

Arresting practices: exploring issues of dual arrest for domestic violence

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In this paper, the authors explore the issue of dual arrest for domestic violence, factors contributing to its occurrence, the implications for victims and strategies employed to address this practice. The situational factors, policing policies, practices and views that contribute to dual arrest for domestic violence are examined. Men's and women's use of violence in relationships is considered and the dynamic of control and fear explored. Reforms to policing policies and practices introduced in Australia and elsewhere are considered in terms of their ability to minimise the occurrence of dual arrest. While there has been little research around this issue in Australia, there has been significant debate elsewhere, particularly in the United States of America (USA). The paper draws significantly on this international research.

DUAL ARREST IN DOMESTIC VIOLENCE CASES

Recognition of domestic violence¹ as a crime with serious, sometimes fatal, outcomes for those experiencing it has led to reforms in criminal justice systems aimed at responding better to victims and perpetrators. Since the 1980s, Australia and other countries have introduced significant changes to improve police responses to this crime; for example, by enhancing training on domestic violence issues, introducing protocols governing the collection of evidence and encouraging the arrest of perpetrators.

¹ The term 'domestic violence' is used in this paper to refer specifically to violence between intimate partners and not other family members or members of a household.

Arrest of perpetrators is widely regarded as a key strategy for protecting victims. However, an unexpected consequence of policies promoting the arrest (and prosecution) of perpetrators has been a rise in the number of dual arrests for domestic violence; that is, the arrest of both parties at the scene, usually a man and a woman.

Many researchers and victims' advocates have voiced strong concerns in the literature and elsewhere about the negative impact dual arrest can have for victims of abuse (e.g. see North American research by Finn & Bettis 2006; Henning & Feder 2004; Humphries 2002; Hirschel & Buzawa 2002; Lane, Lucera & Boba 2003; Martin 1997; Miller, S 2001; Miller, S & Meloy 2006; Rajah, Frye & Haviland 2006; Saunders 1995). The emotional and practical implications of arrest can have devastating impacts

on victims' safety, their livelihoods, access to children and their sense of self. Many victims of domestic violence² have experienced abuse over long periods of time. Their arrest can result in further abuse, leaving them more vulnerable and alone.

In Australia, estimating the prevalence of dual arrest for domestic violence is difficult because accurate and comparable data is not available. Records of dual arrests are only kept by some individual services and not identified by police departments in any comprehensive or consistent way. It is possible to draw some information by examining data from legal and court services about the increasing number of contacts from female defendants for domestic violence matters. For example, in a submission to the NSW Ombudsman's Office (Smith, S 2006, unpublished), the Redfern Legal Centre's Women's Domestic Violence Court Assistance Scheme reported a 23% increase in the number of contacts from female defendants in domestic assault matters, in the twelve months from 1 July 2005 to 30 June 2006, when compared to the previous year. Anecdotal reports from Australian services and agency officers consulted for this paper, suggest that dual arrest for domestic violence is occurring but there is little documented data available about trends.

In this paper, the authors explore the issue of dual arrest for domestic violence, factors contributing to its occurrence, the implications for victims and strategies employed in Australia and elsewhere to address this practice. The discussion is aimed at informing policy making and operational practices in Australia, and to stimulate debates amongst police, domestic violence services, legislators and policy makers about this issue. While there has been little research around this issue in Australia, there has been significant debate elsewhere, particularly in the USA. The paper draws significantly on this international research.

2 Victims of domestic violence are predominantly women, while perpetrators are predominantly men; see, for example, Australian Bureau of Statistics (2006). This paper makes use of gendered language to describe perpetrators and victims to reflect this reality. The gendered nature of this crime is discussed in more detail later in the paper.

CHANGING POLICE POLICIES AND PRACTICES

As understanding has increased about the danger posed by perpetrators of domestic violence, scrutiny of police response to incidents has intensified and reforms of policy and practice have aimed to improve their practice. One development has been that police employ diverse strategies when attending a domestic violence incident; such as, mediation at the scene, providing information and referral to victims, cautioning the perpetrator, ordering them to leave the premises for a stated period, making an application for a protection order, arresting the perpetrator or taking no action at all. Among these, arrest of the perpetrator is considered most effective in keeping victims safe. Arrest provides immediate protection for the victim by removing the dangerous party from the scene. It can allow victims time to consider their options and make alternative living arrangements (MacRae 2003). Arrest makes perpetrators more accountable for their behaviour.

Studies have also shown that arrest reduces recidivism. In Minneapolis, USA, Sherman and Berk (1984) found that arrest for domestic violence offences significantly reduced the likelihood of further violence, by over 50% more than other police responses (i.e. mediation, advice giving or ordering the perpetrator to leave). While replication studies in the US have indicated more modest results (e.g. Dunford, Huizinga & Elliot 1990; Hirschel, Hutchison & Dean 1991; Sherman 1992), other research confirms the impact of arrest on recidivism. Campbell *et al's.* (2003) US study of 563 cases of domestic homicide and domestic physical abuse demonstrated that arrest was consistently related to reduced subsequent aggression against female victims and reduced risk of femicide.³

In the past, police practice has not reflected an appreciation of the value of arrest as a strategy to address domestic violence. Police call outs to domestic violence incidents often greatly exceed the number of arrests, police responses can be variable across different jurisdictions and police may choose not to act where victims are reluctant to provide statements or give evidence against their partners.⁴

3 That is, the killing of women.

4 There are many reasons why a victim may not want police to proceed with arrest, including fear of retaliation by the perpetrator, concern about family and community backlash, shame, hope that

