

Responding to Domestic Violence Incidents: A Collective Approach

Approved: Dr. Nancy Gartner

Date: 12/17/2018

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Acknowledgements

I would like to thank some people that have played important roles in the completion of not only this paper, but the master's program as a whole. I would like to thank my family for all their support over the past few years. My wife, Susan, has kept things rolling along at home while I have been devoting much of my free time to school work. My daughter, Kaylee, has exercised a great deal of patience while I finish up "one more thing" before we can go play. I would also like to thank my mother, Leesa, for all her time spent proof reading and discussing research topics over the years and in particular during this final assignment. I would also like to thank the criminal justice faculty at the University of Wisconsin Platteville for facilitating a great deal of academic and personal growth during my time as part of the program. Thank you to my seminar paper advisor, Dr. Nancy Gartner for all her help getting my final paper ready for submission.

It has been an exciting and informative journey. This achievement would not have been possible without a great deal of support and now, I am looking forward to devoting more of my free time toward friends and family.

Abstract

Societal views surrounding domestic violence (DV) have changed over time and impacted the way in which governments choose to intervene. While there has been a great deal of improvement socially in the way DV incidents are addressed, there needs to be a continued evaluation of the practices in place and exploration of potential advances. From a criminal justice standpoint, two components that offer the greatest potential for facilitating meaningful intervention regarding DV incidents are associated with law enforcement and the courts. A great deal of effort needs to be placed on identifying DV incidents as a public health problem worthy of comprehensive social intervention and improving criminal justice responses should be part of that effort. It is argued that relying on punishment based responses such as mandatory arrest and or mandated prosecution of DV incidents fails to identify the unique dynamics of domestic relationships. To truly identify and track DV trends there needs to be a commonly held definition of what constitutes a domestic relationship and the behavior associated with DV. It is suggested that law enforcement universally implements pro-arrest policies when addressing DV incidents, which reinforces the concept that DV incidents are taken seriously while allowing for the discretion needed to best address a wide variety of complex circumstances. Additionally, the use of specialized DV courts offers a more treatment based method of facilitating meaningful change in the lives of victims and offenders.

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Section I: Introduction

Statement of the Problem

For many people intimate relationships and family are great sources of support and stability. Family helps to form the foundation of views toward the world as well as how individuals interact with others and build relationships. In many cases this is a positive nurturing process, however for some it forms the basis for tumultuous relationships in the future by modeling unpredictable and destructive behaviors. A Bureau of Justice Statistics report exploring domestic violence in America found that an average of 1.3 million non-fatal domestic violence victimizations occurred annually in the United States from 2006-2015. Approximately 68% of those incidents involved intimate partners (Reaves, 2017).

Many people have a stereotypical image of domestic violence, but they fail to realize the prevalence and complexities of the problem. In many instances the role of victim and offender may change from incident to incident or even within one encounter. A concrete definition for domestic violence (DV) has thus far been elusive, but traditionally, the term has been most often associated with physical abuse between heterosexual couples. More recently definitions of DV have begun to include relationships covering a variety of sexual orientations, ranging from married or divorced couples, live-in lovers, even those on first dates, as well as between immediate family members (Walker & Katz, 2005). The DV definition has also begun to include physical, psychological, and or emotional violence as well as the threats of these types of victimization (Wallace & Roberson, 2011). The dynamics associated with domestic violence make addressing the problem a challenge for those interested in intervening in meaningful ways.

Historically, interactions between family members and loved ones have been viewed as a private issue free from government interference. During the late 1980's and early 1990's, some law enforcement agencies across the country implemented mandatory arrest policies for DV incidents. These policies were meant to compel action on the part of law enforcement officers when responding to DV incidents. These policy changes followed the completion of the Minneapolis Domestic Violence Experiment (1984), a study conducted within the Minneapolis Police Department focusing on DV interventions (Berk, Campbell, Klap & Weston, 1992). They also were a response to, pressure from women's rights organizations in conjunction with high profile lawsuits against law enforcement agencies around the country for failing to intervene on behalf of battered women.

Mandatory DV arrest policies have been implemented as research driven methods to address a nationally significant issue, but it can be argued that relying on compulsory arrest fails to acknowledge the complexities of DV incidents (Celik, 2013; Karman, 2010; Wallace & Roberson, 2011; Zelcer, 2014). While many states have adopted DV arrest laws requiring arrest, others allow officers to utilize more discretion in the use of arrest as method of addressing domestic violence incidents.

Similar to the "War on Drugs," in the 1980's and 1990's, what was once seen as a necessary police intervention best practice, should evolve away from simply relying on mandatory arrest toward a more of a collaborative treatment based approach to address the causes of domestic violence rather than try to arrest away the issue. Taking more of a public health approach with education and resources seems to be a more realistic way to remedy the root causes of DV rather than trying to address one symptom of this behavior at a time. When arrests are made utilizing specialty DV courts may facilitate positive change and accountability

for offenders while providing support and protection for victims that traditional general crimes courts fail to deliver.

Traditionally, the courts have followed similar viewpoints held by society and law enforcement with regard to DV incidents being a private matter (Champagne, 2015). Beginning in the 1970's state courts in the United States began rejecting the notion that men have the right to chastise or discipline their wives; however despite that ideological change many court officials remained reluctant to intervene in domestic violence issues (Champagne, 2015). Mandatory arrest coupled with traditional court methods appears to be a rather hollow deterrent when it comes to addressing DV incidents. DV specific courts began on a fairly limited basis as early as the 1980's but became more prominent during the 1990's and 2000's (Labriola, Bradley, O'Sullivan, Rempel & Moore, 2009). Specialty courts have had documented success over recent decades most notably with drug courts which are uniquely suited to address the dynamics of drug related crimes. Ideally, the DV specialty court model could be coupled with a more appropriate law enforcement responses and community interventions to fully address DV incidents.

Purpose of the Study

The goal of this paper is to discuss the practicality of relying on mandatory arrest as a method of reducing rates of DV in the United States. This study will compare the effectiveness of mandatory versus more discretionary arrest policies for law enforcement in impacting the rates of DV. Furthermore, the effectiveness of specialized DV courts in addressing DV victims and offenders resulting from these arrests will be considered as well. This paper will provide data driven recommendations for effective criminal justice approaches to reducing rates of DV.

Methods of Approach

Information for this study will come from review of existing literature including peer-reviewed scholarly journals, textbooks, agency websites and government reports. These sources will be examined to help define domestic violence and determine the dynamics present between victims and offenders. A strong understanding of these concepts will lay the foundation for further analysis.

Significance or Implications of the Study

Domestic violence is an issue facing many citizens in the United States as well as countries around the world. There is a range of discretion afforded to law enforcement in this country surrounding DV incidents ranging from virtually none to total discretion. It is important to objectively evaluate common practices within the criminal justice system. Evaluating the effectiveness of law enforcement response as well as judicial approaches may provide an opportunity to increase effectiveness and maximize efficiency within the criminal justice system while offering better service to both victims and offenders.

Section II: Complexity of Domestic Violence in Society

Historic views of Domestic Violence

Throughout history physical and emotional abuse among family members, particularly between husband and wife, have been deemed a private matter. For centuries men were considered “head of the household” and allowed to “discipline” their wives as they saw fit. This was accepted in English Common Law denying equal rights between genders. Men were able, and in many cases expected, to control their wives and children by physical means if necessary. Physical discipline was deemed to be a private family matter and led to a social standard of men

only disciplining their wives with a stick no bigger than thickness of their thumb, which became the “rule of thumb” (Friedman, 2010; Karman, 2010; Walker & Katz, 2005)

Puritans in the early American colonies were the first to pass laws forbidding verbal or physical abuse between family members, however these were rarely enforced and took on more of a symbolic meaning (Karman, 2010). A second wave addressing family violence came during the late 1800’s when reformers argued that government had a duty to enforce morality, when states like Alabama and Maryland introduced legislation that criminalized spousal abuse (Karman, 2010; Zelcer, 2014). A third wave of reform came during the 1960’s and 1970’s as part of the women’s liberation movement with a push to protect and empower female victims by establishing shelters for battered women and pressuring legislators to seriously address DV (Hirschel, Buzawa, Pattavina & Faggiani, 2008; Karman, 2010; Sherman et al., 1984; Walker & Katz, 2005; Wallace & Roberson, 2011; Wellman, 2013). Additionally courts recognizing domestic violence (DV) as behavior deserving of intervention began granting restraining orders and protection orders in an effort to shield victims from further abuse. Interestingly, these court orders offered little relief for victims who received little or no support from law enforcement when those protection and restraining orders were violated (Champagne, 2015).

During the 1970’s and 1980’s, high profile lawsuits nationwide, including New York (Bruno v. Codd, 1979), California (Scott v. Hart, 1979) and Connecticut (Thurman v. City of Torrington, 1984), targeted law enforcement officers as well as their agencies. These civil actions were the result of failure to protect female victims from their domestic abusers and pressure created for law enforcement to embrace change with regard to arrest policies (Celik, 2013; Ciraco, 2001; Houston, 2014; Walker & Katz, 2005; Zelcer, 2014). Domestic violence courts also began in limited numbers during the late 1980’s but have become more prominent

during the 1990's and 2000's (Labriola et al., 2009). Backed by research data out of Minneapolis that supported mandatory arrests for DV incidents, pro DV legislation was established during the 1980's and 1990's despite sharp opposition from the National Rifle Association with regard to weapons bans for DV offenders. The Violence Against Women Act (VAWA) of 1994 (P.L. 103-322) was passed and its provisions remained largely unchanged despite a newly elected republican controlled congress. This was due in part to the high profile O.J. Simpson trial. The VAWA was renewed in 2000, 2005 and again in 2013. The renewal strongly supported law enforcement embracing the move toward implementing mandatory arrests for DV incidents and offered federal funding to states that adopted the legislation (Celik, 2013).

Minneapolis Experiment

The Minneapolis Domestic Violence Experiment conducted in the early 1980's is commonly regarded as a seminal study with regard to the topic of domestic violence. During 1981 and 1982, data was collected from the Minneapolis Police Department regarding police responses to DV calls for service (Sherman et al, 1984). These responses represented the three most common approaches traditionally employed by officers faced with DV calls which included counseling the parties involved, asking one of the parties to leave, and in some cases arrest.

