Evaluating the Effectiveness of Mandatory Arrest for Domestic Violence in Virginia

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EVALUATING THE EFFECTIVENESS OF MANDATORY ARREST FOR DOMESTIC VIOLENCE IN VIRGINIA

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The Commonwealth of Virginia has adopted a series of new provisions, scheduled to become effective, July 1, 1997. These provisions will provide directives for the criminal legal system in response to the issue of domestic violence. One of these provisions, the mandatory arrest of the "primary physical aggressor" in instances of assault and battery of a family or household member, is a matter of some controversy in Virginia and the nation. This article focuses on evaluating the effectiveness of the mandatory arrest provision in Virginia. The underlying premise of this article is that systematic evidence is different from personal experience, and even professional expertise, and that, in many situations, where systematic evidence exists, it is to be preferred over personal experience and professional expertise. This article suggests that the critical skills and faculties necessary to assess effectiveness in a systematic manner are lacking in the written records on the adoption of mandatory arrest in Virginia. Furthermore, there appears to be no commitment of resources on the part of the Commonwealth of Virginia to collect the systematic evidence necessary to assess whether its new reforms will, in fact, improve the safety of women. This article reviews the origins of the mandatory arrest provisions in Virginia, the logic and evidence presented in its support, and the available scientific evidence about the effectiveness of mandatory arrest as a means to prevent additional harm to the victims of domestic violence. The history of recent reforms in the criminal law relating to domestic violence measure effectiveness in terms of protecting the victims of domestic violence from subsequent harm. If, in fact, the safety of the victims of domestic violence is the goal of the new legal provisions in Virginia, the issues at hand are 1) the extent to which mandatory arrest has accomplished that goal in other jurisdictions and 2) how the citizens of Virginia will know if mandatory arrest has been effective in Virginia.
I. THE VIRGINIA COMMISSION ON FAMILY VIOLENCE PREVENTION

The immediate origins of the mandatory arrest provisions in Virginia appear in the recommendations of the Virginia Commission on Family Violence Prevention. The Virginia Legislature created this twenty-five member commission to, among other things, "study family violence" and "determine the services, resources and legislation needed to address, prevent and treat family violence." In January 1996, the Commission adopted a legislative agenda that included a provision requiring that law enforcement officers in the Commonwealth of Virginia arrest and charge the suspected abuser upon finding probable cause for assault and battery among family members. If two or more parties in the same incident make complaints, the police are to arrest “the primary physical aggressor” and may use their discretion not to arrest the other party even if the officer has probable cause to believe that they also committed assault and battery. Based on a report of its Law Enforcement Subcommittee, the Commission included four criteria for determining who is the "primary physical aggressor": 1) prior complaints of domestic or family violence; 2) relative severity of the injuries inflicted on each person; 3) the likelihood of future injury to each person; and 4) whether one of the persons acted in self-defense.

The report cites no source for the concept of “primary physical aggressor” nor for the four criteria that determine who fits the description. The Commission does not mention the experience any other law enforcement agency has had using this concept or these criteria. The Commission made a related recommendation: all law enforcement officers in the Commonwealth of Virginia

2. Id. at 5.
3. The adopted legislation provides law enforcement officers with the discretion not to arrest if they complete a report that indicates the special circumstances that dictated a course of action other than an arrest. Neither the legislation nor the Commission's report, however, provides any direction to law enforcement officers as to what such special circumstances might be nor as to how supervisors would review, if at all, the exercise of such discretion.
should be mandated to receive eight hours training on the new mandatory arrest provisions every year.\(^5\)

The Subcommittee's report provides virtually no evidence on why mandatory arrest might be useful to the Commonwealth of Virginia nor on the effectiveness of mandatory arrest for domestic violence in other jurisdictions. For instance, the Subcommittee's report on mandatory arrest begins with a one paragraph, highly-dramatic anecdote that describes a brutal domestic violence incident for which the police did not make an arrest. The report does not indicate where this incident happened, when it happened, nor if it ever happened. The report simply asserts that incidents "similar to this one" are "unacceptable."\(^6\) This unsubstantiated account of one incident is not evidence; neither is it relevant, even if true. It is not even a good anecdote, as it provides no details on the victim's safety after the police left.

