

Mandatory Arrest for Domestic Violence

Posted on September 5, 2024

View this essay online:

<https://academic-master.com/mandatory-arrest-for-domestic-violence/>

Introduction

Mandatory-arrest policies for domestic violence require or strongly direct police to make an arrest in specified circumstances when probable cause exists, even when the victim does not request that outcome. These laws emerged partly in response to a long history of police and courts treating violence within intimate relationships as a private matter rather than applying the same seriousness used for assaults between strangers. The reforms established an important public principle: domestic violence is not exempt from criminal law. Their effects, however, cannot be evaluated by arrest counts alone. Research has produced mixed findings about deterrence, and policy can create unintended consequences when officers make dual arrests, misidentify the predominant aggressor, or fail to consider self-defense, economic dependence, immigration concerns, disability, or retaliation risk. A 2024 systematic review that appeared in print in 2025 concluded that much of the arrest literature is old and narrow, with relatively few studies examining outcomes beyond repeat violence (Connor et al., 2025). A defensible approach therefore combines lawful arrest authority with careful investigation, survivor-informed safety planning, due process, and measurement of whether violence and injury actually decline.

Why Arrest Policies Emerged and How They Differ

Domestic violence can include physical assault, sexual violence, stalking, threats, coercive control, economic abuse, and technology-facilitated intimidation, although criminal arrest must be based on conduct covered by applicable law. Mandatory, preferred, and discretionary arrest models differ. A mandatory policy directs arrest when specified legal conditions are met; a preferred-arrest model favors arrest while retaining more officer discretion; and discretionary systems permit a broader choice of lawful responses. None removes the requirement for probable cause. Officers still need objective facts from statements, injuries, damaged property, messages, recordings, witnesses, prior orders, body-camera footage, admissions, and the surrounding scene. The details also vary by state, offense severity, protective-order violation, weapon involvement, and whether the offense occurred in the officer's presence. Historical pro-arrest reforms were designed to reduce unequal nonenforcement and the pressure placed on victims to demand prosecution in front of an abusive partner (Hirschel et al., 2007). The policy question today is therefore how to preserve accountability without converting a corrective rule into an automatic response that ignores context.

What the Deterrence Evidence Shows

Evidence about deterrence explains why broad claims for or against mandatory arrest should be avoided. The Minneapolis Domestic Violence Experiment reported lower subsequent violence among arrested suspects than among some comparison groups and strongly influenced policy development (Sherman & Berk, 1984). Replication studies in other cities produced less consistent results, suggesting that employment, criminal history, social ties, neighborhood conditions, enforcement, and measurement can affect outcomes. The recent systematic review by Connor and colleagues identified thirty-four U.S. studies and emphasized both the age of much of the evidence and the limited range of outcomes examined (Connor et al., 2025). Arrest may interrupt an immediate assault, create a formal record, support protective conditions, and communicate that intimate-partner violence is a public offense. It can also fail to prevent future harm when prosecution, supervision, housing, advocacy, or treatment are absent. This makes arrest an event within a larger system rather than a complete intervention. Evaluation should therefore examine repeat violence, injury, homicide, survivor-reported safety, willingness to call police again, dual-arrest rates, prosecution, disparities, and access to services rather than treating more arrests as self-evident proof of success.

Predominant Aggressor, Self-Defense, and Evidence

The quality of the initial investigation is especially important in cases where both parties have injuries or each alleges violence. A predominant-aggressor analysis should consider comparative injury, history, fear, threats, coercive control, self-defense, witness evidence, and the likelihood of future harm rather than identifying the person who appears angriest or who struck first during a struggle. Someone resisting strangulation, confinement, sexual assault, or another immediate threat may use force lawfully in self-defense. Dual arrest can erase this context and may give an abusive partner another mechanism of control. Officers should also recognize high-risk indicators such as nonfatal strangulation, stalking, escalating threats, weapon access, separation, forced sex, or threats to kill. Evidence-led investigation can reduce overreliance on a survivor's later participation by preserving photographs, emergency-call recordings, messages, witness accounts, medical evidence obtained lawfully, damaged property, and suspect statements. The U.S. Department of Justice recommends law-enforcement practices designed to reduce gender bias and improve responses to domestic and sexual violence (U.S. Department of Justice, Office on Violence Against Women, 2022). Accurate context protects both survivor safety and the accused person's due-process rights.