Participating officers were selected from the two precincts with the highest volumes of domestic violence incidents and asked to attend a three day planning meeting. The 33 officers that agreed to participate for one year were issued pads that contained documents, in random order, dictating what outcome was to be pursued (counsel, separate or arrest) involving misdemeanor DV incidents. Each time officers responded to a domestic violence call they would utilize the method described on the top of the pad. Exceptions were made for cases in which the offender assaulted an officer, the victim persistently demanded the offender be arrested or both

parties were injured. In these cases the officers were instructed to abandon the experiment and follow standard protocol with regard to determining a resolution.

The goal of the experiment was to collect 300 cases to analyze. Due in part to lack of officer participation the experiment was extended slightly beyond the initial year long timeframe and 18 additional officer participants were added to the study. At the end of the 17 month period, data involving 314 cases was obtained. The study was designed to utilize bi-weekly follow-up sessions over a six month period to establish the levels of repeat DV incidents. Sixty-five percent (205 of 314) of the victims attended the initial follow-up meeting, but only 49% ($n = 161$) completed all twelve of the prescribed sessions.

Analysis of the data collected began to paint a picture of DV incidents reported to police in Minneapolis. The incidents disproportionately involved unmarried couples with lower than average education levels, who were disproportionately minority and mix race (black male, white female) and who are very likely to have had prior violent incident with police intervention (Sherman et al, 1984). Based on information collected from police reports related to the 314 cases, 10% of the offenders who were arrested were involved in an incident of repeat violence that was reported to police over a six month period following their initial arrest. This finding was considerably lower than the 19% of individuals initially advised on scene or the 24% who were sent away.

The 161 victims who completed the 12 follow up interviews provided data indicating 19% of the offenders arrested during the initial police contact had an incident of repeat violence during the six month period following their arrest, compared to 37% who were initially advised on scene and 33% who were sent away (Sherman et al., 1984). The information obtained during

the experiment the Minneapolis PD changed its policy regarding domestic violence incidents to mandate arrest.

The Minneapolis Domestic Violence Experiment provided exploration into an area of criminal justice previously receiving little or no acknowledgement from law enforcement, the court system or society. The experiment appeared well designed and implemented. While there were issues with police participation and victim follow through, adjustments were made during the study and useful data collected (Sherman et al., 1984).

There were a number of weaknesses associated with the experiment raising suspicion about fully implementing mandatory arrest as the primary intervention for DV incidents. The sample size and location of the experiment are two areas of concern. The overall number of offenders provided small subsets to be explored with regard to variables such as age, race, employment, criminal history, and etcetera. Minneapolis has a relatively low crime and unemployment rate making it not necessarily representative of many communities across the country. Minneapolis, unlike many cities, kept arrested DV offenders in jail overnight. It is possible that if offenders were given the opportunity to immediately post bail this could have impacted the results (Sherman et al., 1984).

One of the most glaring weaknesses with regard to associating the data collected as the basis for major policy is the utilization of reported domestic violence incidents. Especially considering it is suggested that DV incidents are extremely underreported (Karman, 2010). Some data suggests as many as 71.9% of victims chose not to call police (Walker & Katz, 2005). It is difficult to account for unknown crimes and DV is not exception. It is difficult to determine if reported incidents are representative of all DV incidents. Further, if calling the police the first time did not provide relief for the victim; it is difficult to determine if many of these victims fail

to contact police during later incidents. This could greatly impact the rates at which future violence is reported, particularly with regard to individuals where arrest was the outcome. Arrest appears to be the largest inconvenience and consequence for the offender and should consequently, be assumed to have a greater deterrent effect. However, arrest may also negatively impact the victim and that may influence future reporting or cooperation.

Mandatory Arrest Replication Attempts

There were several attempts to replicate the findings of the Minneapolis Domestic Violence Experiment, despite the fact that many outspoken feminist critics indicated the evidence spoke for itself making further research unnecessary (Celik, 2013). Studies in Omaha, NE (Dunford, Huizinga & Elliot, 1990), Colorado Springs, CO (Berk, Campbell, Klap, & Weston, 1992), Milwaukee, WI (Sherman et al., 1992), Charlotte, NC (Hirschel & Hutchinson, 1992) and Miami, FL (Pate, Hamilton, & Annan, 1995) provided varying, sometimes conflicting, and largely inconclusive evidence to support or refute arrest as the ideal solution to DV incidents.

However, an analysis of a study completed by the Centers for Disease Control (2012) confirmed that arrest of batterers was consistently related to reducing subsequent aggression. It found no correlation to arrests contributing to an increased risk for the victim and put to rest major attempts to replicate the Minneapolis Domestic Violence Experiment (Maxwell, Garner & Fagan, 2001). This data coupled with high profile law suits against law enforcement and outspoken women's rights activists fueled legislation that solidified mandatory arrest as the accepted practice within the law enforcement community (Hirschel et al., 2008; Houston, 2014; White, Goldkamp & Campbell, 2005; Wallace & Roberson, 2011).

Need to Define Domestic Violence

A review of the literature shows there is no universally accepted definition of domestic violence. Nevertheless there is great need for robust guidelines to establish consistency with regard to tracking trends and delivering consistent meaningful intervention through the criminal justice system. Traditionally, the term ‘domestic violence’ is what has been most often associated with abuse within a relationship. According to the Oxford Dictionary of Current English the word domestic is defined as, “relating to a home or family” (Soanes, Hawker & Elliot, 2006). The term domestic abuse implies that the abuse is taking place between married couples that are most likely assumed to be heterosexual in a more traditional sense of the word family. When attempting to define something as complex as DV it seems foolish to think that one term encompasses all the relationship types accurately. Similarly, it would be unwise to assume all domestic type relationships would be best handled in the same manner. For example, two people with no intimate relationship (i.e. roommates) may call for a different response than immediate family members. This also differs from individuals who have an intimacy component to their relationship.

Attempt to Define Domestic Violence

The meaning of DV is greatly influenced by the statutes and what is considered socially acceptable behavior in a given location. The term domestic violence describes physical, sexual, or psychological harm by a current or former partner or spouse. This type of violence can occur among heterosexual or same-sex couples and does not require sexual intimacy (Centers for Disease Control, 2012). Another term used to describe DV incidents is Intimate Partner Violence. These relationships have a sexual component traditionally been associated with

heterosexuals but have grown to encompass a wide range of sexual orientations (Centers for Disease Control, 2012).

Domestic violence has been identified as encompassing four main categories: physical violence, sexual violence, threats of physical or sexual violence and psychological/emotional violence (Centers for Disease Control, 2012; National Institute of Justice, 2007). Physical violence is defined as the intentional use of physical force (e.g., shoving, choking, shaking, slapping, punching, burning, or use of a weapon, restraints, or one's size and strength against another person) with the potential for causing death, disability, injury, or physical harm (Centers for Disease Control, 2012).

Sexual violence can be divided into three categories: (1) the use of physical force to compel a person to engage in a sexual act unwillingly, whether or not the act is completed; (2) an attempted or completed sexual act involving a person who, because of illness, disability, or the influence of alcohol or other drugs, or because of intimidation or pressure, is unable to understand the nature or condition of the act, decline participation, or communicate unwillingness to engage in the act; and (3) abusive sexual contact.

Threats of physical or sexual violence include, communicating the intent to cause death, disability, injury, or physical harm through the use of words, gestures, or weapons.

Lastly, psychological or emotional violence includes the traumatization of a victim by acts, threats of acts, or coercive tactics (e.g., humiliating the victim, controlling what the victim can and cannot do, withholding information, isolating the victim from friends and family, denying access to money or other basic resources). In most cases, emotional violence has been preceded by acts or threats of physical or sexual violence (Centers for Disease Control, 2012).

In addition to the four main types listed above a fifth form of abuse often associated with current or former intimate partners is stalking.

The act of stalking refers to harassing or threatening behavior that an individual engages in repeatedly, such as sending the victim unwanted presents, following or lying in wait for the victim, damaging or threatening to damage the victim's property, appearing at a victim's home or place of business, defaming the victim's character or spreading rumors, or harassing the victim via the internet by posting personal information (National Institute of Justice, 2007).

It is important to understand that the categories outlined represent a range of acts that could be considered criminal in a variety of relationships. A review of the literature shows a lack of concrete definitions with regard to domestic abuse and or intimate partner violence. Therefore it is important to understand that these categories could be used to define DV incidents regardless of the presence of an intimacy component.

Portrait of Domestic Violence Offenders and Victims

To better understand the need for criminal justice intervention that is tailored to the unique dynamics of domestic violence it is important to understand the circumstances surrounding domestic violence. As with any data the lack of concrete definitions makes tracking and evaluating the problem a challenge. The United States Department of Justice (DOJ) attempts to analyze domestic violence trends through data collected annually through victim reporting as part of the Bureau of Justice Statistics' National Crime Victim Survey. These surveys collect data reported by victims regarding non-fatal victimizations that are reported to police as well as incidents not reported to police. This data helps to provide a picture of victims, how they are abused and by whom.

Between 1993 and 2010 the overall rate of intimate partner violence in the United States has declined by 64%. Statistically females face a higher likelihood of being victimized (5.9 per 1,000 persons age 12 or older) versus males (1.1 per 1,000) and individuals between 25 and 34 years old were the most likely to be victimized (12.1 per 1,000). Black/ African Americans reported the highest rates of victimization followed by Whites, then Hispanic/ Latina and Other (7.8 per 1,000; 6.2 per 1,000; 4.1 per 1,000; and 3.8 per 1,000 respectively) (Catalano, 2012).

With regard to relationship status separated individuals reported the highest rates of victimization at 59.6 per 1,000 followed by individual where were never married (8.0 per 1,000), divorced and or widowed (6.5 per 1,000) and married (2.0 per 1,000). Single female adults with children were victimized at a rate of 31.7 per 1,000 compared to single adult females (4.6 per 1,000) and married adults with children (2.5 per 1,000). Married adults without children and single male adults with children were reported by ten or fewer individuals making their rates essentially zero. Females reported being previously victimized by the same offender on average 78% of the time (Catalano, 2012).

In addition to exploring the variables associated with the characteristics of people involved in DV incidents, there has also been data collected regarding the circumstances in which these incidents took place.

