



LEGAL APPROACHES

NATIONAL CENTER ON LEGAL APPROACHES
TO PREVENT FAMILY VIOLENCE



CHANGING SYSTEMS
TRANSFORMING LIVES

MANDATORY ARREST POLICIES

July 2025

BWJP



INTRODUCTION

Before the 1970s, society mischaracterized domestic violence as a private matter rather than a societal problem. Moreover, the state categorized domestic violence as a relationship malady and placed spousal battery and assault outside of the criminal legal system’s jurisdiction. In turn, many victims suffered in silence or received disproportionate system response and experienced further harm.

Feminists and battered women’s advocates were concerned by this widespread apathy and minimization. As a result, they pressured law enforcement and the legislature to make policy and procedural changes that centered the safety and security of survivors and held perpetrators accountable, deterring further violence. Thus, mandatory arrest policies emerged as a solution to both state and societal indifference toward intimate partner violence and the prevalence of violence against women.

Part One of this series delves into the history of the battered women’s movement and traces the movement’s collaboration with the state, providing an essential foundation for understanding what led to the development of mandatory arrest laws. Through this historical analysis, Part One provides context for the movement’s emphatic advocacy for state intervention in cases of intimate partner violence. From there, Part One explores the movement’s arguments on behalf of mandated state intervention: decreased violence, safety and security for survivors, deterrence, accountability for perpetrators, and reinforcement of domestic violence as a rampant societal concern.

Still, while proponents of mandatory arrest were driven by the desire to protect survivors and the goal of ending domestic violence, modern advocates are reckoning with the unintended consequences of these policies. Part Two and Three will delve into the research and lived experiences of survivors that challenge the efficacy of mandatory arrest, asking the question: are mandatory arrest policies obsolete?

ANALYSIS

I. Domestic Violence 101

a. What is Domestic Violence?

Domestic violence is a recurring pattern of behaviors used to exert power and control in the context of an intimate relationship. Domestic violence includes behaviors like physical violence, emotional or psychological abuse, sexual assault, coercion or coercive control, rape, economic abuse, technological abuse, and reproductive violence. Those who cause harm in domestic violence cases use their privilege to intimidate, manipulate, humiliate, isolate, and frighten their partners. While women are largely the victims of domestic violence, anyone regardless of gender identity, age, race or ethnic identity, or sexual orientation can experience or perpetrate domestic violence.¹ A reported three in 10 women and one in 10 men in the United States have experienced domestic violence in their lifetime.

b. The Emergence of the Domestic Violence Movement

1. The Women's Rights Movement of the Late 19th Century

The Seneca Falls Women's Rights Convention of 1848 marked the first time² that mainstream women's rights activists organized against the structural barriers to women's liberation. Organizers created a list of demands that included more professional and educational opportunities for women, women's right to own property and control their own wages, and the ability to vote, run for office, and speak in Congress. Excluded from mainstream discussions of women's liberation due to white supremacy, Black women founded the National Association of Colored Women (NACW) in 1896, an organization that advocated for women's rights and Black liberation.

Parallel to the broader women's liberation movement was the temperance movement, which promoted moderation or complete abstinence from alcohol. Founded in the 1870s, the Women's Christian Temperance Union (WTCU) promoted temperance after observing the correlation between alcohol abuse and increased rates of violence enacted by men against their wives. In 1871, based on the WTCU and other temperance-based women's group's lobbying and vigilante efforts, Alabama and Massachusetts passed laws that made domestic violence committed by husbands against their wives illegal. Eleven years later in 1882, Maryland became the first state to make physical abuse a crime punishable by 40 lashes or a year in jail, marking the first time lawmakers codified criminal penalties for spousal abuse.

2. The Establishment of the Family Court System

In 1933, Buffalo, NY established the first Domestic Relations Court.³ Domestic Relations Courts were created to solve family problems outside of criminal jurisdiction, exemplifying societal and structural attitudes around domestic violence and its impact on survivors and communities.

Accordingly, domestic violence remained a “private family matter” rather than a matter of public concern or safety. Although by 1920, spousal abuse was illegal in all 50 states, courts funneled domestic violence cases from the criminal court system into the family court system until the 1960s.

3. Psychological Perspectives on Domestic Violence

Mid-20-century psychologists provided a framework for domestic violence that focused on physical abuse as a pathological problem within a relationship. To these psychologists, domestic violence was a manifestation of relationship dysfunction, and societal factors did not have an impact on the perpetuation of violence against women. The 20th-century approach to solving domestic violence was individualistic and named perpetrators and victims as contributors to the harm. Based on this belief, mental health professionals proscribed clients who were experiencing intimate partner violence with counseling and other methods to “repair the relationship.”

