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SYMPOSIUM: ARREST: WHAT'S THE BIG DEAL

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SUMMARY:

... For the last twenty years, activists in the battered women's movement have been urging the criminal justice system to take action against domestic violence. ... Arrest is one type of intervention that advocates for battered women have universally promoted as a fundamental underpinning of an effective response to violence targeted at women in intimate relationships. ... Thus, when activists seek mandatory, preferred, or presumptive arrest policies and practice in domestic violence cases, it must be understood that the demand is for the employment of multiple, synchronized strategies by the legal system. ... A second goal of domestic violence intervention is to stop the violence. ... A fourth goal of legal intervention against domestic violence is divestiture by perpetrators. ... A fifth goal of effective legal system intervention is restoration of battered women. ... Without this perspective, first-responders in "mandatory arrest" or "preferred/presumptive arrest" jurisdictions will devise their own rationale for chosen responses to domestic violence. ... Without shared perspectives, law enforcement will retreat from policies and practices that favor arrest of domestic violence perpetrators. ... represents the entry point for victims and perpetrators can enhance victim safety enforces perpetrator accountability deters crime Police intervention = homicide /crime prevention Intervention Works: Domestic Homicides Decrease ...

TEXT:

[*207]

For the last twenty years, activists in the battered women's movement have been urging the criminal justice system to take action against domestic violence. They want the system to treat it like a crime, to recognize that its perpetrators are chronic, high-risk offenders, and to acknowledge that this violence is costly in both human and social terms. Arrest is one type of intervention that advocates for battered women have universally promoted as a fundamental underpinning of an effective response to violence targeted at women in intimate relationships.

Yet, activists have not seen arrest as a panacea. They have not identified it as a unitary action, sufficient unto itself. Rather, activists have been calling for coordinated, comprehensive, and specialized intervention by all components of the legal and human services systems. Experience has demonstrated that arrest, when effected in a system designed to protect the victim and hold the perpetrator accountable, may interrupt patterns of violence; avert life-imperiling injuries,

homicide and suicide; and prevent the most frequent and endangering of "copycat" crimes. On the other hand, activists assert that when arrest is a singular intervention, the transitory nature of the beneficial effects and the chance that offenders will seek retribution may place battered women and children at an escalated risk.

Thus, when activists seek mandatory, preferred, or presumptive arrest policies and practice in domestic violence cases, it must be understood that the demand is for the employment of multiple, synchronized strategies by the legal system. The demand is based on a conviction that the death, dismemberment, destruction, and denigration of women are intolerable occurrences in society. Moreover, they are preventable. * * *

Effective intervention, arrest, or other actions, must be measured in light of explicit goals. In the context of domestic violence, there are six primary goals. The first and overarching goal is safety for battered women and children. Every intervention should be measured against the yardstick of safety.

[*208]

Arrest may well serve this goal in the immediate future. A batterer who is in secure custody is significantly restrained from perpetrating acts of violence and intimidation (except as he is able to persuade third parties to act on his behalf).

A second goal of domestic violence intervention is to stop the violence. Arrest seemingly works best to stop the violence, at least in the immediate-term, when perpetrators are firmly connected to the community, that is, when men are employed, affiliated with social or religious organizations, have a stake in preserving their reputations and/or maintain close connections to friends, family, co-workers, et cetera. For these "connected" men, arrest alone may serve to stop the violence, at least temporarily. Long-term cessation or desistance is more likely when arrest is merely the first of numerous, concerted interventions by the legal system.

A third goal of legal system intervention is accountability of perpetrators accountability to victims and to the community. Arrest draws the line. It informs the batterer that he has transgressed the principles safeguarding liberty and justice embodied in law. Arrest calls the batterer to account for his wrong doing in compromising community standards. It apprises him that continued violent conduct will be met with severe, adverse consequences. Accountability, thereafter, is a plan, either devised by the batterer or mandated by a court, for adherence to law, conditions of sentencing, and limitations imposed by victims as to future contact or relationships.

A fourth goal of legal intervention against domestic violence is divestiture by perpetrators. Most batterers believe that they are fundamentally and irrevocably entitled to relationships with battered women; entitled to the services, loyalty, obedience, and fidelity of a battered partner and entitled to superimpose his will upon her. Arrest gives notice that entitlement (this perceived inalienable right) is a fallacy. Arrest challenges a batterer's notion that he may do with a battered woman as he pleases and that the battered woman is without recourse or remedy related to his authority and ownership. Arrest profoundly challenges the beliefs of batterers that they have the right to control their battered partners.

