Mandatory Arrest

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Introduction to Criminal Justice

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Paper

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In an attempt to combat domestic violence states have passed a mandatory arrest law, which requires police to arrest suspects. These laws have expanded dramatically over the past thirty years. Many people viewed domestic violence as a family issue and not a public safety problem. The 19th century brought a change to this view after several studies were conducted on domestic violence and the effectiveness of mandatory arrest. Mandatory arrest laws direct police to detain a person who violates a law regardless of the victim’s wishes. All states have enacted some sort of mandatory arrest law. Proponents state mandatory arrest laws act as deterrence, are necessary to protect victims, assist victims through prosecutions of suspects and empower victims. Opponents state mandatory arrest laws do not act as deterrence, can disempower victims, takes away law enforcement discretion and have increased arrests.

The National Organization for Women established a task force to study domestic violence in 1975. After the study, law enforcement and judicial official began to take steps toward reforming how they handle domestic violence cases. In 1977 Oregon became the first state to enact a mandatory arrest statute for domestic violence. By the 1980s, almost every state had established a similar mandatory arrest statute. Congress passed the Family Violence Prevention and Services Act in 1984, which established funding for domestic violence victims. By 1987, a majority of the nation’s law enforcement agencies established a mandatory arrest policy requiring officers to make arrests for domestic violence incidents (Prah, P., 2006).

In 1984 Lawrence Sherman conducted a study of 314 domestic violence cases over six months which occurred in Minneapolis, Minnesota. His study found that arrests of suspects who violate domestic violence laws are substantially more effective at deterring future violence than physical separation or law enforcement mediation. After this study, Minnesota created a mandatory arrest law for domestic violence. Over one-third of the United States police
departments reported adopting mandatory arrest policies due to data indicating arrests were a
deterrent against future violence. Research indicates mandatory arrest laws have shown violence
decreased because the situation was defused and the suspect was removed from the home (Prah,
P., 2006). Victims who were questioned regarding the effectiveness of mandatory arrest laws,
indicated 74 percent believed mandatory arrest laws reduce violence (Barata, P., pg 153). Also,
vioence typically decreases over the long term because of a fear of being arrested in the future
(Prah, P., 2006).

Some states have passed a mandatory prosecution statute, within their mandatory arrest
statutes. These prosecutions are also known as “no-drop prosecutions.” A study of these cases
indicated a noticeable effect on future behavior of suspects arrested under mandatory arrest
statutes. Victims who chose to assist with the prosecution of suspects were less likely to
experience future violence. Mandatory arrest and prosecution assist victim who are too fearful in
making appropriate decisions regarding the arrest and prosecution of suspects. This preventative
impact comes from the victim’s personal empowerment (Prah, P., 2006).

Victim empowerment had a major impact on whether mandatory arrest laws were
effective. A study indicated that when suspects were arrested, victims experienced repeated
abuse in 26 percent of the cases. However, when suspects were arrest and the victims viewed
police as concerned and willing to listen, the repeat abuse rate dropped to nine percent. The
researchers concluded that recidivism dropped when the police affected a mandatory arrest,
because the victim felt empowered by the police intervention (Mills, L. par. 4 1998). In addition,
mandatory arrest empowers victims by reducing law enforcement discretion and thus the
reduction in law enforcement bias against arresting (Barata, P., pg 149).
In order to protect victims from continued abuse, mandatory arrest laws were established. Offenses of mandatory arrest that occur in residences were more likely to result in an arrest than those that occurred in public. According to the Bureau of Justice Statistics the number of victims in domestic violence incidents dropped 50 percent since 1993 to 2001 (Pamela Prah 2006). A study of 19 states showed 12.9 percent of domestic violence incidents were due to aggravated assault and 76.5 percent were simple assault. Furthermore, 7.3 percent of these incidents involved the use of a deadly weapon, while 71.8 percent involved a personal weapon. 2.9 percent of domestic violence incidents involved the victim receiving a serious physical injury and 48.1 percent had an apparent minor injury (D. Hirschel, pg 274-275). After the passage of mandatory arrest laws for domestic violence, overall arrest rates for assault and intimidation was 49 percent (D. Hirschel, pg 292).