To improve responses, many jurisdictions have introduced policies limiting or removing discretion from victims, police and prosecutors to arrest or prosecute perpetrators. Such policies include:

- **Pro-arrest** – if there is sufficient evidence at a domestic violence incident on which to base an arrest (e.g. a victim displays injuries or there is property damage), there is a presumption that police arrest the perpetrator. Police may be required to provide an explanation in those cases where they did not make an arrest. In Australia, these policies are used in New South Wales (NSW), the Australian Capital Territory (ACT), Queensland and Tasmania.
- **Mandatory arrest** – police are required to arrest at the scene where there is evidence that domestic violence has occurred. By 2004 in the USA, twenty-one states and the District of Columbia had introduced mandatory arrest policies (Miller, N 2004, p.28).
- **Primary aggressor** – where police are confronted at the scene with conflicting claims about who is the victim and who is the perpetrator of violence, they are required to identify and arrest a primary aggressor. In making this decision, police may consider contextual issues, for example, whether one party was acting in self-defence⁵ or prior complaints of domestic violence. These policies are used in at least twenty-four US states.
- **Pro-charge** – a presumption that police will charge an offender in cases where there is evidence that domestic violence has occurred. Such policies have been introduced in Canada.
- **No drop** – prosecutors are required to continue a prosecution in relation to offences arising out of domestic or family

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violence, regardless of the victim’s wishes. These policies are used in Canadian and USA jurisdictions and in the Northern Territory in Australia.

In Australia, the powers of police to arrest without warrant are specified in state and territory legislation.⁶ Generally, the legislation allows police officers to arrest a person if they suspect the person of having committed an offence. In four jurisdictions (NSW, ACT, Queensland and Tasmania) police may only exercise this power where it is necessary to ensure the appearance of the person in court, prevent the repetition or continuation of the offence, prevent the concealment, loss or destruction of evidence, prevent interference with witnesses, prevent the fabrication of evidence or to preserve the safety or welfare of the arrested person.

In many domestic violence call outs, the power to arrest would be justified based on the need to prevent the repetition of the offence. However, if a strong pro-arrest or mandatory arrest policy were ever to be implemented in Australia, changes to legislation would be required. When Tasmania introduced its pro-arrest strategy in 2004,

new legislation required police to give priority to the safety, wellbeing and interests of any affected person or child when deciding whether to arrest a person for a family violence offence.⁷ In Queensland, police are required to arrest when the person has breached a protection order.⁸ In the ACT, the approach is described as pro-arrest, pro-investigation and pro-intervention but the incidence of dual arrest is very low because of the emphasis on informed officer discretion (M. Serbatoio, Team Leader, Intervention Team, ACT Policing, 25 September 2007).

While the introduction of these pro- and mandatory arrest policies in some jurisdictions has seen a rise in the arrest of perpetrators, there has been a corresponding rise in the number of dual arrests and single arrests of women for domestic violence. Since

the violence will cease, financial dependence on the partner or concern for their children.

5 It should be noted that the term “self-defence” holds a particular legal meaning in some jurisdictions. The term is used more generally in this paper to refer to violent resistance to abuse.

6 (ACT) *Crimes Act 1900* s212, (NSW) *NSW Law Enforcement (Powers and Responsibilities) Act 2002* s99, (NT) *Police Administration Act* s123, (Qld) *Police Powers and Responsibilities Act 2000* s365, (SA) *Summary Offences Act 1953* s75, (Tas) *Police Offences Act 1935* s55, (Vic) *Crimes Act 1958* s458, (WA) *Criminal Code 1902* s564.

7 (Tas) *Family Violence Act 2004* s11.

8 (Qld) *Police Powers and Responsibilities Act 2000* s365(1)(j).

the 1980s in the USA, the number of dual arrests for domestic violence has increased. For example, following the introduction of pro-arrest and mandatory arrest policies for domestic violence in California, male arrest rates increased by 136%, while female arrest rates increased more than 500% from 1987 to 2000 (DeLeon-Granados, Wells & Binsbacher 2006, p. 359). In the state of Georgia in the US, the percentage of women identified as perpetrators of domestic violence increased from 18% in 1996 to 21% in 2001 (Georgia Bureau of Investigation 2003). Dasgupta (2002) also cites steady increases in Connecticut between 1987, when 11% of women were arrested for domestic violence, and 1997 when this figure had risen to 18%.

Canada has documented a rise in single and dual arrests of women since its introduction of mandatory charge policies (Aboriginal Justice Implementation Commission Final Report 2001). A study by Comach, Chopyk and Wood (2000) examining arrest rates of women for domestic violence in Winnipeg from 1991 to 1995 found substantial increases in female arrest following zero tolerance policies. Ironically, the authors identified that in 35% of the domestic violence cases involving arrests of women, it was the women who had called the police for help (as compared with 5% of cases involving men). In Winnipeg, Crouch (2003) found that 9% of all cases of domestic violence attended by police resulted in dual arrest.

Interestingly, dual arrest rates vary significantly across and within US and Canadian jurisdictions, often with similar policies (Finn & Bettis 2006). This discrepancy warrants investigation, to help identify measures to minimise such arrests.

IMPLICATIONS OF ARREST FOR VICTIMS

Impacts on victims' safety

There are numerous negative outcomes for victims who are arrested at domestic violence incidents, the most concerning among them being the impact on their safety and the safety of their children. Once a victim is arrested, she has limited access to a criminal justice system intended to protect her (Bui 2001; Crager, Cousin & Hardy 2003; Dasgupta 2001, p. 18; Hirshel & Buzawa 2002). After their arrest, women have reported feeling betrayed because the police failed to protect them.