A fifth goal of effective legal system intervention is restoration of battered women. The construct of restoration is complex. It includes restitution; timely compensation for losses sustained as a result of the violence, for example, replacement of destroyed clothing, household goods, eyeglasses, cars, and

[*209]

computers. Restitution involves compensation for loss of work related to court appearances occasioned by the violence. Restitution entails payment of all violence-precipitated medical costs. Restitution involves compensation for tuition or fees forfeited by battered women when these losses are directly caused by the coercive conduct of the perpetrator. Losses suffered by battered women are extensive. Compensation for the losses may be formidable as a consequence. All the more reason that these costs should be squarely assigned to the person responsible for them. Losses should not be borne by the victim. But restoration goes beyond restitution. It also anticipates that battered women must be restored to health, must live again without fear, must be accorded the opportunity to restore relationships with family, friends, neighbors, and co-workers, all of which may have been compromised by the batterer, his violence, and coercive controls. Arrest may merely permit battered women and children to sleep for the night. Arrest may permit battered women to escape from the house and seek shelter. Arrest may permit battered woman to seek medical attention for their injuries. Arrest may eradicate the barriers that prevent battered women from accessing community resources and support.

Finally, the sixth goal of effective intervention is to enhance agency in the lives of battered women. Agency is the power to make informed decisions and implement them without interference by the batterer. Agency is the power to organize one's life. Agency is the power to establish stable, nurturing homes for children. Agency is the power to participate, without batterer impediment, in work, education, faith, family and community. Battered women cannot fully participate in the justice system or act as an advocate for themselves and their children in the community unless they are fully informed about what they can do and are able to act. Agency is the power to employ the legal options, community resources, economic remedies, housing opportunities, and educational programs available in order to escape the violence and achieve lives that are free of intimidation, degradation, and violation. Arrest facilitates agency when it both informs battered women of the social and legal options essential for sustained agency and when it brokers access to these legal and human services options. * * *

[*210]

Arrest practice that is grounded in these intervention goals can make all the difference in the lives of men who employ violence against women in their intimate relationships. It is critical that law enforcement, particularly those who are the first to respond, "first-responders," are fully cognizant of the goals of domestic violence intervention. Those officers imbued with a rich understanding of the profound difference that their actions can make in the lives of adult and child victims, as well as perpetrators, will approach each of the tasks, which are associated with domestic violence intervention, equipped with a critical perspective a perspective that informs each task undertaken at the scene of the domestic violence incident.

The perspective (the knowledge, beliefs, values, and departmental culture) of the first-responder is the engine that drives the intervention strategies selected. Perspective shapes the amount of caution exercised when approaching the scene, any identification of injuries, the assessment of probable cause, the decision about whether to arrest one or both parties, the brokering of community resources for the victim, and whether any emergency safety planning should be undertaken with the victim.

Without this perspective, first-responders in "mandatory arrest" or "preferred/presumptive arrest" jurisdictions will devise their own rationale for chosen responses to domestic violence. If an officer's perspective is that "women provoke

violence" or "it takes two" or "domestic violence is nuisance behavior," then that perspective will shape intervention. Experts in the field of domestic violence, both sworn and civilian, agree that these perspectives convey an attitude of tolerance toward the violence, fail to call the perpetrator to account, and jeopardize both the safety of the officer and the victim.

When a department imposes a mandatory or preferred arrest directive, officers who embrace these victim-blaming, perpetrator-exculpating perspectives routinely resist the directive and either arrest both parties or conclude that probable cause does not exist to believe that the accused has committed the crimes alleged. Too often, then, the perpetrator gains further license for his behavior. Certainly, close supervision and monitoring by police management and the community can restrain the most egregious of these compromising practices, but resistance will be unremitting without a change in perspectives that embraces the six goals of intervention safety, desistance, accountability, divestiture, restoration, and agency. Similarly, perspective is the engine that drives the practices of the other

[*211]

components of the legal and human services systems. It shapes policy and practice guidelines; it informs decision making; it shapes resource allocation; it bolsters or erodes the resolve to end violence against women. Perspective shapes institutional and individual practice. Without shared perspective, a coordinated community intervention plan to end domestic violence cannot work. Without shared goals, institutions will lapse into easy solutions or regressive practices. Without shared perspectives, law enforcement will retreat from policies and practices that favor arrest of domestic violence perpetrators. Without corresponding perspective and practice by other components of the criminal legal system, law enforcement will soon conclude that arrest is a worthless, if not endangering, intervention. Thus, it is critical that those engaged in coordinated community intervention against domestic violence periodically revisit and affirm their shared goals and their perspective, evaluating whether the policies and practices currently employed are consistent with the goals of safety, desistance, accountability, divestiture, restoration, and agency. * * *