Between 1993 and 1998 it was reported that women in households earning less than \$7,500 per year were abused at a rate of over 20 per 1,000 compared with women living in households making \$50,000 or more being victimized at a rate less than 5 per 1,000. That same reported recorded the highest instances of intimate partner violence took place in the home (63% of women and 52% of men) and at night between the hours of 6 p.m.

and 6 a.m. (60% of women and 59% of men). It was also found that 50% of women and 68% of men were not injured as the result of intimate partner violence. Of the victims injured, roughly 6 in 10 female and male victims were not treated for their injuries. Of the 50% of victims injured during an incident of intimate partner violence, 42% of women and 27% of men received what was classified as minor injuries.

During period of 1993-1998, on average 53% of women and 46% of men reported their victimization to the police. With regard to why the incident of intimate partner violence was not reported to the police, 35% of women and 52% of men stated it was a private or personal matter. In addition, 19% of women feared reprisal if the incident was reported and 7% of women along with 15% of men called the incident a minor crime not needing to be reported to police (Rennison & Welchans, 2000).

According to research above, the profile of a DV victim would likely be a young (18-34 years old), women (most likely black otherwise white), and whose household income places her below the poverty line. This victim is likely to have children but is not married to her male abuser with whom she has a history of DV incidents (Catalano, 2012; Rennison & Welchans, 2000). The incident is most likely to take place between the hours of 6 p.m. and 6 a.m. in or directly around her home (Rennison & Welchans, 2000). Based on the time and place of these episodes, the likelihood of children witnessing the incident is troubling especially when you consider that violence is a learned behavior. Children raised with violence are likely to become abusers and or victims as adults (Redden, 1997). The incident may or may not result in injury but if an injury is sustained it will likely be minor and the victim will receive no medical treatment. Regardless of injuries sustained the incident will likely not be reported to the police and dismissed by the victim as a private matter (Catalano, 2012; Rennison & Welchans, 2000).

The depiction of domestic violence, particularly between intimate partners, combined with the relationship dynamics outlined previously begin to paint a portrait of the unique circumstances surrounding DV incidents. For those reasons it is important to understand the benefits of specialized treatment based courts in contrast to more traditional court proceedings which focus primarily on guilt or innocence versus invoking meaningful change for victims and offenders.

Domestic Violence Beyond Arrest

As mentioned previously mentioned DV was historically viewed as a private issue that took place within the home (Champagne, 2015; Walker, 2015; Wellman, 2013). In the 1960's and 1970's the women's rights movement began bringing to light the abuse many women suffered in their own homes (Wellman, K., 2013). Similar to the law enforcement response to DV the courts were often reluctant to intervene it what was commonly held as a private matter. As early as the 1970's, changing judicial views of DV began rejecting the notion of a man's right to discipline his wife (Champagne, 2015). However, judicial practices continued taking a primarily hands off approach when addressing DV cases (Champagne, 2015).

Views toward DV continue to evolve with the expansion of victim advocacy and increased levels of action taken by law enforcement and the courts when dealing with DV incidents. "Change accelerated with the passage of the Violence Against Women Act in 1994, which established federal pro-arrest laws and funding mechanisms for victim services and other interventions" (Labriola, et al., 2009, p. 2). Mainly during the 1990's and early 2000's the implementation of specialized "problem-solving courts" designed to address a "common underlying problem" (Labriola, et al., 2009, p. 2) were formed based on the principle "grounded

in therapeutic jurisprudence” which shifted away from the traditional adversarial process utilized in general criminal proceedings (Ostrom, 2003, p.1).

Components of Domestic Violence Courts

There is research suggesting a lack of conclusive evidence that criminalization of DV is a suitable response to the problem (Wellman, 2013). Rather, coordinated efforts that link services to victims and offenders may be a more appropriate answer (Scott, 2007). Specialized DV courts seek to place more of an emphasis on both victims and offenders with a treatment based approach (Ostrom, 2003). This is done by utilizing members of the court work group that are specifically designated to address a particular issue, in this case DV (Labriola et al., 2009; Messing, Ward-Lasher, Thaller, & Bagwell-Gray, 2015).

Most problem solving courts focus on victimless crimes (i.e. mental health and drug courts), however DV courts have a duty to not only provide services to the offender but also the victims (Labriola et al., 2009). The core values and objectives of DV courts often remain the same across jurisdictions. However, logistics may vary by geographical location. Some DV courts may only hear intimate partner violence related matters while other may also hear cases involving family violence. Similarly some cases may be assigned to DV courts after the offender’s initial appearance and the issuance of DV charges while other courts may take cases at the point of arraignment through final disposition (Labriola et al., 2009).

According to an evaluation of DV courts around the country, victim safety, offender accountability, and administration of justice were found to be the top goals amongst DV court workgroup members surveyed (Labriola et al., 2009). Court workgroup members refer to the individuals associated with court proceedings. This includes court specific individuals like judges, prosecutors, defense attorneys and court clerical staff but may also include non-court

staff. Police officers who make arrests and refer charges, probation agents who supervise offenders, victim advocates who represent the interests of victims and members of non-profit organizations associated with the fight against DV (Labriola et al, 2009).

In most cases, victim safety is achieved through the use of victim advocates, protection orders, and courthouse safety (Kramer, 2015; Labriola et al, 2009; Lippman, 2013; MacDowell, 2011; Messing et al, 2015; Ostrom, 2003). First, victim advocates are able to assist victims navigate the court process and provide victim resources including means to become more self-sufficient as well as emergency resources in the event of further DV incidents. Second, protection orders are designed to provide an added level of protection for victims who are at risk of further victimization. Third, providing a safe and secure environment during court proceedings are intended to allow victims the ability to participate in the court process free from intimidation by offenders. Fourth, offender accountability is designed to both deter further DV incidents while providing an opportunity for rehabilitation (Labriola et al., 2009; Porter, 2011).

After completing an assessment, offenders are often enrolled in some form of batterer's intervention based treatment and in some cases this is in conjunction with other treatments for substance abuse, mental health, and parenting classes in an attempt to address some of the other issues associated with DV. As part of the court process offenders are regularly monitored for compliance which is reviewed by a judge who offers praise or sanction where appropriate (Labriola et al., 2009).

One of the strongest assets of specialty courts is a dedicated group of individuals familiar with a given topic, in this case DV, and who become familiar with specific individuals (victims and offenders) (Labriola, 2009; Ostrom, 2003; Walker, 2015). This lends itself to the third element of DV courts which is the administration of justice. Having a dedicated group of trained

individuals with knowledge and experience in a particular area allows for a collaborative effort to provide victim resources, address offenders with quality and efficiency in a more consistent manner than traditional court proceedings (Labriola et al., 2009; Lippman, 2013; Wellman, 2013).

Other Specialty Court Successes

Government intervention regarding deviant behavior has evolved over time. Criminal justice responses have been likened to a pendulum swinging from more conservative in nature to more progressive. Traditionally individuals who abuse drugs and alcohol have been viewed as social deviants that, in some cases, pose a threat to the general law abiding public. At many points in history there has been little, if any, distinction between individuals who sell drugs and those who consume them. This has led to a government response focused greatly on incapacitation as a method of protecting the general public and serving as a form of deterrence.

In more recent decades there was a switch toward rehabilitative efforts attempting to change behavior particularly for individuals suffering from addiction. One of the ways this was illustrated in the court system was through the implementation of drug courts. Drug courts attempt to shift the focus from the traditional adversarial approach to criminal court proceedings toward “therapeutic jurisprudence” which incorporates a team oriented treatment based approach to address offenders dealing with substance abuse (Francis & Reynolds, 2015).

The concept of modern drug court began in 1989 in Miami (FL). Over the past decades drug courts have spread across the country. As of January 01, 2009, there were more than 2,300 drug courts in the United States (Walker, 2015). Similarly, an article published about drug courts in Canada indicated that by 1998, the first drug court established outside the United States found a home in Toronto and by 2011 Canada had a total of six federally funded drug courts as well as

being adopted in the United Kingdom, Australia and New Zealand (Somers, et al, 2012). This is due in large part to the success surrounding drug courts in the United States. Research indicates in comparison to traditional incarceration methods drug courts not only yield lower levels of recidivism but produce these results at a fraction of the cost of institutionalization (Francis & Reynolds, 2015; Messer, Patten & Candela, 2016; Rempel, et al, 2003; Skordas, 2015; Somers, et al, 2012; Walker, 2015).

Features of Effective Drug Courts

There have been many promising outcomes associated with the implementation of drug courts, particularly in comparison with traditional court proceedings and institutionalization practices. Once offenders are determined to be eligible for drug court they are presented with the opportunity to participate, which is contingent on them entering a guilty plea prior to participation in programming. The screening process included an initial criminal history assessment to determine if the individual's eligibility. Upon successful completion of the program, in many cases charges will be dropped all together or reduced from a felony to a misdemeanor with minimal or no time served (New York City Criminal Court, 2004).

Once offenders agree to participate they are often assigned case management workers who assess their needs and assist in developing court-mandated treatment to supplement the ongoing court monitoring process. Participants are provided a range of treatment options including: inpatient programs, outpatient programs, residential programs or a combination as well as specialized treatment programs (Labriola et al., 2009; New York City Criminal Court, 2004). One of the benefits associated with drug court is the decreased time between arrest, assessment and placement in a treatment program (Kramer, 2015; MacDowell, 2011; Labriola et

al., 2009). While in-patient treatment is available a majority of participants (68%) are enrolled in outpatient treatment (New York City Criminal Court, 2004).

Depending on the plan of care, participants are monitored in court by the presiding judge to periodically assess progress, compliance and any violations. Another advantage to the drug court process is the consistent workgroup involved in monitoring the progress made by participants. Familiarity with the cases and more intimate nature of the proceedings allow for participants and workgroup members to become familiar with one another (MacDowell, 2011; Messing et al, 2015). This helps to facilitate more meaningful interactions where praise and sanctions have more of a personal meaning as opposed to the superficial involvement of traditional court proceedings (Messing et al, 2015).

Compliance with drug court program objectives including but not limited to active participation in treatment, clean drug test results, no new arrests, participation in education and or employment allows for participants to advance through the program and move closer to graduation. Failure to comply with program objectives results in progressive discipline which can include verbal reprimand from the judge, the requirement of writing essays for the participant, failure to move forward in the program, serving immediate jail time, all the way up to dismissal from the program (Labriola et al., 2009). If and when jail time is imposed the sentence is carried out quickly and the number of days served increases depending on the severity of the infraction as well as prior program adherence or sanctions imposed.