Being arrested can make a victim more vulnerable to manipulation by the perpetrator, who may threaten to have her re-arrested or reported for probation violations. Women may become afraid to defend themselves, especially if they are on probation (Miller, S 2001; Pollack, Battaglia & Allspach 2005). Victims are also likely to be reticent to contact police in the future (Rajah, Frye & Haviland 2006; Martin 1997, p. 155; Henning & Feder 2004; Crager, Cousin & Hardy 2003). Following the introduction of mandatory arrest policies, Duluth in the USA recorded a 40% reduction in calls to police about domestic violence and Hartford recorded a 28% reduction (Martin 2001). It is critical that victims of domestic violence have confidence that the police will act to secure their safety and protection.

Impact of arrest on women's sense of self

A woman's arrest not only weakens her case against the perpetrator, it also leaves her vulnerable to secondary victimisation by the criminal justice system. This can have a significant emotional impact and contribute to her mental distress (Smith, S 2006). Arrested women report feeling paralysed, confused, disoriented, embarrassed and surprised (Ferraro & Johnson 1983). Women with a criminal record are likely to feel shame, depression, mistrust, isolation and suicidal thoughts (Pollack, Battaglia & Allspach 2005). Victims may turn to drugs and alcohol as a coping strategy.

In a US qualitative study of nineteen women arrested for domestic violence, participants described their arrest as traumatic, painful, horrifying; and as causing their sense of self to be challenged (Rajah, Frye & Haviland 2006, p. 908). They felt betrayed by police who treated them like a perpetrator, rather than someone requiring criminal justice assistance, and locked them up with other criminals for breaching an order. The women in the study said that being defined as a criminal made them feel worthless, powerless and frightened. Arrest not only undermines a victim's confidence in the criminal justice system but also in herself, leaving her more vulnerable and isolated following the abuse.

Legal representation

If a case proceeds to trial, victims can be further compromised in court. In the US, Miller's (2001) interviews with thirty-seven criminal justice professionals and social service providers found that

women arrested for domestic violence offences often appeared unrepresented at court⁹ and were often encouraged to plead guilty to avoid jail or losing custody of their children. Miller reported that prosecutors and defence attorneys tended to take advantage of women's confusion and manipulated them into decisions in order to expedite cases.

Similar findings were drawn from a Canadian study involving interviews with nineteen women who were dually or solely arrested in Toronto, and focus groups with nine Crown Attorneys (Pollack, Battaglia & Allspach 2005). This study found that women had limited access to legal representation (for financial reasons). Legal advisors had limited time to consult with their clients and women were pressured to plead guilty in order to obtain a speedy outcome. No one asked them about their injuries or the reasons for their violent behaviour. These circumstances clearly disadvantage women defendants and can undermine their trust in the criminal justice system.

Referral to a perpetrator program

In some US jurisdictions, anyone convicted of a domestic violence offence must attend a perpetrator program. The Georgia Commission of Family Violence (2004, cited in Finn & Bettis 2006) collected information from twenty-eight family violence intervention programs and found 14.5% of referrals were women. Of these women, 84% identified themselves as victims of abuse. It is inappropriate and often destructive to require female victims arrested for domestic violence to attend perpetrator programs designed for violent men.

Some of the adverse consequences for victims include exacerbating victims' distress (Miller, S 2001; Hamberger & Arnold 1990), failure to attend programs may result in a breach of parole and possibly a jail sentence and some programs contact violent partners of participants to monitor their safety and incidents of recidivism. In this case, the participant's partner would be the perpetrator, creating a further opportunity for them to control the victim. It is possible that, through attendance, victims learn more about domestic violence and the assistance available to them through support services. However, under these circumstances, victims' responsiveness to such opportunities may be minimal.

⁹ It is unlikely that defendants would appear unrepresented in Australian courts.

Social and economic consequences of conviction

A criminal conviction for domestic violence can disadvantage women in a number of important ways. It can impact on custody decisions in family law disputes (Crager, Cousin & Hardy 2003; Miller & Meloy 2006). (Children, themselves, who witness the arrest of their mother may experience trauma, especially if left with an abusive father [Crager, Cousin & Hardy 2003; Pollack, Battaglia & Allspach 2005]). A conviction can diminish a woman's civil rights, such as her voting rights, opportunity to hold public office and residency status (possibly resulting in deportation) (Dasgupta 2001; Dasgupta 2002).

Because of a criminal conviction, a woman could lose her employment, with resulting social and economic consequences, and her chances of future employment diminish (Chesney-Lind 2002; Crager, Cousin & Hardy 2003; Dasgupta 2001; Pollack, Battaglia & Allspach 2005; Rajah, Frye & Haviland 2006). A conviction may affect access to welfare benefits and equitable property settlements (Dasgupta 2002, p. 1375). Arrest and conviction may also restrict a victim's access to services; such as access to public housing, restraining orders, victim's assistance and legal aid (Bui 2001; Finn & Bettis 2006; Martin 1997; Miller, S & Meloy 2006; Hirschel & Buzawa 2002; Humphries 2002). In particular, a criminal record may discourage women from calling the police in future domestic violence incidents and may affect the attitude of the police when responding to their calls for assistance (Rajah, Frye & Haviland 2006, p. 905).

USE OF VIOLENCE IN RELATIONSHIPS

Prevalence of men and women's violence

The serious consequences of arrest and conviction for victims of domestic violence demand investigation of whether it is occurring and why. Increases in dual arrests for domestic violence have occurred alongside a growing debate about women's use of violence in relationships. Some argue that research (e.g. Straus 1980; Straus & Gelles 1979), including that using Conflict Tactics Scales, has indicated that women are as violent as men and that the effect of mandatory and pro-arrest policies has demonstrated this.