Police officers are the gatekeepers of the criminal legal system. Effective action by first-responders in police and sheriff departments may serve to open the gate both for victims and perpetrators. So, the big deal about mandatory, presumptive or preferred arrest policies is that they are the first link in a vital chain of institutional interventions that save the lives of battered women and children, restore the community and invite batterers to accountability.

[*212]

APPENDIX A

APPENDIX A

Domestic Violence: Fundamentals of Police Intervention Police as Gatekeepers to the Justice System The leadership of law enforcement in domestic violence crime reduction is undisputed.

Police Chiefs and Commissioners in many of the larger cities in the country are credited with transforming the attitudes of departments and personnel (Butterfield,1997).

Lawenforcement:

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Serious and violent crime has dropped for the fifth year in a row in the United States, according to preliminary figures released in early 1997 by the FBI. There was a 7% reduction in murders, much of the reduction occurring in the nation's largest cities (Butterfield, 1997). In 1996 - Los Angeles and New York City:

there was a decline in the homicides attributable to domestic violence

In 1996 - New York City: domestic homicide reduced by half

Police officials attribute the drop to both:

an increased awareness about violence against women in intimate relationships and a surge in criminal prosecutions of batterers (FVVPF, 1997).

[*213]

Academics suggest the fact that there are more police on the streets, along with the existence of the Brady law restrictions on firearms possession, may also account for the homicide reductions (Butterfield, 1997).[ep

The contribution of the leadership of law enforcement to this crime reduction is undisputed. Police Chiefs and Commissioners in many of the larger cities in the country are credited with transforming the attitudes of departments and personnel (Butterfield, 1997).

The assertion that police intervention equals homicide/crime prevention is now supported by hard numbers (Butterfield, 1997; FVVPF, 1997).

The conviction that police response can deter crime is catching on throughout the nation. In:

Alexandria, VA Ann Arbor, MI Chicago, IL Detroit, MI Los Angeles Luzerne County, PA New York Philadelphia Portland, OR Quincy, MA San Diego Seattle State College, PA

In several cities there have been dramatic reductions (Klein, 1997):

In San Diego, CA, there was a 50% drop in domestic homicides after the police department implemented its pro-arrest policy in 1993. The arrests for domestic violence crimes doubled.

In Newport News, VA, after the police department adopted a pro-arrest policy, domestic homicides decreased by almost 75%.

The domestic homicide rate in Tulsa, OK, plummeted by more than 50% in the first year after the adoption of the pro-arrest policy, and, in 1996, there was only one domestic homicide.

[*214]

Nashville, TN, created a specialized domestic violence unit and a "stalking the stalker" program. It also instituted a pro-arrest program. The domestic homicide rate dropped by more than 50%.

In Quincy, MA, there has been no domestic homicide in the last decade. This police department is renowned throughout the country for its domestic violence intervention.

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Recent crime statistics show that with specialized, upgraded police response:

domestic homicides decrease, and in time the number of "repeat calls" to police decline (Klein, 1997).

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These reductions should be credited to aggressive police practice and to changes in the practices of prosecutors, the courts, and probation departments. In each of the jurisdictions above, these components have contributed to the significant reductions in domestic homicide.

To make elevated intervention a success, each component in the justice system must embrace definitive domestic violence intervention protocols and allocate resources to the increased workload.

[*215]

APPENDIX B

APPENDIX B Principles Of Practice: Police Response to Domestic Violence

INTRODUCTION

These principles of practice are intended to serve as guidelines for effective police response to incidents of domestic violence from:

initial dispatch to arrest arraignment follow-up investigation victim assistance through disposition

These principles reflect and incorporate both the basic framework of state and federal law and the practical experience of law enforcement authorities and domestic violence experts.

These principles, as a whole, are not mandates. In all departments, officers can and should:

be familiar with accepted principles of effective police practice, and attempt to implement them to the extent feasible.

As crimes of domestic violence are committed by and between individuals involved in intimate relationships, these principles reflect the dual nature of effective police response to domestic violence.

Police should:

- 1) respond to domestic violence as they would to any other crime of violence, and
- 2) provide victims with special assistance, including efforts to ensure victim safety and access to needed services.