As is seen through the entire drug court process, speed contributes to the overall effectiveness. Praise and sanctions are delivered quickly by individuals who are familiar with the participant. This immediate feedback by a known group of individuals appears to have great effect on participants when compared to the drawn out impersonal experience associated with

most criminal court proceedings (Labriola et al., 2009). Once participants are able to successfully navigate the court mandated treatment process, they are considered graduates. They receive the benefit of not only having potential charges reduced or dropped altogether, but many drug court participants are found to have increased levels of personal achievement such as scholastic or employment goals, as well as improved social and family relationships (Labriola et al., 2009). The general consensus that drug court graduation is positively associated with decreased recidivism and increased cost savings, particularly compared to traditional criminal drug proceedings and punishment, is widely accepted (Francis & Reynolds, 2015; Messer, Patten, & Candela, 2016; Rempel et al., 2003; Skordas, 2015; Somers et al., 2012; Walker, 2015).

Section III: Methods of Approach

Methodology

Information for this study will come from review of existing literature including peer-reviewed scholarly journals, textbooks, agency websites and government reports. These sources will be examined to help define domestic violence and determine the dynamics present between victims and offenders. A strong understanding of these concepts will lay the foundation for further analysis.

Previous studies will be used to outline the criminal justice responses to DV incidents over time and the differences in response currently in place. An evaluation of the Minneapolis Domestic Violence Experiment and its findings will better illustrate the driving force behind mandatory arrest, and why it fails to properly address many DV incidents. Finally, data regarding the effectiveness of existing domestic violence courts will be explored including what approaches facilitate meaningful intervention. This information will help describe how a

collaborative effort between the courts and law enforcement will provide more meaningful responses to domestic violence incidents.

Section IV: Options for Domestic Violence Response

Law Enforcement Options for Domestic Violence Response

A concrete definition of DV makes identifying and studying its occurrence a challenge. Laws vary by state and even relatively common terms like assault or battery can have different names or meanings. Within these varied terms, the degree of severity can also change by jurisdiction. What makes something relatively low level battery (i.e. pushing or hitting causing pain) versus more serious incidents (i.e. visible marks, broken bones, loss of consciousness, permanent injury or disfigurement) are all defined statutorily and vary by jurisdiction (Barocas, Emery, & Mills, 2016). These differences, coupled with a range of descriptions constituting what defines a domestic relationship, make tracking these incidents difficult. These ambiguities impact the varying levels of discretion afforded to law enforcement, which can make enforcing existing DV laws challenging (Barocas, Emery, & Mills, 2016).

Discretion is a large part of what allows law enforcement officials to apply relatively black and white statutes to real world scenarios that often do not fit nicely into one specific category. With regard to law enforcements response to DV, each state has established guidelines defined by statute. Currently the three main response categories include mandatory arrest, officer discretion and pro-arrest (Hirschel et al, 2008). The amount of discretion ranging from none (i.e. mandatory arrest) to total discretion serve as the guideline that dictates officers responses depending on the jurisdiction they operate.

When exploring statutes and policies within the criminal justice system it is important to recognize and understand two commonly used key terms “may” and “shall”. These terms

influence the expected response from the person or persons acting on those statutes and policies. The use of the term “may” allows for some leeway with regard to a given statement while the term “shall” is a more concrete directive (Wisconsin Department of Justice, 2014). A statement indicating an officer “may” arrest under a given circumstance implies arrest is an option that could or could not be utilized. However, a statement indicating an officer “shall” arrest is a specific direction given the criteria outline in that instance has been met. Statutes and policies allowing for discretion utilize language that includes “may” while statutes with little or no discretion afforded rely on “shall.” A very useful resource for understating a variety of DV laws is the chart created by the American Bar Association Commission on Domestic Violence (see Appendix A for table showing DV laws by state).

Mandatory Arrest Option

Mandatory arrest policies aim to remove or greatly limit the use of discretion by attempting to dictate a prescribed response based on meeting specified criteria. The goal is to produce consistency and limit human error or bias (Johnson & Dai, 2016). Many states such as Wisconsin (Wis. Stat. Ann. § 968.075(2)(b)), Kansas (Ky. Rev. Stat § 431.005(2)(a)), and Oregon (Or. Rev. Stat. § 133.055 (2)(a)) enacted statutes that require law enforcement to arrest when probable cause exists that a domestic violence related crime was committed. Others such as South Dakota (S.D. Codified Laws Ann. §§ 23a-3-2.1), New Jersey (N.J. Stat. Ann. § 2c:25-21) and Ohio (Ohio Rev. Code Ann. § 2935.032 (A)(1)(a)) require mandatory arrest when there is physical injury to the victim. Each state specifies timeframes in which law enforcement must arrest when reported. This can range from mandatory arrest for incidents having taken place within the past 24 hours, such as in Nevada (Nev. Rev. Stat. § 171-137) and Mississippi (Miss.

Code Ann. § 99-3-7(3)), to Wisconsin where arrest is required for any incident reported to law enforcement within 28 days (Wis. Stat. Ann. § 968.075(2)(b)).

Additionally, each state outlines the amount of discretion allowed when considering dual arrests in situations where the line between victim and offender is difficult to discern. In most states dual or mutual arrests are discretionary and it is strongly encouraged to determine and arrest the predominate aggressor (American Bar Association, 2011). Another factor to consider is the violation of temporary or permanent restraining or protection orders granted by the courts. Many states such as New Hampshire grant officers discretion when making an arrest during DV incidents but require an arrest be made in the event of a temporary or permanent restraining order violation (N.H. Rev. Stat. Ann. § 594:10 (I)(B)).

As with any practice there are strengths and weaknesses associated with their use. Probably the main strength associated with mandatory arrest is the idea of consistency with regard to the delivery of services (Guzik, 2008). Mandatory arrest seeks to limit the number of officers not taking action based on a variety of reasons ranging from lack of training and or empathy to laziness or personal bias (Johnson & Dai, 2016).

Arguably another strength of mandatory arrest policies is the removal of pressure on the victim to decide what they would like done (Houston, 2014). Typically officers and prosecutors take victim preference heavily into account when determining the best course of action for a given incident. The close personal relationship between DV offenders and victims can weigh heavily on victims who may feel conflicted about wanting the abuse to stop, while not necessarily wanting their loved one to get in trouble or feel intimidated by the offender. Mandatory arrest seeks to limit that pressure on the victims (Guzik, 2008).

Conversely, removing the wishes of the victim from the equation can also be a weakness of mandatory arrest. Making an arrest in direct conflict with a victim's wishes may cause the victim to feel as if they are being victimized a second time by the individuals who are sent to help (Messing et al., 2015). This can cause feelings of resentment about reaching out for help and may come into play when considering whether or not to seek help in the future.

Another weakness associated with mandatory arrest relates to the lack of a concrete definition of DV and the ambiguity associated with policies and statutes outlining criminal justice responses. With expectation of mandatory arrest in instances where there is question as to whether or not the criteria for arrest have been met, the response may be to make the arrest just to be on the safe side. This could be viewed as a positive by some but may also be a negative if people are being unnecessarily arrested causing resentment toward law enforcement by victims and offenders (Guzik, 2008; Dixon, 2008).

Large numbers of arrests may also burden the system (Dixon, 2008). Overburdened court systems may be forced to take on more of a triage approach, focusing on the most serious cases (Guzik, 2008; Houston, 2014). This may also mean choosing not to issue charges in cases with tentative or uncooperative victims (Guzik, 2008). One study consisting of interviews with prosecutors in three different states (Pennsylvania, California and Florida) estimated approximately 80% of criminal charges were ultimately dismissed based on lack of victim cooperation with the case (Lerman, 1981). In this case mandatory arrest becomes a rather hollow threat when there may be limited follow through beyond the inconvenience of the actual arrest.

Discretionary Option

Officer discretion policies cover the continuum of choices afforded to the individual officer. Each officer is able to apply existing criminal laws as they see fit depending on a specific

scenario. Officers operate based on statutory authority, training, experience, and personal judgement. States such as Alabama (Ala. Code 1975 § 15-10-3 (8)), Minnesota (Minn. Stat. Ann. § 629.341(1)), Vermont (Vt. R.Cr.P. Rule 3) and Texas (Tex. C.C.P. Art. 14.03(A)(4)) advise that officers may arrest based on probable cause that an incident of DV has taken place. Some states outline specific timeframes for reporting that range from incidents taking place within the past 12 hours in New Hampshire (N.H. Rev. Stat. Ann. § 594:10(I)(B)) to 72 hours in Oklahoma (Okl. Stat. §22-196). In Illinois officers are only required to intervene when DV is believed to have taken place and take steps to prevent further abuse. These steps can include providing transportation for the victim to another suitable location, seizing weapons, providing victim resources or making referrals to appropriate social service agencies, but may also include arrest of the alleged perpetrator (725 Ill. Comp. Stat. 5/112A-30). Some discretionary states allow for officers to use their judgement, but also require an arrest be made in specific instances like visible injury to a victim, a felony being committed or violation of protection and restraining orders (American Bar Association, 2011).

Affording officers varying levels of discretion when addressing DV incidents has strengths and weakness. Possibly the biggest strength of discretion is that officers are allowed to use situation specific variables to impact their final decision. This allows for flexibility when dealing with more unique or particularly complex situations that may or may not be addressed by statutes and policies. That being said, the largest weakness of discretion is possibility of inconsistency based on a variety of factors (Johnson & Dai, 2016). Lack of training and experience, bias, laziness as well as poor leadership have the ability to adversely affect performance and service delivered by law enforcement (Johnson & Dai, 2016). This

inconsistency also puts officers and departments in more of a position to be second guessed or judged for their actions at a later date.

Pro-Arrest Option

Pro-arrest policies strongly encourage a prescribed response much like mandatory arrest policies. However, they allow for the use of discretion when deemed appropriate given situational variables. A smaller number of states including Arkansas, California, Massachusetts, Montana, North Dakota, and Tennessee have implemented pro-arrest stances to address DV incidents (American Bar Association, 2011). Pro-arrest policies direct officers faced with DV incidents that meet outlined criteria are encouraged to make an arrest, however it is not required in all instances. North Dakota in particular advises arrest shall be presumed to be the most appropriate response (N.D. Cent. Code § 14-07.1-10). This maintains support for a taking DV seriously while allowing for leeway in specific instances where arrest may not be the most appropriate option. Like the previous two options pro-arrest still directs officers to identify primary aggressors when considering arrest. California (Cal. Penal Code § 13701(B)) and Massachusetts (Mass. Gen. Laws Ann. Ch. 209a § 6 (7)) specify that any violations of restraining or protection orders require mandatory arrest.