However, crime and other statistics provide evidence that domestic violence is a gendered crime, overwhelmingly committed by men against women. The *Personal Safety Survey* conducted by the Australian Bureau of Statistics (2006) found that since the age of fifteen, around 2.1% of Australian women experienced violence by a current partner and 15% by a previous partner. In contrast, only 0.9% of men experienced violence from a current partner and 4.9% experienced violence by a previous partner (p. 11). The gender bias is also borne out in intimate partner homicides. There were seventy-four intimate partner homicides in Australia in 2005-06 (21% of all homicides in that year) (Davies & Mouzos 2007, p. 24). Of these, fifty-nine homicides (80%) involved a male killing his female partner.

Data from other countries demonstrate similar gender patterns. In 2005, of the 1,510 intimate partner homicides recorded in the USA, 1181 (78%) involved the homicide of women, compared with 329 (22%) involving the homicide of men (US FBI, Supplementary Homicide Reports, 1976-2005, in Fox & Zawiz 2007). For 2004, women in the USA experienced non fatal, violent victimisation by an intimate partner at a rate of 3.8 per 1,000 females (aged twelve years or older), while men experienced this violence at a rate of 1.3 per 1,000 males (Catalano 2006). Other studies have put the rate of women reporting themselves as victims of domestic violence at least two to four times the rate at which men do (e.g. Dobash & Dobash 2004 research in the UK).

A feminist analysis recognises domestic violence as behaviour based in social structures and perspectives that privilege men over women.

Manifestations of violence

Although some research suggests that women are as violent as men in their relationships (e.g. Straus, Gelles & Steinmetz 1980; Headey, Scott & de Vaus 1999), it has been soundly criticised for failing to account adequately for the contextual and relational factors surrounding the violence (e.g. Archer 2000; Bagshaw *et al.* 2000; Dasgupta 2001; Dekeseredy & Schwartz 2003; James *et al.* 2002; Pence & McDonnell 1999; Saunders 2002; Taft, Hegarty & Flood 2001). In particular, criticism has been levelled at equating all violent acts (e.g. according similar or equal weight

to shoving and punching). This approach ignores the more serious injury levels women experience, women's use of violence to defend themselves, the gender bias in experience of sexual assault and fails to account for women's experience of abuse that may have occurred over many years.

In Archer's (2000) US review of twenty studies, women were more likely to be injured by violence from their male partner, than men were likely to be injured by their female partner's violence (see also Henning & Feder 2004). In their UK research with

ninety-five couples, Dobash and Dobash (2004) compared the way in which men and women use violence. They concluded that intimate partner violence is based on men's violence towards women and that women's violence does not approximate men's violence in regard to any of the major indicators: frequency, severity, consequences and the victim's sense of safety and

wellbeing. They found violence employed by women in an abusive relationship is usually infrequent and results in few, if any, serious injuries to their male partners (Dobash & Dobash 2004).

Further, Henning, Renauer and Holdford (2006) found that women who used coercive violence in their relationships were more likely to become victims in subsequent domestic violence reports than offenders. The authors proposed that when women used violent resistant tactics and physical aggression, they were at higher risk for future victimisation.

Violent retaliation to a history of abuse

Many studies identify that those women who use violence in relationships do so to protect themselves or as a reaction to their experience of continuing violence over long periods (Chesney-Lind 2002; Dasgupta 2001; Dobash & Dobash 2004; Hirschel & Buzawa 2002; Hamberger & Potente 1994; Kernsmith 2005; Miller, S 2001; Saunders 1995; Swan & Snow 2002). Women who have experienced previous violence may use violence first as a tactical strategy to avoid being hit (Miller, S 2001).

In studies focussing on matters where both partners have been arrested at a domestic violence incident, a recorded history of abuse is common. Martin

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(1997) conducted a US study of 134 cases of dual arrest for family violence heard by the criminal courts in Connecticut in 1988, three months after the introduction of a mandatory arrest for domestic violence law. The study found that women were far less likely than their male dually arrested counterparts to have been previously arrested for family violence, although 40% of dually arrested women had been victimised before in a domestic violence incident. None of the men in this study had any record of having been victimised in a relationship.

Similarly, a US study by Henning and Feder (2004) in Shelby County, Tennessee compared the demographic characteristics, criminal history variables and the past domestic violence histories of 317 matched pairs of men and women dually arrested for a domestic violence incident. The authors found that the police were more likely to have been previously called to incidents in the homes of male arrestees compared to female ones and that male participants were more than twice as likely to have prior arrests for domestic violence.

A history of abuse can be extremely dangerous for victims. Australian data indicates a strong link between a history of domestic violence and homicide. Of the seventy-four intimate partner homicides occurring in 2005-06, thirty-nine (53%) had a recorded history of domestic violence between the partners (Davies & Mouzos 2007, p. 25). In nine of the homicide cases (12%) there was a current or expired protection order (p. 25).

In view of this research, police and prosecutors need to be trained to consider whether they should arrest and prosecute women, whether there is a history of abuse against them and whether they have a background consistent with aggressive behaviour.

Power, control and fear

Looking for evidence of mutual physical violence by men and women, however, only provides part of the domestic violence picture. The key determinants of domestic violence are a perpetrator's use of violence and abuse as a means of exerting power and control over their victim, resulting in her fear and intimidation. Elements of 'fear' and 'intimidation' are central to definitions of domestic violence in Australian state and territory legislation, as well as the *Family Law Act 1975* (Cth).