II. The Principles

II. The Principles A. Dispatcher Response

- 1) Prioritize domestic violence calls akin to other crimes of violence

[*216]

2) Keep caller on the line and reassure caller that police/help is on the way. Obtain information about the location, crime, suspect, victims, witnesses, caller, weapons, injuries, continued risk, descriptions of perpetrator and any vehicle which perpetrator might use, and exigent circumstances.

3) Inform the responding officer/s of all pertinent information obtained from the caller as well as criminal history, outstanding warrants, protection orders, weapons indicator, any prior calls to the same location.

- 4) Send back-up officers, where appropriate or mandated by policy.

B. Responsibilities of Responding Officers

1) Be persistent about obtaining background information from dispatcher on the way to the call. Ask specifically about protection orders, outstanding warrants, and criminal history.

2) Approach the scene with caution, including a silent approach if appropriate. Wait for back-up, if available, and use officer safety techniques.

3) Secure the crime scene. Separate the alleged victim and perpetrator, keeping the victim out of the perpetrator's line of vision as much as possible.

- 4) Safeguard the victim, any witnesses, including children, as well as other officers from attacks by the alleged

perpetrator.

5) Locate firearms and other dangerous weapons in the building and secure them out of the reach of the alleged perpetrator. Seize as evidence any weapons used in the commission of an offense. Secure any other weapons as necessary for victim and officer safety.

6) Inquire if there are injuries to any of the parties and, based on observation and/or statements of the parties, consider whether medical attention should be sought. Identify and locate any children who were at the scene to verify that they were not harmed at the time of the offense. Where it appears that medical attention is critical or upon request, the responding officer should attempt to secure appropriate emergency medical services. Have victim sign a medical release form:

[*217]

Victim/suspect/witness refuses treatment

Victim/suspect/witness signs release of medical records to police

7) Interview the alleged victim, perpetrator, and witnesses, including the children. Obtain the services of a translator where appropriate and available. Document statements of all people interviewed. Inquire of victim and witnesses about outstanding protection orders, warrants, and criminal history.

8) Assess and determine whether there is probable cause to believe that either a state crime or federal domestic violence offense has been committed. Probable cause may be found based solely on the statements of the alleged victim.

9) In assessing probable cause, consider whether one party is the primary aggressor. Where there is probable cause and a primary aggressor or perpetrator, arrest that person when there is authority to do so. Where both parties have engaged in violence without justification, both may be arrested.

Identifying the "Primary Aggressor: "arresting both parties to a domestic dispute is rarely warranted in cases of domestic violence. It may result in dismissal of the case and is contrary to the goal of protecting victims from abuse. Instead, officers should attempt to determine which of the parties is the primary aggressor and arrest and charge that party when there is authority to do so. In making this determination, officers should consider:

the intent of the law to protect victims of violence;

the right of victims to use reasonable force in their own defense;[ep

the nature and comparative extent of the injuries to the parties. Officers should be aware that assaults on victims may leave no immediately observable injuries (i.e., where the victim has been choked or suffered a concussion or injuries to internal organs from punching or kicking), while visible injuries to perpetrators

[*218]

(i.e., scratches or bite marks) are often inflicted by victims in self-defense; and the prior history of domestic violence. Evidence available to the responding officers personal knowledge, departmental records of prior incidents, orders of protection, medical records, statements of witnesses as to prior incidents may clearly establish the likelihood that one of the parties to the presenting incident is the primary aggressor.[ep

10) Where there is probable cause and the alleged perpetrator flees, pursue the suspect with due diligence. Document the "due diligence" used to apprehend the suspect. If the suspect is not located and arrested after a reasonable amount of time, seek an arrest warrant or file a citation, as appropriate, and apprise the victim of the action taken. If the county requires approval from the district attorney's office prior to applying for a warrant, seek such approval as soon as possible.

11) Attempt to obtain a current photograph of the evading suspect to aid in the search.

12) If an arrest is effected where a suspect has fled, reasonable efforts should be made to advise the victim of the arrest.

13) Where there is probable cause to believe that a federal crime of domestic violence has been committed, immediately notify the district attorney and the appropriate federal authority.

14) Document, document, document!

Take pictures of any visible injuries to the victim and of the crime scene at the initial call and several days later.

Interview all witnesses, document their statements, secure and retain all physical evidence, complete a body chart of the victim(s) indicating the location of injuries, areas struck, and areas of pain.