Pro-arrest allows officers to potentially evaluate each situation. It can reduce unnecessary arrests in situations where the criteria may technically be met but the overall situation does not seem to warrant such a response. For example, statutes that list individuals who “live together” or “have lived together in the past.” It is suggested that these statutes can be interpreted in a very literal sense or the individual applying the statute can use the criteria as a guideline to make a more informed decision. This type of language was likely added to encompass a wide variety of

relationships that could be considered domestic relationships beyond the traditional dating or married heterosexual couples such as short-term roommates.

Additionally, it is important to determine what constitutes actually living with someone. Not having specific criteria for establishing residency leaves that decision to the individual applying the statute even in more restrictive mandatory arrest situations. It is the idea of applying the spirit of a law versus the black and white letter of the law. It is suggested that there are many instances where the statute states something but, with experience, training and logic, a reasonable officer would argue the idea behind the statute allows for some latitude.

Returning to the example of living together as criteria for a domestic relationship experience, training and logic allows an officer to ideally identify in what instances this criteria is met. There may be situations where it would appear at face value individuals live together or have lived together in the past and an arrest under the DV statute may not be appropriate. It is suggested that a well-trained, alert and invested officer may also recognize situations where this aspect of a domestic relationship is appropriate despite attempts by offenders and possibly victims to downplay or disguise their cohabitation status. Statutes and policies can be drafted with the ideal of encompassing a wide range of variables but practical application in real world settings requires independent thinking. This is particularly true in instances where concrete definitions are not available and criteria defining action is varied.

The discretion afforded by pro-arrest polices appears to offer a more moderate approach to dictating the response of law enforcement when presented with DV incidents. Like the previous two options pro-arrest practices have strengths and weaknesses. Pro-arrest is a blend of mandatory arrest and officer discretion and carries many of the strengths and weakness outlined above apply. Nevertheless, the method of providing a prescribed method but allowing latitude to

account for situation specific variables seems to moderate the strengths and weaknesses associated with mandatory arrest or total discretion. Pro-arrest sets an expectation that officers will make arrests when criteria is met reinforcing the idea that DV is taken seriously by law enforcement. This will also help relieve some of the pressure on victims to make the decision on whether or not to request an arrest. However, the discretion afforded to officers does allow for victim wishes to be taken in to account when making arrest decisions. An officer encouraging victims to pursue arrest and voicing concern, while not telling them the decision has already been made, seems to offer an opportunity to empower those who may not feel as if they have much power to begin with (Guzik, 2008).

Judicial Options for Domestic Violence Response

Criminal court proceedings in the United States follow an adversarial model pitting the prosecution against the defense. This means there are essentially two sides that make up the courtroom work group that carries out the judicial process. These workgroups generally consist of professionals which include the judge, a prosecutor, a defense attorney, a court clerk, a court reporter, a bailiff and any expert witnesses as well as nonprofessionals such as victim(s), defendant(s), jurors, any non-expert witnesses (Schmalleger, 2017). Given most court proceedings are public hearings, spectators and or press members may be included in the judicial workgroup.

Criminal proceedings often follow a similar flow depending on the jurisdiction where the case is presented. After formal charges are issued by the prosecution, an initial appearance takes place informing the defendant of their alleged charges. This initial appearance is followed by a hearing compelling the prosecutors to demonstrate sufficient evidence supporting their accusation. In some jurisdictions this evidentiary hearing is presented to a jury and in others it

takes place in front of a judge. Assuming no plea agreement is reached, the court process continues with trial either in front of a judge or jury. In the event the defendant is found guilty there is sentencing (Schmallegger, 2017).

Traditional court proceedings generally have similar members making up the courtroom workgroup and follow the progression outlined above. Traditional criminal courts are designed to address an assortment of crimes ranging from driving related offenses, or variety property crimes to violent felonies such as sexual assaults and homicides. Depending on the size of the jurisdiction cases may be heard by the same courtroom workgroups from start to finish or may switch between different courts.

Specialty courts offer an opportunity for designated workgroups to hear particular cases involving topics such as mental health, drug related crimes, domestic violence and other family related issues. These specialty courts offer opportunities for workgroup members to become focused in a particular area utilizing experience and a more collective approach when addressing specific content.

As mentioned previously, the top goals of DV courts have been identified as maintain victim safety, while holding the offender accountable and the administration of justice (Labriola et al., 2009). Offender accountability, administration of justice and victim safety are common goals in any court proceeding whether following the traditional method or through the utilization of specialty courts. Specialty courts allow for a more tailored approach that gives individualized attention to both victims and offenders (Guzik, 2008, Wellman, 2013). While DV courts have been analyzed arguably one of the most studied specialty courts are drug courts. Drug courts seek to administer justice while balancing offender accountability and offender treatment in an

effort to positively alter future behavior (Porter, 2001; Lippman, 2013). The success of drug courts offers support for the possibilities of other specialty courts such as DV courts.

Analysis of multiple drug treatment courts in the state of New York found that a relatively small number of eligible participants (8%) simply refused to enroll in the program. Of those who chose to enroll, a lower rate of recidivism was observed in relation to the comparison group (27% versus 36% one year from initial arrest, 34% versus 48% at two years and 35% versus 50% at three years after initial arrest) (Porter, 2001; Rempel, 2003). Some hypothesized that the effects of drug court on recidivism would greatly diminish after graduation without the intense involvement and oversight of drug court workgroup members and treatment (Porter, 2001). Those who failed to complete drug court experienced similar levels of re-arrest to those in the comparison group, while the recidivism gap widened for drug court graduates as time wore on after completion. Two significant indicators for re-arrest among drug court participants were age and prior criminal history. Younger participants and participants with prior arrest records were found to have higher rates of recidivism to the point that age appeared to nearly overcome the positive effects of drug court participation. When controlling for all other relevant characteristics, older drug court participants performed particularly well (Porter, 2001).

There is more research needed to better understand the effectiveness of specialty courts. However, what research has been completed points to promising outcomes when utilizing more of a treatment based approach with regard to certain criminal issues (Porter, 2001). Similar to domestic violence, drug use in particular exhibits dynamics unique to the issues faced by the individuals engaged in certain conduct related to their struggles with substance abuse. Simply trying to arrest away the problem fails to acknowledge the root causes of the issues leading to a

variety of criminal behaviors. This is particularly true when considering certain individuals are more prone to facing these types of issues.

Effective Specialty Court Considerations

Three main themes emerged when examining what makes specialty courts work well. First, is the importance of collaboration between the courts and treatment personnel. Second, is the large cost savings associated with long-term reductions in criminal activity. Third, is the importance of flexibility and level of resource coordination between courts and treatment providers (Francis & Reynolds, 2015; Messer, Patten, & Candela, 2016; Porter, 2001; Rempel et al., 2003; Skordas, 2015; Somers, et al., 2012; Walker, 2015). While a bulk of the cost savings came from the long-term impacts of crime and substance abuse reduction, there were immediate financial impacts associated with drug court versus the traditional judicial process. The speed at which drug courts move are conducive to participants success, but also greatly reduce the amount of time an individual spends behind bars during the court process and initial sentence (Francis & Reynolds, 2015; Messer, Patten, & Candela, 2016; Rempel et al., 2003; Skordas, 2015; Somers, et al., 2012; Walker, 2015).

In addition to studying the systemic effectiveness of drug courts, researchers have looked at how offenders perceive the experience. At the Bronx Treatment Court (NY), drug court participants were interviewed regarding their experiences. Researchers coded the interview responses and ranked components identified as valuable to participants. The outcome revealed the two most important components of drug court for participants were the ever-present threat of a sentence in response to program failure and praise from the judge (Porter, 2001). Research has highlighted the importance of praise and the overall personal interactions found in drug courts as a valuable component in the success of these proceedings (Francis & Reynolds, 2015; Messer,

Patten, & Candela, 2016; Porter, 2001; Rempel et al., 2003; Skordas, 2015; Somers, Currie, Moniruzzaman, Eiboff, & Patterson, 2011; Walker, 2015). Additionally, participants cited frequent drug testing, direct interaction with judges and frequent court appearances among the most influential components of drug court.

By comparison sanctions (i.e. jail stays, having to write essays and being required to observe additional drug court proceedings) were the components considered the least influential (Porter, 2001). This could lend credence to the overall theme of treatment based judicial intervention, placing more of an emphasis on personalized motivational geared intensive court intervention in lieu of the traditional adversarial punishment based approach (Porter, 2001).

Section V: Recommendations for Domestic Violence Response

Domestic Violence (DV) is an extensive and complex topic that has risen in recognition as a legitimate social issue in need of government intervention. The recommendations below are meant to aid in the progression of identifying and intervening in DV incidents. These recommendations include general criteria for more universal definitions of DV incidents, recommendations for a more appropriate response by law enforcement and the courts as well as recommendations for social response to DV incidents.

Recommendations for Defining Domestic Violence

The numerous jurisdictions across the United States and the world add greatly to the complexity of addressing DV as an issue (Champange, 2015; Celik, 2013; Ciraco, 2001; Hirschel, Buzawa, Pattavina, & Faggiani, 2008; Sherman et al., 1984; Houston, 2014; Karman, 2010; Walker & Katz, 2005; Zelcer, 2014). Currently there is no universally accepted definition for DV incidents and the criteria in place for identifying a DV incident and the prescribed response is guided primarily by the laws of any one particular jurisdiction. This can pose a

challenge for the individuals tasked with responding to DV incidents. Lack of a concrete definition also makes tracking DV incidents and evaluating the effectiveness of particular methods of intervention difficult. Therefore it is clear we need to speak a common language. The following are recommended categories of definitions.

Domestic Violence. It could be suggested that a fundamental aspect of defining DV would be to explore the term domestic violence. Whether called domestic violence, family violence or intimate partner violence, these terms seek to encompass a wide variety of relationships with dynamics as unique as the individuals involved (Centers for Disease Control, 2012; National Institute of Justice, 2007). Finding the exact wording that best embodies all the potential relationships seems to be an exercise in futility.

