

Why Does Good Research Go Unused?

**The Inertia of the Mandatory Arrest Policy for
Misdemeanor Domestic Violence Offenders**

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Introduction

Long considered a private issue, domestic violence has recently gained notoriety as an important problem facing American society. The growth of the feminist movement in the 1970s helped place domestic violence on the public agenda and forced policy makers to pay more attention to it. As it rose on the public agenda, research uncovered the rampant prevalence of domestic violence at all levels of society. In the early 1980s, domestic violence research found that mandatory arrest was an effective deterrent for domestic violence. As a result, many police departments and even state legislators adopted mandatory or preferred arrest policies. These policies meant that police officers were required or were strongly encouraged to arrest those whom they had probable cause to believe had committed an act of domestic violence. Further research in the late 1980s demonstrated that arrest had an ambiguous effect on domestic violence: some individuals responded to an arrest by reducing their domestic violence incidents while others reacted by increasing their domestic violence incidents. Despite this information, few jurisdictions changed their mandatory or preferred arrest policies and some even adopted the policies after the information's release.

This essay will explore the phenomenon of policy inertia through the lens of mandatory or preferred arrest policies for domestic violence. As such, it will begin by tracing the rise of domestic violence on the public's agenda. Next, it will turn to research findings on the effectiveness and subsequent ambiguity of mandatory and preferred arrest domestic violence policies. Finally, it will explore possible reasons that explain why policy makers failed to change their use of mandatory or preferred arrest policies despite the ambiguous research findings on the effectiveness of such policies.

Agenda Setting and Domestic Violence

John Kingdon asks the question "how does an idea's time come?" in his book *Agendas, Alternatives, and Public Policies*. Kingdon is concerned with how agendas are set, how alternatives are specified, and how decisions around an agenda are ultimately implemented. By agenda, he means the "list of subjects or problems to which governmental officials, and people outside of government closely associated with those officials, are paying some serious attention at any given time" (Kingdon (1984), p. 3). He suggests that, working under various constraints, governments make choices about which subjects will receive public attention from a pool of possible subjects.

Kingdon claims that agenda setting is affected by three kinds of processes. The first process is how people recognize problems in society. Usually, these problems are understood and defined through large, attention getting events, such as an accident that signals the unreliability of airline safety standards (Kingdon (1984), pg. 18). Problems could also be defined by a change in a widely known and respected indicator. For example, a dramatic increase in the homicide rate would suggest a violence problem in a particular city. The second process affecting agenda setting is information gathering and subsequent policy proposal formulation by experts in a particular policy area. As researchers develop, evolve, and publish their insights on a subject, they often create an impetus for adding the subject to the agenda and changing some policy around it. For example, a scientist who discovers that a particular food preservative causes cancer will

undoubtedly create pressure on the government to add the regulation of the preservative to its agenda. The third process involves the political mood of the public. A swing in this mood creates different pressures for government to take up one issue or another on its agenda. Usually, a mixture of these three processes contributes to the setting of the government's agenda.

Kingdon's theory provides a useful context to study the ascension of domestic violence to the national agenda. Though all three processes described above certainly had a hand in putting domestic violence on the agenda, I will focus on the second two processes. In catapulting domestic violence to the national agenda, these two processes occurred sequentially rather than simultaneously. Specifically, a change in the political mood of the public had to occur prior to information gathering and policy proposals, because of the traditionally private and taboo nature of domestic violence. What we call domestic violence today was not recognized as such thirty years ago. Instead, violence between intimates was considered a "private" matter with little room for action by the state. A change in the public's political mood reframed this kind of violence as a problem that the state could and should do something about. This recognition opened the gates for researchers to examine domestic violence and formulate policy options that could be used to help solve or reduce the problem. In summary, domestic violence had to be named as a problem before it could be researched and acted upon.

Changing the Public's Political Mood

Making domestic violence an issue of public concern required a reframing of the issue from a private matter to a public matter. Though there were sporadic examples of calling attention to domestic violence as a public concern in the early stages of American history, the bulk of this change in public perception occurred after the 1960s.