Record all statements made by those involved in the incident, especially excited utterances.

Include in the report, officers' observations of injuries to victim and damage to possessions or other property.

Have the victim sign a medical release form.

[*219]

15) Apprise the victim(s) of all rights they may have as crime victims and victims of domestic violence as required by state law. Advise victim(s) of the availability of shelter. Provide all required written materials, including the address and telephone numbers of the local domestic violence program. Assist the victim(s) in contacting the program if the victim(s) seeks officer help.

16) Obtain contact information of the victim(s) where notification can be made about the release of the alleged perpetrator from custody. Keep this contact information confidential.

17) To the extent possible, offer assistance to the victim(s), including transportation, if available, referrals to shelter and counseling, securing of the residence, and contacting family or friends. Offer the victim(s) assistance in preliminary safety planning and make referral to local resources for on-going safety planning.

18) Where the victim wishes to obtain an emergency protection order under the Protection From Abuse Act, or asks that a criminal protective order be imposed as a condition of the release of the perpetrator, assist the victim in pursuit of the order or the conditions before the appropriate district justice. Where there are pre-trial services available in the county, inform the victim how these services may enhance victim safety during the pendency of any criminal prosecution. Provide victim with distinct written materials or a telephone referral.

19) Convey the message that violence against family and household members will not be tolerated and that there is no excuse for domestic violence. For example, this conveyance may include an explicit verbal statement or an arrest.

Fully complete an incident report. Refer to

6105 of the Protection From Abuse Act. When deciding not to arrest, or to arrest both parties, explain in detail the reasons for such decision.

20) If an arrest is made, take the suspect before the arraigning authority as soon as possible. Inform the charging authority of all alleged crimes committed against the victim, including the current incident and past incidents which fall within the statute of limitations. Ask that the arraigning authority consider the history of domestic violence of the parties and the risk posed by

[*220]

domestic violence in setting bail. Ask the district justice to require, as a condition of bail, that the perpetrator stay away from, and have no contact with, the victim(s).

21) Photograph and fingerprint the perpetrator at the time of the arrest. This will ensure that the incident is documented and in the suspect's criminal history record.

22) Inform the victim of the crimes with which the perpetrator has been charged, and any conditions of bail imposed. Advise the victim of procedures to follow if bail conditions are violated. Responsibilities of Investigating Officers/Detectives

1) Interview the victim within 24 hours, as possible, after the incident.

Take pictures of all injuries, including bruising. Remember that full coloration may not be evident for 2-3 days, thus requiring additional photographs to fully capture the extent of injury. Take supplementary statements. Inform victim once again of rights, remedies, and services available.

2) Where feasible, repeat all of the above 72 hours after the incident.

3) Where there is probable cause to believe that a crime has been committed, but there is no authority to make a warrantless arrest or the perpetrator has fled, seek an arrest warrant.

Advise the victim of the issuance of the warrant and the arrest of the suspect. Establish a method of notifying patrol officers of such active warrants, e.g. roll call, police information sheets, etc.

4) Ensure that all evidence photographs, statements, weapons, medical reports, 911 tapes, and other physical evidence is secured and that chain of custody is maintained.

5) Where resources permit or community policing is operative, contact the victim weekly to ascertain safety requirements and service needs and to obtain supplemental information to facilitate prosecution and enhance victim safety.

Offer assistance to safeguard the victim during all court appearances.

[*221]

6) Work with probation and parole officers to revoke suspects who are under supervision for any prior offenses. Fax offense and arrest reports to probation and parole officers for immediate action on revocation.

7) Prepare case documents for prosecution, identifying who can testify to what and what evidence is available. Discuss with victim the nature of procedures and proceedings before the district justice and the Court of Common Pleas. Develop and maintain rapport with prosecuting attorneys to facilitate problem-solving.

8) If there is probable cause to believe that a federal domestic violence offense has been committed, contact the appropriate local federal authorities as a follow-up to the responding officer's report. Provide relevant information to assist in federal investigation.

9) Maintain offender and victim databases or risk registries to identify repeat suspects and victims.

10) Participate in community education programs and trainings with local domestic violence programs or shelters.

Legal Topics:

For related research and practice materials, see the following legal topics:

Criminal Law & Procedure
 Defenses
 Self-Defense
 Criminal Law & Procedure
 Defenses
 Battered Person Syndrome
 Criminal Law & Procedure
 Sentencing
 Alternatives
 Probation
 Revocation
 Standards