It is suggested that domestic violence may best serve as an umbrella term for individuals who share some form of relationship and share sustained close physical proximity (i.e. roommates) or a heightened emotional connection (i.e. family, very close friends or intimate partners). Domestic relationships include individuals who currently share sustained close physical proximity and a heightened emotional connection as well as those who have shared them in the past. These individuals share a bond that is not typically observed with casual acquaintances or strangers. In many cases the dynamics of these domestic relationships provide support needed for the individuals involved. However, in the instances where these relationships breakdown, those same dynamics may aggravate the issue and impact the way the individuals involved react to destructive behavior.

When addressing victimizations between individuals who currently share or have previously shares sustained close physical proximity, such as roommates, using the term DV may be sufficient. There is certainly a closer bond shared by these individuals than with others

whom they have never shared close personal space. Roommates may have their own personal spaces and share little common interests, but sharing such close living proximity could influence the level and manner in which someone is victimized as well as the potential responses of both individuals.

Family Violence. Within the category of DV there are individuals who share a heightened emotional connection like immediate family members. Not only have these individuals shared sustained close physical proximity but there is the addition of heightened emotional connections between family members (Aysa-Lastra, Rojas, Dillon, Duan, & De La Rosa, 2012; Renner, 2012). Even after moving apart physically, the dynamics in place formed by strong emotional connection and or established history between family members has the heightened potential to impact potential victimizations. The unique dynamics between victims and offenders also includes the possible influence of other family members who are emotionally invested in both parties (Aysa-Lastra et al., 2012). It is suggested that family violence is an adequate term for identifying these types of individuals who fall under the DV umbrella. This may include traditional family makeups including fathers, mothers, brothers and sisters. Other non-traditional family type relationships including extended family, very close personal friends, as well as individuals joined by adoption and or re-marriage would also fall under this category. It would include those individuals who share not only current or previous sustained physical proximity, but also have a heightened level of emotional attachment without intimacy.

Intimate Partner Violence. Similar to family violence, individuals who share an intimacy component could be said to fall within the overall term of domestic violence, but require an additional identification of their intimate relationship. It is suggested that defining what constitutes intimacy be left as a rather fluid definition rather than relying on traditional

methods such as the presence of a child in common. This allows officers to utilize discretion to determine whether or not the individuals meet the intimacy component based on the information they are provided.

The category of intimate partners arguably has the greatest level of physical and emotional connection that can impact potential victimizations as well as any future interactions. It is suggested that intimate partners can be divided in to current and former intimate partners. Separation from a former intimate partner adds an additional component to the relationship dynamic. Additionally, for current intimate partners it is suggested that those individuals be separated between intimate partners planning to stay together and current intimate partners where one or both are planning to leave the relationship. Individuals planning to stay together present a different challenge and may require a different response or level of intervention than a relationship where one or more partners are planning to leave.

Need to Create Reporting Continuity

One of the major hurdles associated with analyzing DV incidents is the lack of conformity amongst legal definitions across jurisdictions (American Bar Association, 2011). The most ideal way to track DV incidents would be to have legislation passed across states defining domestic relationships and establishing DV specific crimes with uniform elements defined for each type of incident. Disorderly conduct, battery or stalking would be the same whether it took place in Alabama or Alaska.

In addition, one entity, likely the federal government, would be charged with collecting data from local jurisdictions and utilizing a defined constant method of coding that information so that each crime could be compared across jurisdictions similar to the Federal Bureau of Investigation's (FBI) annual Uniformed Crime Reporting (UCR) which relies upon self-reported

data from local jurisdictions. Realistically, this is a task that could be added to existing UCR reports once uniform definitions and criteria were established. Establishing clarity and uniformity with regard to defining and tracking DV incidents would provide a much stronger picture of current incidents and any changes over time.

Recommendations for Law Enforcement Response

It is important to understanding how different types of domestic relationships and dynamics may impact DV incidents. It seems foolish to assume that each type of domestic relationship warrants the same responses from law enforcement. With that in mind it is suggested that rather than relying on mandatory arrest policies it is more effective to implement pro-arrest policies for law enforcement when addressing DV incidents. It is the response that takes situation specific dynamics into account allowing a more tailored approach.

Pro-Arrest. Training and accountability are two necessary components needed to accompany pro-arrest policies. With consistency surrounding what constitutes a domestic relationship, as well as what DV incidents look like, officers will be better able to analyze a given situation and properly apply existing statutes. Training and experience help strengthen an officer's ability to analyze specific situations and act appropriately in good faith. Like any law enforcement decision, the measuring stick cannot be how reasonable the decision was based on the outcome. Rather, the rationale for the decision should be based on the information available at the time of the decision based on their training and experience (*Graham v. Connor*, 1989). It is recommended law enforcement training encompass scenario based training followed by debriefs to help ensure officers are grasping larger concepts with regard to identifying and addressing different kinds of DV variables. Additionally, it is important that officers and prosecutors meet periodically on a regular basis for training purposes to discuss expectations and trends specific to

their jurisdiction. These legal updates combined with scenario based training and experience gathered over time on patrol help form and maintain the decision making process needed by officers. This decision making is what drives the effectiveness of discretion based pro-arrest as a method of addressing DV incidents for law enforcement.

Cooperation with Outside Entities

Ideally, law enforcement action could be supplemented with more robust social service agency support. This is something that would require devoting more resources to social service agencies that can work with entire families, victims and abusers to provide resources and alternatives. Some agencies may implement specialized DV units assigned to DV specific caseloads. While this approach may offer the benefit of specialized officers, law enforcement agencies may be better served enlisting the assistance of outside social service agencies. Much like the movement toward pairing law enforcement officers with mental health professionals to better serve individuals in crisis, combining law enforcement resources with social service assets allow both to do what they are good at. Law enforcement has its place in the equation but needs to constantly be in search of ways to best deploy resources. Having ready access to trained professional domestic violence resources could provide options outside of or in addition to arrest with regard to DV incidents. As mentioned previously, like many other public health issues like mental health and substance abuse, DV is not likely a problem that can be arrested away.

Recommendations for DV Specialty Court

It is important to analyze the criminal justice system as a whole and understand how the interplay between different institutions. Law enforcement, courts and corrections all impact system outcomes. Law enforcement is typically the most visible and likely the most familiar portion of the criminal justice system for the average citizen. Law enforcement is most often the

first contact and in some cases may be the only contact with the criminal justice system for individuals involved in DV incidents (Schmallegger, 2017). Nevertheless, it is argued that the court system may offer the greatest potential for influencing positive change in the lives of DV offenders and victims.

Criminal courts are charged with facilitating a fair and just process to determine guilt or innocence. During that process there is an ability to evaluate situation specific variables and determine appropriate action moving forward to ideally impact behavior (Francis & Reynolds, 2015; Messer, Patten, & Candela, 2016; Rempel et al., 2003; Labriola et al., 2009; Skordas, 2015; Somers et al., 2012; Walker, 2015). Because of this critical role, it is suggested that widespread implementation of DV specialty courts be adopted as part of a collaborative criminal justice approach to addressing DV incidents.

Personalized Approach. Specialty courts seek to administer justice but with a more personalized approach than traditional court proceedings (. The use of specialty courts allows for court members to become more involved with victims and offenders, which allows for closer monitoring of offenders and their actions during the course of their involvement with the court process (Francis & Reynolds, 2015; Messer, Patten, & Candela, 2016; Rempel et al., 2003; Labriola et al., 2009; Skordas, 2015; Somers et al., 2012; Walker, 2015). Ideally this provides some incentive for offenders to comply with orders from the court. The more personalized environment can provide a certain feeling of security for victims knowing court workgroup members are experienced and stable fixtures in the process. Combined with an understanding of a more treatment based approach, specialty courts seem are more sensible way to achieve compliance from victims and offenders involved in the process.

Meaningful Interventions. In conjunction with pro-arrest policies for law enforcement, it is suggested that a more specialized court process will facilitate more meaningful intervention for victims and offenders. It is important that victims are sought out by prosecutors and victim advocates to participate in the court process and share their wishes with the court. Additionally, it is suggested that resources such as social service agencies be utilized to provide assistance to victims and offenders as necessary. These agencies might facilitate classes or training for obtaining employment, finishing school, parenting skills or obtaining adequate housing. These are likely areas that both victims and offenders could benefit depending on their situation and in turn may help impact some of the factors contributing to the abuse taking place. Consistent monitoring for offenders during the court process provides a level of security for the victims knowing that violations will be dealt with swiftly while, depending on the relationship status between victim and offender, praise for compliance may not only provide motivation and support of offenders but victim as well.

Recommendations for Social Response

As with many challenges facing society, the criminal justice system is designed to play a role in impacting behavior and maintain order. That said, it is only one part of a larger social system that influences behavior. Social norms established over time offer a great deal of influence over the behavior of individuals. It is suggested that DV, much like mental health issues and substance abuse, are areas that often fall to criminal justice professionals to handle if for no other reason than there was no one else to call at the time of the issue.

To impact these circumstances it is suggested that in addition to criminal justice specific modifications there be an emphasis placed on facilitating social change. This can be done in a number of different areas.

1. The way we raise our children with regard to appropriate behavior and expectations has an impact on how they behave throughout their lives. This is done through adults in their lives including parents, other family and friends, teachers and many others talking about what is right as well as demonstrating those behaviors and values themselves.
2. This is also observed by the way our political leaders and representatives portray themselves as well as the policies they support and implement.
3. The types of entertainment and those involved in that entertainment whether acting or playing sports also shape the way we see the world.
4. It is important for people to not only hear that we take DV seriously from a young age, but see it as well.

Illustrating how DV is taken seriously can be done through polices and laws but also through the way we interact with each other and what is acceptable behavior. Just because something is being taken seriously does not necessarily mean it is dealt with in the harshest way. Mandatory arrest and prosecution combined with long prison terms give the perception of taking something very seriously but do not actually solve the real problem. In some cases those methods work and may be appropriate but in others they may not. It could be argued that a harsher social stance with regard to the acceptance of DV incidents would have a greater impact in changing behavior than the harshest government interventions.

It is argued that while there is a place for criminal justice polices and resources there also needs to be an emphasis placed on other entities that support social changes that drive criminal justice problems. Funding for education and social services combined with resources to help provide opportunities for individuals to grow and support themselves and others is what is needed to foster social change. Adding more and more police officers and building bigger jails

and prisons will only go so in the fight against domestic violence. There needs to be an emphasis on legitimate accessible support for individuals dealing with DV related issues. Having victims that are aware of potential resources and have the ability to utilize them when needed might help to avoid a particular issue and provide time and space to pursue long term intervention. With limited resources many great social service agencies whose aim is to combat DV go unnoticed by many citizens. Staffing and funding issues also make existing resources scarce for those in need.