Survivor Autonomy and Unequal Effects

Survivor autonomy and disparate impacts create additional policy trade-offs. A survivor may want the violence to stop while fearing that arrest will remove household income, destabilize housing or

childcare, trigger immigration consequences, or provoke retaliation after release. Black, Indigenous, immigrant, disabled, and LGBTQ+ survivors may also have reasonable concerns about discriminatory treatment or prior negative experiences with law enforcement. Mandatory rules can reduce one form of officer discretion but cannot eliminate unequal policing, and apparently neutral language does not guarantee equal effects. At the same time, making the survivor solely responsible for requesting arrest can recreate coercion because an abusive partner may pressure the person to decline action while officers are present. Survivor-centered practice therefore does not mean transferring legal responsibility back to the victim. It means explaining what police can and cannot control, listening to immediate safety concerns, providing language and disability access, protecting confidentiality where possible, and preserving choices in areas not fixed by law. Connor et al. (2025) specifically call for greater attention to survivor perspectives and potential disparate impacts, reinforcing the need to evaluate implementation across different populations rather than relying on aggregate recidivism alone.

Arrest Within a Coordinated Safety System

A coordinated response is more likely to improve safety than arrest acting by itself. High-risk cases may require rapid connection with prosecutors, courts, advocates, medical services, housing, transportation, childcare, and legal assistance. Protective orders and firearm restrictions can be important where legal criteria are met, but they require clear procedures and enforcement rather than promises that a document alone will prevent violence. Trauma-informed interviewing helps officers obtain usable evidence without assuming that a calm, angry, confused, intoxicated, or inconsistent presentation proves or disproves victimization. Departments should train on probable cause, predominant-aggressor analysis, self-defense, strangulation, stalking, bias, disability, LGBTQ+ relationships, and local resources, then audit high-risk no-arrest and dual-arrest cases. Supervisory review can identify patterns that individual incidents conceal. Courts and service agencies also need timely information, because the period immediately after arrest may bring new risks if the defendant returns home without conditions or the survivor lacks a safety plan. Mandatory authority is therefore most defensible when embedded in a system that combines accountability with evidence quality, support, and repeated assessment of real-world outcomes (Hirschel et al., 2007).

Conclusion

In conclusion, mandatory-arrest laws arose from a legitimate failure of equal protection: intimate-partner violence was too often minimized, and victims were expected to carry the burden of persuading authorities to act. Arrest can stop an immediate incident, preserve evidence, establish public accountability, and create an opportunity for protective intervention. Research does not support treating arrest as a universal deterrent or as a sufficient response by itself. Contemporary evidence also requires attention to dual arrest, predominant-aggressor errors, self-defense, survivor autonomy, racial and economic disparities, immigration, disability, and the consequences that follow

release (Connor et al., 2025). The most responsible policy is therefore not measured by whether it maximizes or minimizes arrests in the abstract. It is measured by whether officers establish probable cause accurately, distinguish coercive aggression from defensive force, recognize elevated danger, connect survivors with practical support, protect due process, and reduce repeat violence and injury. Mandatory and preferred-arrest systems should remain open to evaluation and revision as better evidence becomes available. Public safety is served when legal accountability operates as part of a coordinated, survivor-informed, evidence-based response rather than as an isolated numerical target.

References

- Connor, R. A., Johnson, L., Bridgeman, M., Shokrane, F., & Hakobyan, B. (2025). Outcomes associated with arrest for domestic violence: A systematic review and meta-analysis. *Trauma, Violence, & Abuse*, 26(3), 528-545.
- Hirschel, D., Buzawa, E., Pattavina, A., & Faggiani, D. (2007). Domestic violence and mandatory arrest laws. *Journal of Criminal Law and Criminology*, 98(1), 255-298.
- Sherman, L. W., & Berk, R. A. (1984). The specific deterrent effects of arrest for domestic assault. *American Sociological Review*, 49(2), 261-272.
- U.S. Department of Justice, Office on Violence Against Women. (2022). *Improving Law Enforcement Response to Sexual Assault and Domestic Violence by Identifying and Preventing Gender Bias*.