However, early feminist theorists found these methods of psychological explanation harmful. Framing domestic violence as a problem in a relationship and a matter of personality defects reinforced the public’s belief in the private nature of this type of harm. Feminists argued that focusing on relationship dysfunction as the cause also provided both perpetrators and the state with impunity because it ignored the root cause of domestic violence: power and control.

4. The Emergence of Feminist Criminology

In the late 1960s and the early 1970s, feminist criminology emerged in response to the male-dominated mainstream criminology field. Women were, up until the 60s, excluded from discussions of criminal theory. Primarily, feminist criminologists focused on the inequitable treatment of women as perpetrators of harm and “offenders” within the criminal legal system and state responses to violence against women like domestic violence and sexual assault. Ultimately, feminist criminologists bolstered the mainstream battered women’s movement’s belief that state intervention was crucial in eradicating the harms plaguing battered women at large.

5. Battered Women’s Shelters and Domestic Violence Hotlines

California established the first American battered women’s shelter in 1972. In 1977, New York State began providing funding for domestic violence shelters and offering services to victims. Subsequently, the growing understanding of domestic violence as a societal issue encouraged the New York State legislature to pass a law allowing married victims of domestic violence to file criminal charges against their spouses. Three years later, President Carter created the Office of Domestic Violence and tasked the office with disseminating information about domestic violence to the masses. The establishment of the Office of Domestic Violence highlighted changing attitudes around the pervasiveness of intimate partner violence and of providing victims with safety and security.

Still, there were many hurdles to overcome. Researchers Richard Gelles and Claire Pedrick Cornell found that some law enforcement agencies were using “stitch rules,” when responding to domestic violence situations.⁴ “Stitch rules” dictated that a victim of battering needed a certain number of surgical sutures before their husbands could be charged with domestic assault and battery. In New York and Chicago, police officers were instructed not to arrest in cases of domestic violence, but to attempt to resolve the conflict. Though the culture shifted in some ways, some institutions still regarded domestic violence as less serious than other forms of harm. Activists understood the diminishment of the cause as a major setback in ending intimate partner violence.

6. Class Actions in NY and CA

Frustrated with police inaction, domestic violence advocates sued police departments in New York City and Oakland, California. They sought to enjoin the New York and Oakland police departments to reverse their arrest avoidance policies in response to horrific cases of abuse where police inaction played a role. In response to these suits, the NYPD⁵ and OPD⁶ agreed to begin treating domestic violence like all other crimes and rescinded their respective policies. Following a 2.3-million-dollar judgment in Connecticut, other police departments across the United States became concerned about similar litigation.⁷ In response, police departments began codifying the legal requirement to arrest. The precursor to mandatory arrest laws emerged. In 1987, Oregon legislators passed laws requiring police to make arrests in domestic violence cases when the officer had probable cause to believe that an assault had been committed or when a person holding a protective order feared imminent serious harm.

7. VAWA Passed and Modern Mandatory Arrest Emerges

By 1981, it was clear that the changes to arrest policies in cases of domestic violence prevented further lawsuits. In a Minneapolis study, researchers Lawrence Sherman and Richard Berk found that arrest lowered rates of recidivism in men who abused their partners. While Berk and Sherman acknowledged that their experiment would need to be replicated to truly show its efficacy, domestic violence advocates began lobbying for mandatory arrest policies based on the studies’ results.⁸ When the Violence Against Women Act (VAWA) was passed in 1993, mandatory arrest became a requirement for states seeking to continue receiving federal funding.⁹

II. Understanding Mandatory Arrest

a. What is Mandatory Arrest?

Mandatory arrest policies require police officers who arrive at the scene of an incident to arrest one person or multiple people if they have probable cause to believe that domestic violence has occurred. In 2024, 27 of 50 US states and the District of Columbia and 5 of 5

“organized” US territories (including the US Virgin Islands, Guam, Puerto Rico, American Samoa, and the Northern Mariana Islands) have mandatory arrest laws.¹⁰ Different states have different requirements for police departments to conduct arrests: from primary aggressor determinations to dual arrests. To receive federal funding under VAWA, arrests are mandatory or encouraged where a misdemeanor family offense has been committed and where there has been a violation of a domestic violence civil order of protection.

b. Why Mandatory Arrest?