Research on women's use of violence in relationships indicates that it does not tend to reflect a domestic

violence dynamic. Women do not tend to engage in coercive controlling tactics, systematic threats and the use of violence to exert power, induce fear or control their male partners (Osthoff 2002). Studies show that men typically do not feel fear, bewilderment and helplessness when attacked by a woman, as women commonly do when attacked by a man (DeKeseredy & Schwartz 2003; Dobash & Dobash 2004). A US study of a women's offender program, for example, clearly demonstrated that women who used aggressive violence against their partners did not have control of the men and the male targets did not fear the women or change their behaviour as a result of the violent incident (Miller, Gregory & Lovani 2005). Henning and Feder (2004) found female victims of male arrestees were more likely to report recent escalations in frequency and severity of domestic conflict, to have felt threatened by their partner and to want to end the relationship, compared with male victims of female arrestees.

On this point, Stark (2007) argues convincingly for a focus on 'control' behaviours rather than on physical abuse to identify relationships involving domestic violence. While violence may be present in many relationships, it is the use of control tactics (including domination, hurt, humiliation, intimidation, exploitation, constant surveillance and isolation) that defines domestic violence. Stark argues that main means of control are 'micro regulation of everyday behaviours', including being deprived of money or food, being excluded from areas of the home, having limited access to communication or transportation (p. 5). The effect of acts of control on the victim should not be minimised (McKinnon forthcoming; Stanko 2007). Stark notes that:

I detail a range of harms caused by tactics other than violence. But the women in my practice have repeatedly made clear that what is done to them is less important than what their partners have prevented them from doing for themselves by appropriating their resources; undermining their social support; subverting their rights to privacy, self-respect and autonomy; and depriving them of substantive equality (p. 13).

Evidence of controlling behaviour, therefore, should alert authorities to domestic violence and the danger posed by perpetrators.

SITUATIONAL FACTORS

Situational factors more commonly associated with dual arrest for domestic violence can provide a guide to police in their interpretation of events at the scene of an incident and can inform arrest policy and operational practice.

Characteristics of women arrested

A number of US studies have identified women who are more likely to be involved in a dual arrest for domestic violence in that country. They are women who are:

- white (Lane, Lucera & Boba 2003; Martin 1997)
- between sixteen and thirty years of age (Connecticut Department of Public Safety 1991; Martin 1997)
- heterosexual, unmarried and cohabitating with their partner (Connecticut Department of Public Safety 1991; Martin 1997; Lane, Lucera & Boba 2003; Pollack, Battaglia & Allspach 2005).

It is difficult to know if arrest patterns in Australia reflect these US findings, as there is no local research of this nature. Such research would be valuable in informing which women are more likely to be involved in dual arrest and to examine why police make arrest decisions that are weighted towards people with these characteristics.

Evidence of injury

Overseas research indicates that dual arrest is more likely where both parties display or claim injury. Finn and Bettis (2006) conducted a US study of the arrest rationales employed by twenty-four police officers (nine rookies and fifteen experienced officers) in a pro-arrest jurisdiction. They varied scenarios and scripts, half of which involved women displaying no injuries and in the other half the women displayed significant injuries, such as a bump on the head or a bleeding lip. In all the scripts the husband showed no signs of injury. The study found that rookie officers believed the husband when he said that the

wife injured him (despite no physical evidence) and they chose to arrest both parties. These officers reported a belief that the law supported their decision because both parties admitted to fighting and claimed injury. However, of the experienced officers, all but three took the husband into custody while issuing the wife with a citation to appear in court on charges, seeing the issuing of a citation as less punitive.

In North Georgia, USA, Finn *et al.*'s (2004) study of 299 officers' responses to six domestic violence scenarios also found that injury of both parties increased the likelihood of dual arrest. When only the female partner was injured, 8% of police chose the dual arrest option. If both parties were injured, 45.8% chose dual arrest. However, where agencies

employed primary aggressor policies, requiring officers to identify and arrest the primary perpetrator of the abuse, officers were more likely to choose to arrest the male partner whose injuries were less severe (perceiving him to be the primary aggressor and the female partner more likely to be acting in self defence).

The study found at least fifteen officers would have arrested both parties, even when the husband sustained no visible physical injuries, believing the husband's claims of injury.

Injury is an important factor for police to consider in terms of the severity of the incident and to determine an appropriate response. It is critical, however, that police investigate all claims of injury to assess their validity and to differentiate injuries which are caused in self defence from those which have resulted from aggressive acts.

Use of weapons

Arrest of both parties at a domestic violence incident has been shown in the USA to be more likely in those cases where a weapon is used (Henning & Renauer 2005; Lane, Lucera & Boba 2003). The test of the use of a weapon in the decision to arrest may unfairly discriminate against women. Given their relative size compared to male partners, women are more likely to use a weapon to defend themselves, while men are more likely to use their bodies to assault, to inflict a similar degree of injury (Busch & Rosenberg 2004; Henning & Feder

It is critical, however, that police investigate all claims of injury to assess their validity and to differentiate injuries which are caused in self defence from those which have resulted from aggressive acts.

2004). Men are also more likely to inflict harm that is less visible (e.g. strangulation, punching).

Australian homicide data corroborate these findings about the use of a weapon, revealing that in intimate partner homicides for 2005-06, thirteen (22%) men beat their partners to death with their hands and feet, while no women killed their partners in this way. Of the fifteen women who killed their intimate partners, 80% did so with a knife or sharp instrument (Davies & Mouzos 2007, p. 25).

