

# Mandatory Arrest Laws, Dual Arrests, and Primary Aggressor Statutes

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# Mandatory Arrest Laws

- Rationale: Fair treatment of victims
  - Concern police often treating DV as a private matter
  - “Must” arrest
  - Takes away discretion in preferred and discretionary arrest laws
- Movement fueled by:
  - (a) Minneapolis experiment (Sherman & Berk, 1984)
  - (b) Women’s movement
  - (c) Lawsuits
    - (Scott v. Hart (1976); Bruno v. Codd (1977); Thurman v. City of Torrington (1984))

# Mandatory Arrest Laws

- Implementation
  - By 1994 in 14 states and D.C. (Zorza & Woods, 1994)
  - By 2000 in 22 states and D.C. (Hirschel, Buzawa, Pattavina, Faggiani & Reuland, 2007)
- Department policy v. state law
  - Study in five states: 25 out of 95 (26.3%) departments in states with discretionary/preferred arrest laws had mandatory arrest policies (Hirschel et al. 2007)

# Mandatory Arrest Laws

- Impact
  - Arrest rates
    - 1970s & 1980s: generally 7% to 15% (Dutton,1984; Holmes & Bibel,1988; Worden and Pollitz, 1984; Bayley, 1986).
    - 1990s: 30% or more (Bourg & Stock, 1994; Mignon & Holmes, 1995; Buzawa & Hotaling, 2000).
    - More recently around 50% (Durfee, 2012; Eitle, 2005; Hall, 2005)
    - National ten-year study (2000-2009) 49.9% (Hirschel et al., 2017)

# Mandatory Arrest Laws

- Unintended consequences
  - (a) Increase in female arrests
    - 13% to 25% in Minnesota (Saunders, 1995)
    - 5% to 17% in Delaware (Miller, 2005)
    - 5% to 18% in California (DeLeon-Grandos et al., 2006)
    - In Washington state women arrested in 50% of cases (Epstein 1987)
  - (b) Often part of dual arrests
    - 33% of IPV arrests dual arrests in Washington state (Victim Services Agency, 1988)
    - 33% of IPV arrests dual arrests in Connecticut (Martin, 1997)

# Dual Arrests

- Likelihood of being part of dual arrest not same for all
- Same-sex couples
  - National 10-year study of 5,481 jurisdictions in 36 states and D.C. found that, compared to heterosexual couples:
    - Male same-sex couples 53.5 times more likely to have both arrested
    - Female same-sex couples 39.6 times more likely to have both arrested (Hirschel & McCormack, 2020)
    - Findings replicated with more recent data, but at lower rates (Paintsil, 2024)

# Dual Arrests

- By race:
  - Most studies just compare Black v. White couples
  - That research generally shows that White couples more likely than Black couples to be co-arrested (Martin, 1997; Dichter et al., 2011; Durfee, 2012)
- More nuanced findings when race of both victim and offender taken into account
  - White victims less likely than Black victims to be co-arrested
  - White victims of Black offenders least likely to be co-arrested (Hirschel & McCormack, 2020; Paintsil, 2024)

# Dual Arrests

- Adverse consequences for wrongly arrested victims
  - Loss of all rights and privileges attendant to the victim determination
  - Processed as offenders suffering all the adverse consequences of that designation
  - May lose employment and incur financial hardship
  - May lose custody of children
  - May well be reluctant to call the police to report subsequent abuse
  - Although not guilty, may plead guilty in order to speed up the legal process and minimize potential danger to self and children.

(National Clearinghouse for the Defense of Battered Women, 2001)



# Primary/Dominant Aggressor Laws

- Implementation
  - Designed to promote identification of “real” offender
  - Vary in detail
- Guidelines typically include:
  - Prior complaints of DV
  - Relative severity of injuries
  - Imminent threat of future injury
  - Use of self-defense
- First law passed by Washington state in 1985
- Now in effect in 35 states (Hirschel, McCormack & Buzawa, 2017)

# Primary/Dominant Aggressor Laws

- Impact

- There is some evidence that these laws are achieving their objective

(McMahon & Pence, 2003; Dichter, Marcus, Morabito, & Rhodes, 2011; Fraehlich & Ursel, 2014; Hirschel & Deveau, 2016)

- Ten-year national study no significant statistical difference in rate of dual arrests in states with and without primary aggressor laws

- In addition, 24.8% reduction in arrest rate of single offender

- Of note, 7 of the 9 states that had dual arrest rates above the national average of 2.4% had mandatory arrest laws (Hirschel et al., 2017)

# Assessment

## 1. Dual Arrests

- Need training, in particular on:
  - Defensive vs. offensive injuries
  - Responding to same-sex couples

## 2. Effect of arrest in terms of deterring subsequent abuse

- Arrest not the answer
- Undue emphasis placed on the results of the Minneapolis experiment
- Replication studies in general did not support the findings of the Minneapolis experiment (Garner, Fagan & Maxwell, 1995; Garner & Maxwell, 2000)
- Meta-analysis found that arrest is ineffective in limiting subsequent offending (Hoppe, Zhang, Hayes & Bills, 2020)
- Why the emphasis on deterrence?

# Assessment

3. Concern too that mandatory arrest laws take away victim input from decision-making process

4. Note: South Carolina repealed its mandatory arrest law in 2015

(Mason & Petrie, 2020)

5. Consider preferred arrest laws/policies? (Bridgett, 2000)

6. Need to consider other approaches to lessen the incidence of IPV

- Batterer treatment programs
- Victim empowerment programs (serial victimization)

7. Under researched area of concern: Offenders who flee the scene before the police arrive

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