Proponents of mandatory arrest laws sought to use the power of the state to protect victims and prevent domestic violence. Supporters argued that laws mandating arrest would significantly impact rates of domestic violence, predicting that increased arrests would decrease intimate partner violence. Additionally, battered women’s activists argued that state intervention would reduce retaliation against victims and provide women with space from their husbands. Past and present mandatory arrest advocates see arrest as an effective deterrent to active and would-be abusers. In the same way, they believe that mandating arrest holds the state and offenders accountable by reinforcing the severity and seriousness of domestic violence.

1. Increase Arrests and Decreased Violence

Mandatory arrests have increased the number of arrests in domestic violence cases, which proponents consider one of the main benefits of these policies. This is because domestic violence has historically been undercharged. While state intervention was limited, domestic batterers continued to enact violence against their partners with impunity and were only likely to be arrested 7-15% of the time. Alternatively, since the emergence of mandatory arrest laws, domestic violence arrest rates have increased to 30% or more. Proponents of mandatory arrest also supported no-drop policies, which required prosecutors to move forward with domestic violence charges regardless of the survivor’s wishes. In tandem, advocates believed that these programs would decrease the prevalence of domestic violence, punishing violent men and separating them from vulnerable women.¹¹

2. Provides Space from Abuse for Victims

Similarly, proponents also argued that mandatory arrest requirements in domestic violence cases disrupt the cycle of abuse by separating victims from their abusive partners. When those who cause harm are arrested, they are kept away from their partners, children, and others who they have hurt, allowing their victims a moment of respite from ongoing violence. If the perpetrator is held on bail, the break in the cycle becomes even longer, potentially allowing a victim time to create a safety plan, access resources, to reconnect with family and community.

3. Protects Victims from Retaliation from Abusive Partners

Activists who advocate for mandatory arrest also believe that these policies protect victims from retaliation from their abusive partners. Before mandatory intervention, police officers

asked victims, sometimes in front of their violent spouses, whether they wanted their partners to be arrested for or charged with a domestic violence crime. Some survivors would decline to press charges due to fear, concern about finances or childcare, guilt, or cultural influences, resulting in further harm to the victim, who remained caught in the cycle of abuse. Alternatively, survivors who decided to press charges would be subjected to more violence when their partners returned from police custody, enraged and under the belief that their spouse was the cause of their punishment. Therefore, proponents of mandatory arrest believe that removing the choice from the victim shifts accountability from the survivor to the state.

4. Deterrence

Deterrence theory refers to the Theory of Punishment that criminal penalties prevent violators from committing crimes repeatedly and discourage others from committing similar offenses. Proponents of mandatory arrest believe that would-be perpetrators of domestic violence will weigh the potential benefits of committing violence against their partners to the benefits of not committing violence, and based on that assessment, those who cause harm will not follow through with such acts. Proponents of mandatory arrest believed that one of the main reasons why these laws were important is because they would keep the rates of recidivism low and keep would-be batterers from causing harm to their spouses and partners.

5. Accountability

Proponents of mandatory arrest also consider these policies to be a method of holding perpetrators of violence and the state accountable. Cultural beliefs about women's subjugation and male domination are two major causes of domestic violence. Before the introduction of these policies, the state perpetuated these attitudes by refusing to intervene. By removing police discretion and requiring officers to act despite their personal beliefs and implicit biases, the state and batterers are being held accountable for the harm caused by the patriarchal society upheld by their institutions.

6. The Reinforcement of Domestic Violence as a Crime

Finally, a nationwide study found that preferred arrest states have a 97% lower arrest rate than states with mandatory arrest laws.¹² These trends show that law enforcement is not incentivized to arrest domestic batterers and is unlikely to do so without a legislative requirement. Because of this, those who support mandatory arrest argue that these policies reinforce the importance of combating family violence to the police and other state actors. To policy advocates, emphasis on the criminal element of domestic violence is crucial in combatting gender-based violence and promoting safety and security.

CONCLUSION

Understanding the historical background behind mandatory and preferred arrest policies provides insight into the motives of advocates who believed in the power of state intervention.

After centuries of domestic violence cases being relegated to the family sphere or ignored, proponents undoubtedly believed that there was no choice but to collaborate with the carceral state to provide safety and justice for survivors while holding systems accountable for the societal structures that empowered gender-based violence.

That said, decades' worth of research shows that mandatory arrest policies are ineffective solutions to ending family violence, despite the benefits discussed in Part One. While lending credence to the motivations and intentions of the movement is an important step in analyzing policy, Part Two will examine these intentions through the lens of those who opposed mandatory arrest with a modern understanding of the impacts of mandatory intervention policies in mind.



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