Some research has found that women are likely to use a readily available object to defend themselves, like a plastic bottle, a mobile phone or even a pillow (Henning, Renauer & Holdford 2006; Lane, Lucera & Boba 2003; Miller, S 2001; Smith, S 2006). Such objects do not present the same degree of risk of injury as a weapon like a knife or gun, and should not be treated with the same degree of seriousness.

Interference with police and credibility at the scene

Attending police officers may react to the demeanour of parties at the scene in making arrest decisions. A victim of abuse is likely to be distressed and emotional. She may be crying and incoherent, and consequently may have difficulty communicating exactly what happened to police (Miller, S 2001; Smith, S 2006). In contrast, perpetrators can often display an outward calm (Miller, S 2001) that police could read as more rational behaviour and demonstrative of a more reliable witness.

If police do not respond appropriately to an incident by arresting the perpetrator and do not act empathetically towards victims, victims may become frustrated and angry, or uncooperative with police. Police then may perceive victims as less credible and more combative than male perpetrators (Crager, Cousin & Hardy 2003, p. 28; Rajah, Frye & Haviland 2006). Victims showing what police may perceive as a disrespectful attitude towards them can increase the likelihood of their arrest.

It is apparent from some US studies that women are often falsely accused of violent behaviour by their abusive partners (Hirschel & Buzawa 2002). In Miller's interviews with service providers working with male perpetrators, service providers reported that these offenders often tell each other to 'get to the phone first', because police may consider the person who called them to be more credible

(Miller, S 2001). Respondents reported that male offenders would even self harm and goad their partners to make them respond violently without actually physically attacking them. In another US study, women reported that their male partners self-inflicted injuries, then phoned the police themselves or 'got to police' before victims once they were called, claiming that their wife had assaulted them (Bohmer *et al.* 2002; Pollack, Battaglia & Allspach 2005). Other manipulative behaviours include perpetrators threatening victims that they will lose custody of their children and threatening they will reveal the victim's psychological or psychiatric problems, if they report being victims of violence to police (DeLeon-Granados, Wells & Binsbacher 2006; Miller, S 2001; Smith, S 2006).

An additional factor believed to be associated with dual arrest is women's propensity to be honest to police about their violence (believing their actions to be justified by their circumstances) and their acceptance of responsibility and blame (Crager, Cousin & Hardy 2003; Dobash & Dobash 2004; McMahan & Pence 2003). Perpetrators of domestic violence are known to minimise the extent of their own violence.

Consumption of drugs and alcohol, and other factors

Dual arrests have been shown to be more likely where drugs or alcohol are present or have been consumed prior to police being called (Finn & Bettis 2006; Lane, Lucera & Boba 2003; Martin 1997). Jones and Belknap (1999) conducted a US study of 1,521 police reports of domestic violence in Boulder County, Colorado in 1994. Of these, there were sixty-six dual arrests. They found that the presence of drugs and alcohol increased the likelihood of dual arrest, although whether the man or woman called the police did not influence who the police arrested.

Other factors found to increase the likelihood of a dual arrest are where there is evidence present for both parties, including a statement from uninvolved witnesses, and where one party allows the other to violate an existing restraining or protection order (Connecticut Department of Public Safety 1991; Finn *et al.* 2004; Finn & Bettis 2006; Lane, Lucera & Boba 2003; Miller, S, Gregory & Lovanni 2005).

POLICE RESPONSES AND VIEWS

As with situational factors, consideration of issues surrounding police responses to domestic violence incidents and their views regarding arrest, can inform the development of policy, training and practice designed to minimise dual arrest.

Context of domestic violence

Police approaches to domestic violence incidents are influenced by legal definitions. Legal definitions and court and legal proceedings tend to refer to a single incident of abuse, despite evidence that domestic violence is characterised by ongoing and often escalating abuse. A single incident approach is detrimental to victims because it ignores the dynamic of abuse; that individual acts of violence might appear minor but occur within a context of ongoing actions and behaviours designed to control, coerce and exert power over a partner (Hirshel & Buzawa 2002; McMahon & Pence 2003; Miller, S 2001; Stark 2007). A single incident approach can make it difficult for police officers to characterise and recognise women's violence as a response to a history of abuse (Finn & Bettis 2006; Hirschel & Buzawa 2002; Dasgupta 2002).

Arguably, it is part of the attending police officer's role to uncover information at the scene about what has occurred, who is the perpetrator and the victim, and circumstances surrounding the isolated incident before making an informed decision about who should be arrested. Attending police who do consider contextual factors, such as the size disparity of the parties, are less likely to make a dual arrest (Hirschel & Buzawa 2002). However, US research shows that if police lack training in interviewing victims and are less comfortable with speaking to them, they are more likely to accept the male partner's version of events, even in the absence of evidence, and are more likely to arrest women (Henning & Feder 2004; Saunders 1995).

In their US study of officer responses to domestic violence scenarios, Finn and Bettis (2006) found that none of them carefully weighed the following factors in order to identify the primary aggressor: severity of injury, prior violence, risk of future violence and acts of self-defence when counter

claims were made. Officers were reluctant to investigate the context of the matter, even when required by law to do so.

Perversely, some officers may view arrest as a means of connecting victims and perpetrators with assistance and support. Finn and Bettis (2006) found that while there was some support in the data for the perception of a police backlash against victims, it was more apparent that officers were motivated by desire to assist both the victim and the perpetrator through the criminal justice system.

Lack of police discretion

Some police claim that because their discretion is limited or removed by pro-arrest and mandatory arrest policies, they are under increased pressure to arrest all parties who may have committed a crime

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in the context of a domestic violence incident (Chesney-Lind 2002). A dual arrest deflects responsibility for determining who the perpetrator is to the prosecutors and courts further down the line (Martin 1997; Miller 2001; Saunders 1995).