If changing the way DV incidents are viewed was simple, it would have likely been done by now. As illustrated in the progression in the ways DV incidents have been viewed by the criminal justice system that sort of change takes time. There has inevitably been social change regarding the way DV is viewed which is what drove changes in policy. While changes in the criminal justice system were and will still be needed, it is important to recognize the limitations the criminal justice system has when changing behavior. Social researchers have and continue to debate the best way to induce social change through government intervention. Theories centered on incapacitation, retribution, deterrence, and rehabilitation have been implemented and studied over time. It is argued that while the criminal justice plays a strong role in helping to address deviant behavior in many cases its role is after the fact. Traditionally society seems to stress importance through supporting criminal justice interventions to address social problems.

Section VI. Conclusion

Domestic Violence (DV) has slowly come to be viewed as a legitimate social issue in need of intervention. Overtime social change has forced governments to evaluate how they view and address DV incidents. Policies like mandatory arrest are well intended and at a certain point

probably even assisted in the evolution of the fight against domestic violence. However, it is also important to re-evaluate existing practices and move forward utilizing best practices as the guide.

When considering the dynamics involved in DV incidents, it is no surprise that the individuals involved pose challenges for traditional criminal justice methods. These methods were formed at a time when family and intimate crimes were not viewed as high priorities or in some cases not viewed as crimes at all. Typically protecting a victim from an offender meant separating the offender from their victim as well as any potential future victims. But it becomes more difficult when the victim and offender do not necessarily care to be separated or when separating the offender actually causes legitimate physical, financial and emotional struggles for the victim(s). It may not be as simple as identifying who did what and agreeing to follow along with the process.

Establishing clear and consistent definitions and guidelines with regard to what is considered a domestic relationship is a great first step in establishing expectations for the criminal justice response. Secondly, allowing law enforcement to utilize their training, experience and discretion when it comes to evaluating DV incidents and deciding the best course of action. Ideally law enforcement will continue to recognize DV incidents and treat them seriously but with the assistance of social service agencies that may provide additional resources to victims beyond simply making an arrest. Third, dedicated DV specialty courts need to operate in conjunction with efforts by law enforcement and social service agencies. The use of treatment based court processes that engage the offender and victim offer a great opportunity to foster meaningful intervention and change future behavior. Lastly, there needs to be a continued effort to achieve lasting social change that identifies DV, condemns those who commit such acts, and offers support to those involved.

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Appendix A



Domestic Violence Arrest Policies by State

06/11

State	DV Arrest Policy	Relevant Statute	Circumstances
Alabama	Officer's Discretion	Ala. Code 1975 § 15-10-3 (8)	An officer <u>may</u> arrest a person when an offense involves domestic violence, and the arrest is based on probable cause, regardless of whether the offense is a felony or misdemeanor
Alaska	Mandatory Arrest; Mutual is discretionary	Alaska Stat. § 18.65.530 (A) and (B)	An officer <u>shall</u> arrest a person when there is probable cause to believe that a crime of domestic violence has been committed in past 12 hours. When there are mutual accusations, policy of determination of the primary aggressor
Arizona	Discretionary/Mandatory Arrest	Ariz. Legis. Serv. Ch. 90 §13-3601(B)	An officer <u>shall</u> arrest where infliction of physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument. Otherwise, discretionary.
Arkansas	Pro-Arrest; Mutual is discretionary	Ark. Code Ann. § 16-81-113 (a)(1)(A) and (a)(2)(A)	Where probable cause exists, arrest is the <u>preferred</u> action. Mutual accusations to be evaluated separately, policy of determination of primary aggressor.
California	Pro-Arrest/Mandatory/Mutual discouraged	Cal. Penal Code § 13701(B)	Arrest <u>encouraged</u> where probable cause. Mandatory arrest when claiming violation of domestic violence protective or restraining order. Dual arrests are discouraged, but not prohibited. Reasonable efforts shall be made to identify primary aggressor.
Colorado	Mandatory Arrest; Mutual is discretionary	Colo. Rev. Stat. § 18-6-803.6	An officer <u>shall</u> arrest where probable cause to believe that a crime involving domestic violence was committed. Mutual accusations to be evaluated separately.
Connecticut	Mandatory Arrest; Mutual is discretionary	Conn. Gen. Stat. § 46b-38b (a)	An officer <u>shall</u> arrest whenever the officer determines upon speedy information that an act of domestic violence has occurred.
Delaware	Officer's Discretion	Del. Code Ann. Tit 11 § 1904 (A)(4)	An officer <u>may</u> arrest whenever there are reasonable grounds to believe that any misdemeanor involving physical injury or the threat thereof or any misdemeanor involving illegal sexual contact or attempted sexual contact has taken place.
DC	Mandatory Arrest	D.C. Code Ann. § 16-1031 (a)	An officer <u>shall</u> arrest where probable cause to believe physical injury or the threat thereof has occurred.
Florida	Officer's discretion/Mutual discouraged	Fla. Stat. Ann. § 741.29 (3) and 4(a) and 4(b)	An officer <u>may</u> arrest whenever the officer determines upon probable cause that an act of domestic violence has been committed. Mutual accusations to be evaluated separately; mutual arrests strongly discouraged, policy of determination of primary aggressor.

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Domestic Violence Arrest Policies by State

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State	DV Arrest Policy	Relevant Statute	Circumstances
Georgia	Officer's Discretion	Ga. Code Ann., § 17-4-20 (A) and Ga. Code Ann., § 17-4-20.1 (A) and (B)	An officer <u>may</u> arrest where probable cause to believe an act of family violence occurred, without the consent of the victim and without consideration of the relationship between the parties. Where mutual accusations, policy of determination of <u>primary aggressor</u> .
Hawaii	Officer's Discretion	Haw. Rev. Stat § 709-906 (2)	An officer <u>may</u> arrest a person if the officer has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member.
Idaho	Officer's Discretion	I.C. § 19-603 (6)	An officer <u>may</u> arrest when upon immediate response to a report of a commission of a crime there is probable cause to believe that the person arrested has committed a violation of 18-918 (<u>domestic assault or battery</u>).
Illinois	Officer's Discretion	725 Ill. Comp. Stat. 5/112A-30	Whenever a law enforcement officer has reason to believe that a person has been abused by a family or household member, the officer shall immediately use all reasonable means to prevent further abuse, including arresting the abusing party, where appropriate.
Indiana	Officer's Discretion	IC 35-33-1-1 (A)(5)(B)	An officer <u>may</u> arrest when there is probable cause to believe a domestic battery has been committed.
Iowa	Discretionary Arrest; Mandatory Arrest	Iowa Code Ann. §§ 236.12 (2)(a) and (2)(b)	Arrest is <u>discretionary</u> where probable cause to believe domestic abuse assault has been committed, not resulting in physical injury. Arrest is <u>mandatory</u> where probable cause to believe domestic abuse assault has been committed that resulted in physical injury, or was committed with intent to inflict serious injury; or with display of a dangerous weapon.
Kansas	Mandatory Arrest	Kan. Stat. Ann. § 22-2307 (b)(1)	Officers <u>shall</u> make an arrest when they have probable cause to believe that a crime is being committed or has been committed.
Kentucky	Officer's Discretion	Ky. Rev. Stat. § 431.005 (2)(a)	Any peace officer <u>may</u> arrest a person without warrant when the peace officer has probable cause to believe that the person has intentionally or wantonly caused physical injury to a family member or member of an unmarried couple.

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State	DV Arrest Policy	Relevant Statute	Circumstances
Louisiana	Mandatory Arrest; Mutual is discretionary	L.a. Rev. Stat. Ann. § 46-2140 A(1), A(2), and B(1)	An officer <u>shall</u> arrest where reason to believe family/household member has been abused and (1) probable cause to believe that there has been aggravated or second degree battery or (2) reasonable belief that impending danger to victim exists where aggravated or simple battery/assault has occurred. Mutual accusations to be evaluated separately, policy of determination of primary aggressor.
Maine	Mandatory Arrest	Me. Rev. Stat. Ann. Tit 19-A § 4012 (5)	An officer <u>shall</u> arrest where probable cause to believe there has been a violation of Title 17-A § 208 (aggravated assault) between members of the same family/household.
Maryland	Officer's Discretion; Mutual Discretionary	Md. Crim. Proc. § 2-204 (A)(1), (A)(2), and (B)	(A) A police officer <u>may</u> arrest a person if: (1) the police officer has probable cause to believe that: (i) the person battered the person's spouse or household member; (ii) there is evidence of physical injury; <u>and</u> (iii) unless arrested immediately, the person: 1. may not be apprehended; 2. may cause physical injury or property damage to another; or 3. may tamper with, dispose of, or destroy evidence; and (2) A report to police was made within 48 hours of the alleged incident. (B) Policy of determination of primary aggressor.
Massachusetts	Pro-Arrest; Mandatory Arrest	Mass. Gen. Laws Ann. Ch. 209a § 6 (7)	Arrest shall be the <u>preferred</u> response whenever an officer witnesses or has probable cause to believe that a person has committed a felony, a misdemeanor involving abuse, or an assault and battery. Mandatory arrest when a law officer has probable cause to believe person has violated a temporary or permanent vacate, restraining, or no-contact order or judgment.
Michigan	Officer's Discretion	Mich. Comp. Laws § 764.15a	An officer <u>may</u> arrest if the officer has reasonable cause to believe both of the following: (a) The violation ("domestic assault") has occurred or is occurring and (b) the individual has had a child in common with the victim, resides or has resided in the same household as the victim, has or has had a dating relationship with the victim, or is a spouse or former spouse.