A large part of calling the attention of the public to domestic violence was defining domestic violence. Some researchers point out that the term "violence" connotes physical force. Therefore, most definitions of domestic violence are restricted to actual physical violence. However, there is a growing movement to think more inclusively about domestic violence by including non-violent psychological incidents in the definition (e.g., repeated yelling). Even within the definition of domestic violence as physical force, there are various levels of severity. For example, minor forms of physical violence, such as pushing or slapping, are very different from serious forms of physical violence, such as rape or assault with a deadly weapon. For the purposes of this paper, I will consider any physical act that either succeeds in or has the intention of physically harming an individual who is known to the perpetrator as domestic violence.

Despite some early recognitions of domestic violence as a problem, the issue stayed off of the public agenda for most of the history of the United States. One of the first recognitions of violence against women as a societal problem in the United States occurred at the Seneca Falls Convention in 1848. This convention produced the Declaration of Sentiments, which mentioned wife abuse in its grievance against the marital contract (Blackman (1989), pg. 2). During these times, it was routinely understood that violence within a home was a part of the private realm and instead of addressing violence within the home, public opinion and laws within the United States

either ignored or legalized it. For example, the United States adopted a law called the “Rule of Thumb,” which allowed a man to beat his wife with any implement so long as it did not exceed the width of his thumb. Until 1890, the state of North Carolina allowed a man to beat his wife in any way that did not result in “permanent injury and was not malicious beyond reasonable bounds” (Blackman (1989), pg. 2). The tendency to treat domestic violence as a private matter continued to pervade public opinion in the United States until relatively recently. For example, a famous 1965 legal case called *Griswold v. Connecticut*, which established a principle of marital privacy, has been used to rationalize state refusal to intervene in domestic violence situations (Schneider (1994), pg. 36).

The feminist movement in the United States successfully challenged the idea that domestic violence was a private matter starting in the 1970s. In the early 1970s, more established women’s groups, such as the National Organization of Women (NOW), joined more radical groups, like the New York Radical Feminists and the Bay Area Women Against Rape (BAWAR), to call public attention to physical and sexual violence against women. Most of the literature agrees that it was not a few organizations, but a groundswell of small organizations that succeeded in bringing the problem of violence against women to the attention of the American public (Schneider (1994), Blackman (1989), and Matthews (1994)). Stories about domestic violence occurred in popular periodicals and newspapers, such as the *Washington Post*, the *New York Times*, *Reader’s Digest*, and *Good Housekeeping*.

The increased attention to domestic violence by the media and the clamoring of the feminist movement may have helped change the public’s perception of domestic violence. In 1970, a study by Stark and McEvoy reported in *Psychology Today* that 25 percent of men and 17 percent of women believed that it was okay for a husband to slap his wife under certain circumstances (Frieze and Browne, 1989). By 1983, a similar study found that 86 percent of men and 91 percent of women disagreed with the statement “there are some conditions under which it is okay for a husband to slap his wife” (Frieze and Browne, 1989). Though the studies do not link a change in public opinion with the agitation supplied by the feminist movement or the attention domestic violence received by the press, a comparison of these two studies suggests that something was changing the national mood on domestic violence.

Government Action and Research on Domestic Violence

The change in national mood was sufficient to encourage changes in legislation and government policies regarding domestic violence. By 1980, nearly all states and the District of Columbia had some sort of legislation to deal with domestic violence and almost half of the states had laws that included appropriations for services geared toward victims of domestic violence. Federal government agencies also got involved. By 1978, there were 310 federally sponsored shelters for victims of domestic violence and, within five years, the number of shelters had more than doubled (Blackman (1989), p.15). Most recently, the 1994 Violence Against Women Act (VAWA) represents the biggest dedication to date by the federal government for addressing domestic violence.