Some authors suggest that arresting women enables police to show their disapproval of pro-

and mandatory arrest policies, through thwarting the intent behind those policies (Finn & Bettis 2006; Henning & Feder 2004; Martin 1997; Saunders 1995).

Difficulty determining the primary aggressor

In some circumstances, police may have difficulty in determining who initiated an attack at a domestic violence incident. They also may have limited time to make this decision (Cramer, Cousin & Hardy 2003). Often police are called to an assault in which those involved have only minor physical injuries, did not use weapons and were alone at the time. In these circumstances it is difficult to determine who initiated the attack, especially when attending officers cannot access police records relating to prior incidents involving the parties (Hirschel & Buzawa 2002; Cramer, Cousin & Hardy 2003). Furthermore, a history of abuse may not have been officially recorded on police or criminal justice systems (Dasgupta 2002; Miller & Meloy 2006). In these circumstances, police may choose

to arrest both parties and leave prosecutors and the criminal justice system to decide who is the primary aggressor (Crager, Cousin & Hardy 2003; McMahon & Pence 2003; Miller 2001).

Even where the police do make a decision about who is the primary aggressor, it may be based on conservative and patriarchal attitudes, rather than on the behaviour of the parties (Martin 1997). These attitudes may lead to a desire to punish or deter women who exercise their rights (Rizakos 1995), particularly if women act outside of expectations of 'feminine behaviour', or are disrespectful (Martin 1997), drunk or outspoken to police (Miller, S & Meloy 2001). Women who retaliate against violence may be seen as equally culpable or contributing to their victimisation (Smith, S 2006).

Gender neutrality

Unless it is clear that only one party is at fault, police may aim to be gender neutral and arrest both parties. For example, Canadian research found the criminal justice system allows little consideration for a gender analysis of domestic violence (Pollack, Battaglia & Allspach 2005), particularly where a woman had used a weapon. That is, police practice assumes any assault is an assault and should be treated as a criminal offence.

As domestic violence is a gendered crime, a gender neutral approach in policing is not impartial and in fact de-contextualises women's use of force. It fails to distinguish between victims and perpetrators and can create a bias against women (Dasgupta 2002; Henning & Feder 2004; McMahon & Pence 2003; Miller, Gregory & Lovanni 2005; Pollack, Battaglia & Allspach 2005).¹⁰

SUGGESTIONS FOR AN IMPROVED RESPONSE

Primary aggressor policies

With increases in dual arrest some jurisdictions have introduced modifications to their legislation, such as primary aggressor or predominant aggressor policies. By the year 2000 in the USA, where many states employed mandatory arrest policies, twenty-four states had adopted primary aggressor language in their domestic violence legislation (Hirschel & Buzawa 2002).

Primary aggressor policies allow officers to consider factors, such as whether one party was defending themselves, prior complaints of domestic violence, the relative severity of the injuries on each person, who called the police for help and the likelihood of future violence (Alabama Coalition Against Domestic Violence 2001; Crager, Cousin & Hardy 2003; McMahon & Pence 2003). Some primary aggressor policies even prohibit police officers from threatening an arrest for the purpose of discouraging police intervention in domestic violence situations (Office for the Prevention of Domestic Violence, New York State, no date).

However, primary aggressor policies are not fail-safe. For example, the severity of injuries might not be a good indicator, there may be no prior complaints and it may be difficult to assess likelihood of future injury. The state of Georgia in the USA has primary aggressor language in its legislation and it instructs officers to weigh four factors in order to identify the primary aggressor when a counterclaim is made at a domestic violence incident. However, Finn and Bettis (2006) found that none of the Georgia police officers in their study did this and none of them mentioned whether one of the parties may have been acting in self-defence. The study found that even when police are required to do so, they are reluctant to investigate the context within which an incident takes place, in order to establish whether it was part of an ongoing pattern of behaviour.

In some US jurisdictions, less women have been arrested as a result of the introduction of primary aggressor policies (McMahon & Pence 2003). Other jurisdictions continue to see a rise in arrests of women despite their introduction (Bohmer *et al.* 2002; Chesney-Lind 2002; Martin 1999). Pollack, Battaglia & Allspach (2005) have noted that following

¹⁰ E.g. in NSW, a gender neutral approach to domestic violence ignores section 562E(3)(b) of the *Crimes Act 1900* which states that, in enacting the legislation, Parliament recognises that domestic violence is predominantly perpetrated by men against women and children.

the introduction of mandatory charge policies in Ontario, Canada, there was a rise in the number of dual arrests, which caused police and the courts to examine and review their practices. Reflection on the results of this process led to a decrease in dual arrest but a marked increase in the rate at which women were arrested alone.

Risk assessment

One means police have of determining the primary aggressor and the future danger they pose to the victim is by conducting a risk assessment based on evidence at the scene, witness reports, interviews of partners, historical records and other information. Risk assessments may help in distinguishing between acts of self-defence and those of aggression. McMahon and Pence (2003) suggest as a rule of thumb, that police officers ask themselves: if I took no action, which of the parties would be at greater risk?

US studies of risk assessment of domestic violence offenders have shown that male offenders are significantly more likely than female offenders to be violent again (e.g. Renauer & Henning 2005; Wooldredge & Thistlethwaite 2002). In their study of 5,578 men and 1,126 women arrested for domestic assault, Henning and Feder (2004) found women, as a group, were unlikely to engage in continued aggression or criminality. Some of the women were, in fact, arrested for acts of self defence. Using different risk assessment tools the authors found that men who were arrested were more likely to be violent in the future.

