraction of the arrests were prosecuted, most of the charges were decreased.

The final evaluation concluded that the mandatory arrest policy was not effective. In regards to the Portland Oregon Police Department, Jolin and Moose (1997) stated:

The final assessment of the Portland decision makers was that mandatory arrest was useful but, by itself, wasn't enough. There was agreement that arresting the batterer at the time of the incident would temporarily interrupt the battering but that, without further intervention, violence would likely resume its "natural place" in the relationship (Pg. 287).

These finding led Portland Oregon's Police Department to adapt to the "pro arrest" policy which gave each officer the power to decide if arrest was in fact necessary.

Critical Evaluation

The Portland Oregon experiment, the Charlotte experiment and the Minneapolis experiment all tried to unveil the effectiveness of the police responses to domestic violence in regards to the mandatory arrest policy. The Minneapolis study concluded that the arrest was a good alternative to the domestic dispute, but how valid are those findings? It has been critiqued for being too small of a sample and disproportionately skewed when it came to the race of the victims and offenders. The Portland Oregon study concluded that although the mandatory arrest policy was useful, it simply wasn't enough and the Charlotte study concluded that the mandatory arrest policy was neither substantially or statistically more effective.

When we assess the data collected, it is prevalent that there is no empirical evidence to suggest that the mandatory arrest policy is an absolute answer to reduce subsequent abuse and increase the victim's protection after the incident. Regardless of the evidence, or the fact that the victims want to keep the spouse out of jail, it can't possibly stop further domestic violence.

There aren't any concrete answers or any further findings to imply that the program met its objectives. Most of the studies conducted conclude that the findings remain relatively the same and that much hasn't been proven. One thing is certain, according to the evidence revealed in these research studies, police discretion is very limited when the mandatory arrest policy statute is in place within an organization.

The Minneapolis Experiment played a huge role in shaping criminal justice policies. It

had a profoundly bigger impact than any other study. It received an enormous amount of attention and police departments around the U.S. started implementing the mandatory arrest policy.

With this mandate, Ward also included cohabitants and same-sex couples in the police definition of family. The Houston and Dallas Police Departments were also quick to change their approach to domestic disturbance calls, and make more arrests. Within a year, the number of police departments using arrest as a strategy in domestic violence cases jumped from 10 to 31%, and to 46% by 1986. Numerous other police departments had partially changed their approach to domestic violence cases. In 1984, the U.S. Attorney General's Task Force on Family Violence report drew heavily upon the Minneapolis study, in recommending that domestic violence be handled with a criminal justice approach. Within eight years, 15 states and the District of Columbia enacted new domestic violence laws that required the arrest of violent domestic offenders. By 2005, 23 states and the District of Columbia had enacted mandatory arrest for domestic assault, without warrant, given that the officer has probable cause and regardless of whether or not the officer witnessed the crime. The Minneapolis study also influenced policy in other countries, including New Zealand, which adopted a pro-arrest policy for domestic violence cases (Wikipedia, Minneapolis Domestic Violence Experiment).

The mandatory arrest policy seemed to be a valid alternative in diffusing some situations but certainly not all of them. It is still an arguable subject due to the fact that the studies

fail to provide new insight into the appropriate response when it comes to domestic violence situations. The research is inconclusive.

Based on the evidence concerning this policy, I would have to recommend the mandatory arrest statute not be implemented. I believe that the decision to arrest should lie within the officer's discretionary powers. The officer is the one who has to assess the situation and if he or she deems that an arrest isn't the appropriate response, then they shouldn't have to detain a person.

One alternative to the mandatory arrest policy would be the "pro-arrest" policy. It would ultimately give the officers back their discretionary power. The "pro arrest" policy would be set in place to encourage the officers to make an arrest if there is enough probable cause. It gives the officer more flexibility in the decision process when trying to weigh the victim's desires. In each department there should be ample training and specific guidelines for the officers to follow. They should be trained appropriately so that they can use those tools to help further their decision making out in the field. The purpose of police intervention is to be able to handle the situation carefully and if they are fully prepared then there are fewer chances of problems arising. All parties regardless of the statutes need to be protected.

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