As the government changed laws concerning domestic violence and devoted more resources toward helping its victims, research on the subject also increased. One type of

research that became popular was attempting to quantify the problem. Initial attempts to quantify domestic violence used large sample (22,000) interviews of individuals in 26 different cities to ascertain the incidence of rape (Blackman (1989), pp. 17-18). This study found that there were 39,310 victimizations (rapes) in a population of over 12.5 million people. This survey methodology received critiques based on speculation that interviewees were hesitant to reveal this very personal information, especially when their abusers may have been present for the interview. Other attempts to quantify the rape problem have speculated that over one-quarter of the female population has been the victim of at least one completed rape. One early study (1980) that expanded its scope to focus on all violent acts rather than rape found that 28 percent of married Americans had committed at least one violent act against their spouses (Blackman (1989), pg. 19). Due to a high non-response rate (35 percent) and the study's failure to differentiate between violence by men against women and violence by women against men, this study is very unsatisfactory. Reliance on police records about domestic disturbance complaints is another potential avenue for measuring the size of the domestic violence problem. Though this method may underestimate the size of the problem due to people's hesitancy to report domestic violence to the police, it provides some reasonable approximation of the size of the problem. According to Sherman, American police respond to eight million domestic disturbance calls each year, making it the most common kind of violence that police encounter (1992, pg. 1).

There has also been an increased amount of research on what policies could help prevent or reduce the damage caused by domestic violence. One example of such a policy is the decision to make the arrest of any person committing an act of domestic violence mandatory. The arrest of an individual who breaks a law is widely accepted in society as an acceptable and even desirable outcome. It is possible to see at least two goals of an arrest. First, arrest enunciates a public statement of condemnation. Second, an arrest is the first step in the justice process, which has goals of punishing those who break a law and deterring them from breaking the law again. Research on the effects of mandatory arrest on domestic violence indicated that both of these functions are not necessarily satisfied by an arrest. Though arrest still functions as a condemnation of the offender, it is less clear if arrest deters offenders from committing future acts of domestic violence. In fact, it may be true that in some cases arresting a domestic violence offender could result in their increased participation in incidents of domestic violence. The following case study on mandatory arrest will illustrate the complexity of this policy in relation to domestic violence.

Mandatory Arrest as a Policy Response to Domestic Violence

Through most of American history, only the most severe examples of domestic violence triggered a response from the police. This does not mean that police did not know about incidences of domestic violence, but, because domestic violence was traditionally defined as a private matter, police rarely used the discretion entrusted to them to take action against domestic violence offenders. An example supplied by Sherman illustrates the lack of seriousness with which police officers typically treated domestic violence offenders. In his book *Policing Domestic Violence*, Sherman describes a situation where police were called to a domestic disturbance call in 1966. The police

found a man with a firearm who told them that there was no need for police intervention. When they offered to take no action if the man released his wife from the house, he threatened to shoot them. Upon conferring with police headquarters, the police decided to leave the situation because the man had not committed a real assault (pg. 8).

This kind of passive police response changed in many states in the mid and late 1980s. Instead of only taking action only in particularly egregious situations, police departments and sometimes entire states adopted a policy that mandated the arrest of suspected domestic violence offenders for misdemeanor domestic violence incidents. Other jurisdictions made arrest the preferred policy to deal with misdemeanor domestic violence. By definition, these types of policies reduced or eliminated the discretion traditionally exercised by police officers. In addition to the pressure from the domestic advocacy community pushing the police to take domestic violence more seriously, this policy change was also encouraged by an experiment that suggested the significant deterrence of arrest on future incidences of domestic violence.

The specific research project that produced results suggesting the arrest could effectively reduce domestic violence occurred in Minneapolis, MN in the early 1980s. The project was a reaction to the police department's desire to define a policy intervention that would "reduce the risk of repeat violence by the subject against the same victim in the future" (Sherman (1992), pg. 10). In light of the primary goal of the project, the police defined three potential policies. The first was the status quo of the police department. Traditionally, police dealt with misdemeanor domestic violence incidents by sending the offender out of the house to deescalate the tension between the two parties. Clinical psychologists recommended a second potential policy. This policy involved the police acting as mediators or arbiters in the dispute without making an arrest that might damage the relationship between those involved in the conflict. In this way, the police dealt with the dispute itself, rather than postponing and potentially never solving the dispute. The third policy was to arrest the offenders.