The use of validated, structured risk assessment tools at the scene may greatly assist police to determine who is most dangerous and who to arrest. While no tool is perfect, they have been shown to be more reliable than clinical judgement alone.

Police protocols and training

Training in domestic violence issues and policies is critical in assisting police to assess incidents and minimises the likelihood of dual arrest. Most primary aggressor policies require police to conduct careful, separate interviews with each of the parties, look at injuries to both parties and consider the domestic violence history and context (Henning, Renauer & Holdford 2006). Martin (1997) reports that a 6% dual arrest rate in Dallas was reduced to 1% when police were trained and instructed to arrest the person they assessed as the most culpable or dangerous.

It is essential that police officers are trained to distinguish self defence injuries from those of an aggressive attack (O'Dell 2001). Some research reflects declines in dual arrests in areas where police are trained to distinguish acts of self defence from acts of aggressive violence (Miller, S & Meloy 2006).

However, training and understanding of the intent of mandatory arrest and primary aggressor policies alone may not be sufficient to address the problem of dual arrests. In their study of police officer views and responses to domestic violence scenarios, Finn and Bettis (2006) concluded that primary aggressor policies and training may have a limited effect unless police are also monitored and supervised to ensure compliance. It may be that policies that actively discourage dual arrest are more effective than primary aggressor policies. Further research and evaluation will help our understanding of these issues.

Integrated policing and prosecution

Models where the policing and prosecutorial function are integrated rather than separate, are better able to collect evidence at the scene, reduce the likelihood of dual arrest and prepare matters for court. Integrated Australian models include the ACT Family Violence Intervention Program, the Tasmanian Safe at Home program, the NSW Domestic Violence Intervention Court Model and the Victorian integrated model. Through sophisticated information-sharing and knowledge-building, these models provide police with better guidance for collecting evidence and preparing for prosecution. This process can assist in minimising the likelihood of dual arrest or arrest of victims.

If a victim of abuse is arrested, the charges may be eventually dismissed or reduced for lack of evidence or evidence that the defendant is a victim of violence. This is more likely if the accusing party's injuries are minor or there are no injuries. Henning and Feder (2004) conducted a US study of 576 domestic violence cases assigned to the Domestic Violence Court in Shelby County, Tennessee, in which women were arrested for domestic violence. The study found that prosecutors were more likely to drop charges against women than men (nearly half the cases involved women), particularly in dual arrest cases. Prosecutors dropped 46.5% of cases involving women and, of those prosecuted, 28.2% had their charge dismissed by the judge and 0.7% were found not guilty. Older defendants, minorities

and unemployed women were more likely to be targeted for prosecution. Women who were perceived to have committed more severe offences (for example, because they used a weapon or caused significant injury to the victim) and who had a criminal history were more likely to be prosecuted.

Tasmania's Safe at Home program has found that prosecutors and magistrates tend to dismiss cases against women involved in dual arrest. Prior records of abuse of the woman by her partner, the risk assessment conducted by police at the scene, evidence collected, witness accounts and other information often indicate that the female defendant was actually the victim of abuse. Such cases are unlikely to proceed (L Little, Principal Consultant, Department of Justice, Tasmania, 27 August 2007).

FINAL THOUGHTS

Research has shown that arrest (and prosecution) of domestic violence abusers is a powerful strategy that protects victims and deters future violence (Black *et al.* 1991; Hirshel, Hutchison & Dean 1991; Pate, Hamilton & Annan 1991; Sherman & Berk 1984). Policies that encourage police to recognise the serious nature of domestic violence and arrest perpetrators contribute to a better criminal justice response to this crime. While policy changes to improve victims' safety are welcomed, any policy and practice change can have unanticipated outcomes. Increased dual arrest rates have been shown to be an unintended result, with serious adverse consequences for victims and their children.

If we are to maintain victim safety as a primary goal, these polices must be monitored and evaluated to ensure that their outcomes are consistent with this goal. This includes the ongoing reviews of legislation, policy and operating procedures to ensure that their outcomes reflect their intention. In Australia, where a number of jurisdictions are changing their legislation, policy and practice regarding the policing of domestic violence, monitoring, evaluation and review must be integral to the process.

This paper has canvassed a range of strategies aimed at reducing the likelihood of dual arrest. These include the use of primary aggressor policies, risk assessment tools and closer integration between police and prosecutors. Police procedures need

to place a greater emphasis on training at all levels including prosecution, accompanied with consistent supervision and leadership. Police should be encouraged to prioritise safety rather than the laying of charges. Available research suggests that no approach is successful alone and different strategies may work better in some jurisdictions than others. Their effectiveness also requires monitoring, evaluation and review.

There are also issues to be considered about the effect of pro- and mandatory arrest on specific groups within the community. For example, more informed and educated use of the discretion to arrest would be of particular benefit to Indigenous victims of family violence. The Royal Commission into Aboriginal Deaths in Custody (1987-1991) identified the high number of deaths as directly related to the elevated numbers of Aboriginal people in custody across Australia. A key recommendation of the inquiry was to promote efforts to keep Indigenous people from going to jail.

More information about domestic violence arrest rates and patterns in an Australian context would greatly improve our knowledge about the prevalence of dual arrest, why it occurs and how it affects victims. It would be valuable to know where dual arrest occurs more frequently in Australian jurisdictions and the factors contributing to its prevalence in those locations. Policing approaches must be sensitive to the context and dynamic of domestic violence and aim, ultimately, to protect victims from abuse.

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