

Mandatory Arrest: A Flawed Policy Based on a False Premise

In sum, the labeling of all acts of physical aggression as *violent* [italics added] can have unintended social implications.

(K. Daniel O'Leary)

The Flawed Policy

The National Institute of Justice (NIJ) report, *Controlling Violence Against Women: A Research Perspective on the 1994 VAWA's Criminal Justice Impacts* concludes that advocates and public policy makers *need to know* that their policies and practices *will not endanger women* (Ford, Bachman, Friend & Meloy, 2002). What should be troubling to all criminal justice professionals is that most advocates and almost all public policy makers *do not know* or are unwilling to recognize that mandatory "one-size-fits-all" policies *are often endangering* women, men and children (Dugan, Nagin & Rosenfeld, 2003; Eng, 2003; Hanna, 1998).

Most reasonable and prudent people – particularly those familiar with the criminal justice system - acknowledge that it is unrealistic to expect restraining/protection orders or arrest alone to be effective in deterring domestic violence. The research documents that without a coordinated community response in place, mandatory policies alone are not enough to protect victims from harm. National Institute of Justice (NIJ) studies clearly document that most communities do not have a coordinated community response (Hirschel & Dawson, 2003).

Despite the lack of empirical evidence for the efficacy of mandatory policies they are in place in 24 states. And all fifty states have some form of "de facto" mandatory (preferred or pro-arrest) domestic violence policies (Miller, 2005). The obvious danger of placing the **dangerous cart** [mandatory policies] before the **protective horse** [a coordinated community response] continues to be ignored by advocates and public policy makers (Davis, 2008).

An ever growing number of studies by feminist researchers that document mandatory "one-size-fits-all" policies (intervening as if victims and offenders constitute a homogeneous group), create the false illusion of hope that the criminal justice system is actually capable of protecting (other than by the incarceration of offenders) families (Crisler, 2005; Davis, 1998; Eng, 2003; Hanna: 1998; Stake 2005; Wells & DeLeon-Granados, 2005). By their very nature, mandatory "one-size-fits-all" policies ignore the diverse needs of families (Eng, 2003).

The contemporary criminal justice dichotomy created by mandatory policies is that far too many minor offenders, including some victims, are being arrested and far too many chronically violent offenders are not being incarcerated (Toon, Hart, Welch, Corando, & Hunting, 2005). Mandatory "one-size-fits-all" policies eviscerate the diverse support and varied resources that families require (Eng, 2003; Wells & DeLeon-Granados, 2005).

Advocates and public policy makers ignore the fact that mandatory "one-size-fits-all" policies are placing some families, because of their distinctive family characteristics (i.e. race, ethnicity, class, education, employment, religion) in *greater* danger (Crisler, 2005; Dugan, Nagin, & Rosenfeld, 2003; Eng, 2003; Hana, 1998; Maxwell, Garner, & Fagan, 2001; Sherman, 1992; Stake, 2005; Wells & DeLeon-Grandos, 2005).

Most advocates and public policy makers claim that the Minneapolis Domestic Violence Experiment (MDVE) documents that "arrest works best." They ignore that the authors clearly state that the results of the MDVE *do not imply that all suspected offenders be arrested* (Sherman & Berk, 1984). Advocates and public policy makers do not consider the fact that the MDVE was just one of six NIJ sponsored experiments.

What the advocates, public policy makers and the literature almost universally omit is that the research from all six studies document that *the majority of offenders discontinued their abusive behavior without being arrested* (Maxwell, Garner & Fagan, 2001). Not one of the six studies document that *mandatory arrest* should be the preferred policy. In fact, the lead author of the MDVE continues to publicly argue against mandatory arrest (Sherman, 1992).

The warning that *mandatory policies* may unnecessarily limit a community's resources from identifying and prosecuting the most chronic violent offenders and that they restrict resources needed by families at greatest risk appears to have fallen through the cracks of most research studies (Davis, 1998; Maxwell, Garner & Fagan, 2001; Sinden & Stephens, 1999).

The False Premise

The Minneapolis Domestic Violence Experiment (MDVE) was conducted by academic researchers, however, advocates and researchers do not acknowledge the fact that without the concerns of three law enforcement officers the MDVE would not have taken place (Sherman & Berk, 1984). These officers represent the beliefs of the majority of law enforcement officers. (Davis, 1998; Sinden & Stehphens, 1999; Toon, Hart, Welch, Coronado & Hunting, 2005).