In conjunction with researcher Lawrence Sherman, the Minneapolis Police Department used a randomized experiment to test which policy was most effective at deterring future incidents of domestic violence between the same two people. Using a six-month time frame, the police randomly assigned one of the three treatments to each domestic violence incident they received. That is, a domestic violence offender would be randomly assigned to the status quo treatment, which separated the two individuals involved in the dispute (control group); to the mediation treatment; or to the arrest treatment. The sample of incidents included in the experiment were only misdemeanor domestic assaults, where both parties were still at the scene when the police arrived and the police had probable cause to believe that one of the parties had physically assaulted the other. Any incidents that resulted in serious injury were eliminated from the sample because they were classified as felony aggravated assaults.

The results of this experiment clearly showed that arresting domestic violence offenders was the most effective policy at reducing future incidents of domestic violence. According to police records, the policy of separating the offender and the victim resulted in two and a half times as many future repeat offenders as the arrest policy. The difference between arrest and the mediation policy was less clear, with mediation resulting in a statistically insignificant higher number of repeat offenders. Evidence from

interviews with victims still established arrest as the most effective policy, but showed that separation produced fewer repeat offenders as mediation. According to Sherman, there is no way to know why these two types of data produced slightly different results, but both clearly identified arrest as the most effective policy intervention for reducing repeat incidents of domestic violence (Sherman (1992), pg. 13).

The Policy Implications of the Minneapolis Experiment

The policy implications of the Minneapolis experiment seemed to be very clear: police departments should adjust their procedures to make arrest mandatory or preferred in misdemeanor domestic violence incidents. Sherman included several warnings in his results, including the possibility that arrest of domestic violence offenders could have different effects in different communities or with different individuals. Despite this warning, Sherman's experiment was the only conclusive evidence on the effectiveness of different policy choices around domestic violence incidents. Therefore, the results of his experiment had a large impact on domestic violence policy across the United States in the years after the experiment's completion.

The largest impact of the experiment was to help make arrest the preferred policy intervention in misdemeanor domestic violence incidents. The Minneapolis Police Department was the first to adopt arrest as the preferred policy intervention for domestic violence. The arrest policy was not mandatory, but officers were expected to fill out onerous paper work if they failed to make an arrest in a domestic violence complaint. According to Sherman, 16 states had mandatory arrest laws by 1992 (Sherman (1992), pg. 23). A survey completed by the Police Foundation revealed that only 10 percent of police departments in cities over 100,000 people had arrest as the preferred policy for misdemeanor domestic violence in 1984. By 1986, 43 percent of these departments made arrest the preferred policy and in 1988, 90 percent either encouraged or required arrest of the offender in misdemeanor domestic violence incidents (Sherman (1992), pg. 14). By 1998, over one-third of all police departments had adopted pro-arrest or mandatory arrest policies (Mills, 1998).

The practice of arresting misdemeanor domestic violence offenders had clearly caught on in the major urban centers of the United States. Directly linking the effects of the Minneapolis experiment with increased adoption of arrest in misdemeanor domestic violence cases is difficult because of another event that occurred in Connecticut around the same time as the results were published. A battered woman introduced a lawsuit against the police department in Torrington, Connecticut, claiming that her abuse continued because the police failed to arrest her abuser. She won a \$2.5 million settlement (Sherman (1992), pg. 14). It is difficult to untangle the effects of these two incidents on police departments' propensities to adopt the policy of arrest in domestic violence cases. However, the Minneapolis experiment made quite a media splash. Since it was reported by the popular media in the *New York Times* "Science" section in 1983, the results of the experiment have appeared in over 300 newspapers across the country, on three major television networks, and in countless editorials (Fagan (1996), pg. 12-13). Given the popularity of the results in the media, the careful design of the Minneapolis experiment, and the significance of the results on a topic of increasing importance on the

public's agenda, it is probably true that it had a significant effect on the adoption of mandatory or preferred arrest policies in police departments.

Unintended Consequences of Mandatory Arrest in Domestic Violence Cases

Attempts to replicate the results of the Minneapolis experiment began in 1986, with National Institute of Justice funding similar experiments in five new cities: Omaha, Milwaukee, Miami, Charlotte, and Colorado Springs. Far from supporting the findings of the Minneapolis experiment, the findings from the experiments called the original findings into question. In Omaha, Charlotte, and Milwaukee, the arrest policy actually increased future incidents of domestic violence. Despite an initial deterrent effect, the experiments in these cities found that domestic violence incidents increased in frequency over a longer time period (Sherman, 1992). The findings from the other cities found no difference between the two no-arrest options and the arrest policy. At best these results indicated that the effects of mandatory arrest on future incidences of domestic violence were inconclusive. At worst, they indicated that a policy of mandatory arrest could actually cause more harm than good by placing the victims of domestic violence in greater danger over the long term.