Mandatory arrest laws restrict law enforcement discretion when handling domestic violence cases. Prior to these laws, police were unable to make arrests for offenses they did not witness, without the assistance of the victim (D. Hirschel, pg 294). Researchers believed further studies are needed regarding Lawrence Sherman’s research indicating mandatory arrests are more effective than other methods. In fact, the National Institute of Justice funded research in six other major cities replicating Sherman’s study. These additional studies showed arrests were ineffective as a deterrent (D. Hirschel, pg 293). Mandatory arrests had a significant effect among employed suspects, whereas arrests led to an increase in assaults among unemployed suspects. 12.3 percent of employed suspects who were not arrested continued abuse, as compared to 6.2 percent of those employed suspects who were arrested. Among unemployed suspects, 7.1 percent of those not arrested continued their abuse, as compared to 16.7 percent of unemployed suspects who were arrested. Employed suspects arrested under mandatory arrest laws had a significant
deterrent effect on subsequent assaults. For unemployed suspects arrest under mandatory arrest laws had a significant increase in subsequent assaults. These finding raised concerns about appropriateness and efficacy of mandatory arrest laws. It shows that mandatory arrests only affect those who have something to lose (i.e. employment, standing within a community, etc.) (Pate, A., pg 695).

A survey of women regarding the disadvantages of mandatory arrest, 74 percent indicated arrests increased violence and anger when the suspect returns. (barata, P., pg 154) Because of mandatory arrest laws, many law enforcement officers believe it’s inappropriate to exercise discretion when applying the law in domestic violence cases (D. Hirschel, pg 293).

It is possible that mandatory arrest laws can cause disempowerment from the victim, because it removes the victim’s decision-making power and gives it to an already powerful judicial system. There are several reasons why the victim would not want the suspect arrested (i.e. fear of retaliation, financial situations, trauma to a child, etc.). Moreover, some victims are fearful of dual arrests under mandatory arrest laws. Arresting the victim is a serious act of disempowerment (Barata, P., pg 149).

Most significantly, mandatory arrest laws are producing higher domestic violence arrest rates in states with mandatory arrest laws, compared to states with discretionary arrest laws (D. Hirschel, pg 292). This increase in arrest has affected prosecutors and judicial officials. Data collected from 1970 to 1980 showed arrests for domestic violence incidents were seven percent to 15 percent. After the implementation of mandatory arrest laws arrests rates rose to 30 percent or more (David Hirschel pg 258). Research has indicated an increase in female’s arrests after the implementation of mandatory arrest laws. The number of women arrested for mandatory arrest laws varies from state to state. In some states the rate was as high as 30.8 percent and as low as
17.4 percent. This increase in women arrests is in part because of increase in training for law enforcement that females are not always victims and laws requiring police to make arrests (D. Hirschel, pg 258-260). Although mandatory arrest laws are applied to domestic violence cases, there appears to be a spillover effect with officers in states with mandatory arrest who are more likely than officers in states with discretionary arrests to arrest offenders in both domestic and non-domestic violence cases (D. Hirschel, pg 292). Also, mandatory arrests have increased concerns regarding officer and organizational liability because of the increase in arrest rates (D. Hirschel, pg 293).

In conclusion, mandatory arrests reduce law enforcement’s discretionary powers in handling these situations. For law enforcement, no situation is black and white. This is why they have been granted discretionary powers. Mandatory arrest laws reduce these powers by requiring them to arrest a suspect in domestic violence cases, regardless of the circumstances. Studies also showed mandatory arrests do not act as a deterrent unless the suspect has something at stake. You cannot be deterred if you have nothing to lose. These laws can be disempowering because their victims are fearful of dual arrest situations. Moreover, the increase in arrest rates due to mandatory arrest laws has caused a burden on prosecutors. Lawrence Sherman’s study on mandatory arrest created many states to pass mandatory arrest laws. These laws have saved lives by allowing suspects to cool down before being returned to the victim. Mandatory arrest laws can empower victims through their interaction with law enforcement. These laws act as a deterrent to suspects who know if they violate them they will be arrested and prosecuted. Mandatory arrest laws have clearly produced the desired effect of encouraging arrests in domestic violence cases. Repeal of mandatory arrest laws would have a significant impact on the movement against domestic violence, because it would normalize this type of violence as less
than criminal. Criminalizing domestic violence sends a strong social message that this kind of behavior is unacceptable and will not be tolerated.
References