Public policy makers appear to have passed *mandatory policies* based almost solely on anecdotal claims that do not present the context and circumstances of individual incidents and lack information about the seriousness of the incident or the diverse needs of individual victims. Mandatory arrest is a spurious hypotheses based on an unsubstantiated and false premise that most law enforcement officers do not care about "domestic violence" victims and the callous claim by some advocates that officers care less about female than male victims.

The reports of law enforcement failing to respond appropriately or refusing to take proper action are primarily found in retrospective studies of law enforcement "domestic violence" responses. The "context and circumstances" of the individual incident is usually ignored. In addition, researchers often do not separate the serious and chronic incidents from the minor and infrequent assaults (Davis, 1998; Sinden & Stephens, 1999).

Context and Circumstances

In their book, *Crisis Intervention*, the authors write that, "To understand intimate partner violence, it is important to make a distinction between common couple [minor] violence and chronic [serious] battering" (Hendricks, McKean, Hendricks, 2003, p. 228). Legislative and "de facto" mandatory arrest policies along with the twin fiscal concerns of law enforcement administrators about federal funding and civil law suits have coerced them into implementing mandatory policies (Davis, 1998).

The National Violence Against Women Survey (NVAWS) (Tjaden & Thoennes, 2000 p. 11) documents that: "...most physical assaults committed against women and men by intimates are relatively minor and consist of pushing, grabbing, shoving, slapping, and hitting." Mandatory policies demand that criminal justice professionals ignore the difference between serious incidents (battering) and the minor (family conflict) (Davis 2008; Johnson & Ferraro, 2000).

It is now suggested by advocates, perhaps because of the dramatic rise in the numbers of women being arrested, that law enforcement needs to consider the “context and circumstances” of incidents before they make an arrest for minor assaultive behavior. However, advocates and law enforcement training suggest that officers should consider the “context and circumstances” of the behavior of females and not males (Davis, 2008). One former prosecutor notes that the evidentiary standards for proving “abuse” are now so low that any man who is charged or appears in court is considered guilty (Hanna, 1998).

During my 21 years of experience in law enforcement most officers – when not constrained by mandatory policies - did consider the “context and circumstances” of incidents. Incidents that were considered by the officer and society in general to be minor most often did not result in an arrest. Most serious incidents that were considered to be serious crimes or felonies did result in an arrest (Davis, 1998; Sherman, 1992).

Domestic Violence Homicide

The NIJ study, *The Decline of Intimate Partner Homicide* reports that, “There was no statistically significant relationship between any criminal justice system response and victimization for either gender or for any racial or ethnic group...” (Wells & DeLeon-Grandos, 2005, p. 33).

Just what “domestic violence or abuse” is or is not varies from state to state, from law enforcement agency to law enforcement agency, advocate to advocate and victim to victim, however, the victims of intimate partner homicide are far less ambiguous. And most domestic violence advocates and public policy makers agree that one of the most important goals of the Violence Against Women Act (VAWA), is to reduce intimate partner homicides.

The Bureau of Justice Statistics (BJS) online report, Homicide Trends in the U.S. under, “The proportion of all homicides involving intimates by gender of victim, 1976-2005” the data documents that prior to VAWA from 1976 to 1993 the number of female intimate partner homicides decreased from 34.5% to 28.2%. However, after the passage of VAWA from 1994 to 2005 the same report documents that while the percent of non-intimate or unknown homicides of women decreased from 72.0% to 66.7% the number of intimate partner homicides of women increased from 28.0% to 33.3%.

Conclusion

Those most responsible for interventions, policies, prevention and solutions still have much to learn. An interesting way to learn what law enforcement officers think about domestic violence might be an extensive survey rather than relying on anecdotal stories (Davis, 1998; Toon, Hart, Welch, Coronado & Hunting, 2005; Sinden & Stephens, 1999). Professionals in one area of specialization need to understand and appreciate the difficulties that other professionals face. There needs to be less proffering by researchers and advocates that they have already discovered “the answer.” Until researchers are willing to agree just what “domestic violence” is or is not, it will be improbable to impossible for them to discover the cause or provide a cure (Davis, 1998; Davis, 2008; Johnson & Ferraro, 2000; Pence & Dasgupta, 2006); Soler, 2007; Wallace, 2002).

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Richard L. Davis is a retired police lieutenant, an adjunct instructor for Quincy College at Plymouth, an author of two books and numerous articles concerning domestic violence and its intersection with the criminal justice system and the President of [www.Familynonviolence.org](#). Sage comments welcomed at [rldavis@post.harvard.edu](#). – This pamphlet with hyperlinks to many of the above studies is available at [www.mensbiz.net/SDMensCenter.html](#) Click on the Richard L. Davis link in the left hand column. It is also available at [www.californiamenscenters.org](#) on the “Brochures” page.