More information from the replication experiments pointed to some potential reasons why arrest could trigger increased numbers of future domestic violence incidents. This information suggested that arrest was effective at deterring some types of individuals, but was ineffective at deterring other types of individuals. In general, the difference between these types of individuals is that those who were deterred by arrest had more to lose from an arrest. That is, the social consequences of arrest for this group of individuals were high enough to deter them from committing future acts of domestic violence. On the other hand, the other type of individuals had little to lose from an arrest. Therefore, a mandatory arrest policy was ineffective at preventing future incidents of domestic violence with individuals of this type. Differences in several characteristics help to distinguish these types of individuals. Those suspects who were employed tended to commit fewer incidents of domestic violence after being arrested than those who were unemployed. In addition to employment status, characteristics such as marriage and education level were linked to different outcomes for individuals arrested for committing domestic violence. In general, better-educated, married individuals were less likely to recidivate than less well-educated, unmarried individuals after being arrested for a domestic violence charge (Sherman, 1992).

The unintended consequences of mandatory arrest policies must also be evaluated in light of additional information about the prevalence of domestic violence incidents by class. Domestic violence occurs at every rung of the social ladder, but cases that are dealt with by the police are more likely to involve lower income households. Because of the high correlation between income and race in the United States, this also means that the police disproportionately address domestic violence incidents where the parties involved are minorities. Two reasons account for the disproportionate representation of low-income, minority individuals in the domestic violence cases handled by the police. First, middle and upper-income women are less likely to invoke legal solutions to solve what they consider to be personal problems. Their inhibitions around using legal solutions

include fear of social repercussions from admitting a violent relationship with an intimate. Also, middle and upper class women tend to live in less dense areas with housing units with thicker walls. These factors, along with smaller size that characterizes middle and upper class households, means that there is less chance that another family member or neighbor will call the police during or after an incident of domestic violence. Second, a significant amount of evidence indicates that domestic violence occurs more often in low income households than it does in higher income households. In fact, domestic violence rates are up to five times higher in households below the poverty level than in high-income households (Sherman (1992), pg. 7).

The findings from the experiments on the effects of arrest combined with the information about domestic violence and class suggests that mandatory arrest policies may do more harm than good. The types of domestic violence offenders least likely to be deterred by arrest (unemployed, unmarried offenders with lower incomes and education levels) are also the individuals more likely to engage in a domestic violence incident that is encountered by the police. This suggests that a mandatory or preferred arrest policy may lead to increased future incidences of domestic violence among the population that is currently most affected by it.

There is a second unintended consequence of mandatory arrest policies in domestic violence situations. A great deal of evidence suggests that domestic violence incidents often involve both parties participating in an act of violence (Frieze and Browne, 1989). In other words, both parties in a domestic violence incident could legally be defined as offenders. When combined with a mandatory or preferred arrest policy, this fact has led to increased incidence of dual arrest. According to Lisa Newmark, Senior Researcher at the Urban Institute, when police officers are relieved of their discretionary authority by a mandatory arrest policy, they often choose the risk averse option of arresting both parties in a domestic violence dispute when they have probable cause to suspect that both parties participated in the violence.¹ By choosing this option, police insulate themselves from criticism over how they handle a complex and volatile situation. It is worth noting that few advocates or researchers believe that women and men are equally culpable in a domestic violence incident. For example, women may be involved in violence against men at a high rate, but that they are much less likely to injure a man because of relative differences in size and strength (Frieze and Browne, 1989). Also, it may be difficult to determine what should be defined as an act of violence and what is an act of self-defense on the part of a woman. Rather than grapple with these decisions at the scene of the incident, police officers in a mandatory or preferred arrest jurisdiction are likely to arrest both parties and let the courts settle the matter.