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Domestic Violence Arrest Policies by State

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State	DV Arrest Policy	Relevant Statute	Circumstances
Minnesota	Officer's Discretion	Minn. Stat. Ann. § 629.341 Subd.1	A peace officer <u>may</u> arrest a person anywhere without a warrant, including at the person's residence, if the peace officer has probable cause to believe that within the preceding 24 hours the person has committed domestic abuse.
Mississippi	Mandatory Arrest	Miss. Code Ann. § 99-3-7 (3)	Any law enforcement officer <u>shall</u> arrest a person when he has probable cause to believe that the person has, within 24 hrs, knowingly committed a misdemeanor act of domestic violence or knowingly violated provisions of an ex parte protective order, protective order after hearing or court-approved consent.
Missouri	Officer's Discretion; Mandatory Arrest; Mutual Arrest Discretionary	Mo.Rev.Stat. §455.085.1, 455.085.3	Officer <u>may</u> arrest when probable cause to believe there has been abuse or assault against a family or household member has been committed. Mandatory arrest when a law enforcement officer has probable cause to believe that a party, against whom a protective order has been entered and who has notice of such order entered, has committed an act of abuse in violation of such order. Policy of determination of primary aggressor.
Montana	Pro-Arrest; Mutual Arrest Discretionary	Mont. Code Ann. § 46-6-311 (2)(A) and (2)(B)	Arrest is the <u>preferred</u> response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order or other imminent danger to the victim. Policy of determination of primary aggressor.
Nebraska	Officer's Discretion	Neb.Rev.Stat. § 29-404.02 (1)(C)	A peace officer <u>may</u> arrest a person without a warrant if (s) he has reasonable cause to believe that such person has committed one or more of the following acts to one or more household members: (a) Attempting to cause or intentionally, knowingly, or recklessly causing bodily injury with or without a deadly weapon; or (b) Threatening another in a menacing manner.
Nevada	Mandatory Arrest; Mutual is Discretionary	Nev. Rev. Stat. § 171.137	A peace officer <u>shall</u> arrest when the peace officer has probable cause to believe that the person has committed a battery in the last 24 hours.
New Hampshire	Officer's Discretion; Mandatory Arrest	N.H. Rev. Stat. Ann. § 594:10 (I)(B); N.H. Rev. Stat. Ann. § 173-B:9	An officer <u>may</u> arrest if there is probable cause to believe that in the last 12 hours a person has committed an abuse, including domestic violence. An officer <u>shall</u> arrest if person violates a temporary or permanent restraining order.

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Domestic Violence Arrest Policies by State

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State	DV Arrest Policy	Relevant Statute	Circumstances
New Jersey	Mandatory Arrest, under certain circumstances.	N.J. Stat. Ann. § 2c:25-21	An officer <u>shall</u> arrest if there is probable cause to believe domestic violence has occurred and either victim shows signs of injury, there is probable cause to believe that a weapon was involved, or there is probable cause to believe the person has violated a judicial or protective order.
New Mexico	Officer's Discretion	N.M.S.A. 1978, § 31-1-7 (A)	A peace officer <u>may</u> arrest a person and take that person into custody without a warrant when the officer is at the scene of a domestic disturbance and has probable cause to believe that the person has committed an assault or a battery upon a household member.
New York	Discretionary Arrest/Mandatory Arrest	N.Y. Crim. Proc. Law § 140.10 (1) and (4)(a) and (b)	An officer <u>may</u> arrest a person when there is probable cause to believe the person has committed an offense. An officer <u>shall</u> arrest when there is probable cause to believe the person has committed a felony against a member of the same household or when there is probable cause to believe a protective order has been violated.
North Carolina	Officer's Discretion	N.C.G.S.A. § 15a-401 (b) (1) (2)	An officer <u>may</u> arrest a person when there is probable cause to believe the person has committed 1. A felony, 2. A misdemeanor <i>and</i> will not be apprehended unless immediately arrested <i>or</i> may cause physical injury to himself or others, or damage to property unless immediately arrested, or 3. Has committed one of the listed misdemeanors.
North Dakota	Pro-Arrest	N.D. Cent. Code § 14-07.1-10	If probable cause to believe that a person has committed a crime involving domestic violence, whether the offense is a felony or misdemeanor, and whether or not the crime was committed in the presence of the officer, then the law enforcement officer <u>shall presume</u> that arresting the person is the appropriate response.
Ohio	Mandatory Arrest; Mutual is Discretionary	Ohio Rev. Code Ann. § 2935.032 (A)(1)(a); Ohio Rev. Code Ann. § 2935.03 (A)(1)(a)(ii)	An officer <u>shall</u> arrest if there are reasonable grounds to believe that a person knowingly caused physical harm to another or another's unborn or knowingly caused or attempted to cause physical harm with a deadly weapon <i>unless</i> there are mutual accusations, in which case there is a policy of determination of primary aggressor.

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State	DV Arrest Policy	Relevant Statute	Circumstances
Oklahoma	Officer's Discretion	Okla. Stat. §22-196 (6), (7), and (8)	A police officer <u>may</u> arrest a person if the officer has probable cause to believe that the person has committed and act of domestic violence in the last 72 hours and there are physical signs of injury, impairment of physical condition, a threat made to the victim, or a violation of a protective order.
Oregon	Mandatory Arrest	Or. Rev. Stat. § 133.055 (2)(a),(b),(c)	A police officer <u>shall</u> arrest a person if the officer has probable cause to believe that a felonious assault or an assault resulting in physical injury occurred or action has placed another to reasonably fear imminent serious bodily injury or death.
Pennsylvania	Officer's Discretion	18 Pa. Cons. Stat. Ann. § 2711(a)	A police officer <u>may</u> arrest a person where there is probable cause to believe the person has committed simple assault, aggravated assault, reckless endangerment of another person, or harassment or stalking against a family or household member.
Rhode Island	Mandatory Arrest; Mutual is Discretionary.	R.I. Gen. Laws § 12-29-3 (b), (c)	A police officer <u>shall</u> arrest whenever there is probable cause to believe any of the following has occurred: felonious assault, assault resulting in injury (physical pain, illness, or an impairment of physical condition), action intending to cause fear of imminent serious bodily injury or death, or violation of a protective order or no-contact order. There is a policy of determination of primary aggressor in cases of mutual accusations.
South Carolina	Mandatory Arrest w/Physical Injury; Discretionary Without	S.C. Code Ann. § 16-25-70	A police officer <u>must</u> arrest if physical injury is present and there is probable cause to believe a person is committing or has freshly committed a misdemeanor/felony assault or battery. A police officer <u>may</u> arrest when there is probable cause but no physical injury. There is a policy of determination of primary aggressor in cases of mutual accusations.

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Domestic Violence Arrest Policies by State

06/11

State	DV Arrest Policy	Relevant Statute	Circumstances
South Dakota	Mandatory Arrest	S.D. Codified Laws Ann. §§ 23a-3-2.1	A police officer <u>shall</u> arrest a person if officer has probable cause to believe a protective order has been violated. An officer <u>shall</u> arrest when officer has probable cause to believe that a person 18+ yrs and within last 48 hrs has assaulted a spouse, former spouse, the parent of that person's child, or any person with whom the offender resides or has formerly resided <i>and</i> that an aggravated assault or assault resulting in bodily injury has occurred, or an attempt has been made to put another in fear of imminent serious bodily harm.
Tennessee	Pro-Arrest; Mutual is Discretionary	Tenn. Code Ann. § 36-3-619 (a) and (b)	Arrest is the <u>preferred response</u> when a law enforcement officer has probable cause to believe that a person has committed a crime involving domestic abuse, whether a misdemeanor or felony. If an officer has probable cause to believe that 2+ persons committed a crime, or 2+ persons make complaints to the officer, the officer shall try to determine the primary aggressor. Arrest is the <u>preferred response</u> only with respect to the primary aggressor.
Texas	Officer's Discretion	Tex. C.C.P. Art. 14.03 (A)(4)	A peace officer <u>may</u> arrest a person whom the officer has probable cause to believe has committed an offense involving family violence.
Utah	Mandatory Arrest; Mutual is Discretionary	Utah Code Ann. § 77-36-2.2 (2)and (3)	If the peace officer has probable cause to believe that there will be continued violence against the alleged victim, or if there is evidence that the perpetrator has either recently caused serious bodily injury or used a dangerous weapon in the domestic violence offense, the officer <u>shall</u> arrest the alleged perpetrator into custody. Policy of determination of primary aggressor.
Vermont	Officer's Discretion	Vt. R.Cr.P. Rule 3	An officer <u>may</u> arrest for a misdemeanor where the officer has probable cause to believe that the person to be arrested has committed an assault against a family or household member, or a child of a family or household member.

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State	DV Arrest Policy	Relevant Statute	Circumstances
Virginia	Discretionary Arrest	Va. Code Ann. § 19.2-81.3	Any officer, <u>may</u> arrest without a warrant for an alleged violation (assault, battery, violation of protective order) regardless of whether such violation was committed in his presence, if based on probable cause or upon personal observations or the reasonable complaint of a person who observed the alleged offense or upon personal investigation. An officer having probable cause to believe that a violation occurred <u>shall</u> arrest and take into custody the person he has probable cause to believe, based on the totality of the circumstances, was the predominant physical aggressor unless there are special circumstances which would dictate a course of action other than an arrest.
Washington	Mandatory Arrest; Mutual is Discretionary.	Wash. Rev. Code Ann. §10.31.100 (1), (2)(a),(b),(c)	A police officer <u>shall</u> arrest a person if 16+ and within the preceding four hours has assaulted a family or household member and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim observable or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. An officer <u>shall</u> arrest for violation of protection order. Policy of determination of primary aggressor.
West Virginia	Officer's Discretion	W. Va. Code, § 48-27-1002 (a) and (b)	A law-enforcement officer <u>may</u> arrest a person if the officer has observed credible corroborative evidence that an offense has occurred <i>and</i> either the law-enforcement officer has received, from the victim or a witness, an oral or written allegation of facts constituting a violation of section twenty-eight, article two, chapter sixty-one of this code (domestic violence offense) or the law-enforcement officer has observed credible evidence that the accused committed the offense.

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State	DV Arrest Policy	Relevant Statute	Circumstances
Wisconsin	Mandatory Arrest	Wis. Stat. Ann. § 968.075(2)	An officer <u>shall</u> arrest if 1. 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 2. Any of the following apply: a. The officer has a reasonable basis for believing that continued domestic abuse against the alleged victim is likely. b. There is evidence of physical injury to the alleged victim. c. The person is the predominant aggressor.
Wyoming	Officer's Discretion	Wyo. Stat. § 7-20-102	A police officer <u>may</u> arrest a person if the officer has probable cause to believe that a violation (as defined by W.S. 6-2-501(a), (b), (e) through (g), 6-2-502(a) or 6-2-504(a) or (b) is taking place or has taken place in the last 24 hrs and the offender is a household member (as defined by W.S. 35-21-102(a)(iv)).

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