Policy Inertia and Mandatory Arrest Policies

The policies of mandatory or preferred arrest seem to have persisted in police departments and in state legislation despite evidence that questions the policies' effectiveness. Of particular note is that jurisdictions continued to adopt mandatory or preferred arrest policies after the release of the conflicting evidence (Mills, 1998).

¹ Based on personal correspondence, December 13, 2002.

Mandatory arrest is not the first policy to withstand a negative evaluation. For example, the DARE anti-drug use program has withstood many reports that point to its ineffectiveness in preventing drug use (Clayton and Cattarello, 1991). There are several reasons that explain why the DARE program persists, including vested interests of key stakeholders and the cost associated with removing or changing the program. Mandatory or preferred arrest policies around domestic violence have similar reasons that result in their persistence or adoption within jurisdictions.

First, there are key stakeholders with vested interests in mandatory or preferred arrest laws. In the United States there is a widespread belief that infringements on personal liberties are wrongs that can be righted by state action. The American criminal justice system signals its disapproval of some action by exercising its police power. In other words, police departments arrest individuals who have been judged as breaking some community norm that infringes on the liberty of others. This is true when an individual steals a car, breaks into a home, and, increasingly, when an individual commits a violent act against an intimate partner. It is a tried and true method of indicating that the police are taking a problem seriously. Therefore, the ascendancy of mandatory or preferred arrest laws signals that the advocacy community has won the struggle to name domestic violence as a serious problem in America. As such, it has a vested interest in maintaining and even expanding laws that send a signal to the public that domestic violence is a serious problem and will not be tolerated.

Another group of stakeholders who have a vested interest in mandatory and preferred arrest policies for domestic violence is policy makers. Whether they are state legislators or police commissioners, policy makers considering domestic violence are faced with the need to make a simple and unambiguous policy for a complicated and ambiguous problem. Policy makers must have a policy that is simple enough to present and explain to the public, as well as consistent enough to satisfy the equal protection clause of the Constitution. Mandatory or preferred arrest is simple and consistent: anyone who commits a domestic violence offense should be arrested. A policy that calls for the arrest of those most likely to be deterred by arrest (generally, white middle and upper class individuals) and pursue some other tactic for those less likely to be deterred by arrest (generally, minority lower class individuals) is neither simple nor consistent. Because of the wide acceptance of domestic violence as a criminal problem by the public and arrest as the main mechanism for punishing and deterring criminal acts, it may be politically unfeasible to not arrest domestic violence offenders. Therefore, policy makers have a vested interest in maintaining or adopting a policy calling for the arrest of domestic violence offenders.

The second reason that mandatory or preferred arrest continues to remain a popular policy response to domestic violence is the perceived costs associated with changing the policy. Though there is no bureaucracy behind these policies that would have to be uprooted, the costs of changing the policy are real. The first type of cost is the political cost of changing the policy. Policy makers with vested interests in the existing policy and the advocacy community would have to be convinced that another policy could more effectively deal with the domestic violence problem while still fulfilling their interests. Given the complexity of the problem, another policy that deals with domestic violence could reinstate increased police discretion during domestic violence incidents.

This introduces the next type of cost: reverting to police discretion in domestic violence incidents could result in a return to the old way of doing business. In other words, it is possible that returning to police discretion to address domestic violence would result in only the most egregious cases of domestic violence triggering police action. This is an unacceptable outcome from the advocates' perspective. Taken together, the costs of changing or failing to adopt the mandatory or preferred arrest domestic violence policies help explain the policy inertia of these policies.

Conclusion

Despite the ambiguous research findings on the effectiveness of mandatory or preferred arrest policies for preventing future domestic violence incidents, policy makers continue to use them. The continued use of these policies is rooted in the vested interests that the advocacy community and policy makers have in them. Generally, the advocacy community is reluctant to give up a policy that clearly defines domestic violence as an important and pressing issue in American society. Policy makers appreciate the simplicity and uniformity of the policies and believe that there are few other policies that will be as effective at reducing domestic violence incidents in a politically feasible way. Therefore, despite the unintended consequences of mandatory or preferred arrest policies, they continue to persist in American society.

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