The second paragraph of the Subcommittee's report states that in 1994 thirty-nine domestic homicides occurred in Virginia and that in 1992 twenty-eight percent of all female homicide victims nationally were killed by their husbands, ex-husbands or boyfriends. These statistics are not relevant to the issue of mandatory arrest because the Subcommittee makes no connection between domestic homicides and the arrest practices of the police in Virginia or nationwide. It might have been instructive if the Commission had determined whether domestic homicides were lower or higher in jurisdictions that made more domestic violence arrests, or where mandatory arrests policies had previously been implemented. The Subcommittee's report does not describe the current behavior of any law enforcement agency in the Commonwealth of Virginia. The Subcommittee's report does not mention whether the police in Virginia make arrests in a large or small proportion of domestic violence cases or the extent to which the new policy will increase the number of arrests for domestic violence in Virginia. This serious omission provides no information on those behaviors that the mandatory arrest provisions are attempting to change.

The Subcommittee report does repeat an assertion by an official from the San Diego County Sheriff's Office that domestic homicides decreased by more than fifty percent in the four years following the implementation of a mandatory arrest policy in the city of San Diego. No details on this policy are provided, such as

\(^5\) See id. at 60.
\(^6\) COMMISSION REPORT, supra note 1, at 54.
the nature of the mandatory arrest policy, the date it was implemented, the number of arrests prior to and after the policy was adopted, or even the number of domestic homicides before and after this policy took effect. The Subcommittee's report also does not address the relevance of behavior in the city of San Diego, with a population of 1,157,000, to that of Virginia, where the largest city, Richmond, has a population of 230,000. Without any supporting information, this account remains, at best, a personal testimonial of one jurisdiction's experience with their local version of a mandatory arrest policy.\(^7\) Possibly, the Subcommittee cites this account because it expects the rate of domestic homicides to decrease in Virginia as well, because of the mandatory arrest provisions; however, the report fails to state this proposition.

The Subcommittee's report recommends mandatory arrest and compulsory continuing training for all police officers on how to implement the new mandatory arrest policy. Just as it provides no information on the origins of the "primary physical aggressor," the report does not identify the capacity of anyone in the Commonwealth of Virginia, nor in the nation, to teach police officers how to accurately and reliably implement this innovative policy. A more glaring omission is the lack of any mention of the costs incurred by mandating arrests or by training every police officer in Virginia for eight hours every year. Arrests cost local jurisdictions money. Police officers who make arrests can be out of service for one to four hours and are unavailable for other patrol assignments during this time. The report makes no mention of this possible increase in the burden to local police agencies or of the costs to local tax payers. In this sense, the mandatory arrest provision is a near classic case of an unfunded mandate that the State government imposes upon local governments.

The Subcommittee Report makes two final assertions. First, it asserts that "immediate arrest reduces the incidence of domestic violence."\(^8\) Second, it maintains that a statewide "mandatory"

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7. The individual providing this account was recently dismissed from the San Diego Sheriff's Office for falsifying testimony in domestic violence cases. Reductions in domestic homicides in San Diego are also attributed to the policies and practices of the City Prosecutor. See Meredith Hofford & Susan J. Dansie, State Justice Institute and National Council of Juvenile and Family Court Judges: Reno, Domestic Violence Unit: Office of the San Diego City Attorney, (1992). This report, however, does not provide the actual number of homicides or the dates on which the new prosecution policies were initiated.

8. Law Enforcement Subcommittee Report, supra note 4 at 55.
arrest policy is to be preferred over a "pro-arrest" policy. These are important assertions that warrant detailed review.

II. SYSTEMATIC EVIDENCE ON THE EFFECTIVENESS OF ARREST

The Subcommittee Report cites only one law review article published in 1988 on the effectiveness of arrest. In no field of behavioral research projects will one study, or even one review of existing studies, ever be sufficient to provide a sound basis for public policy. In addition, the reliability of this one article is dubious, primarily because in 1995, seven years after the article was published, the amount of systematic research on the effectiveness of arrest for domestic violence increased dramatically. As a result, the general understanding of the most effective police response to domestic violence has changed dramatically.

Prior to 1983, alternative police policies were essentially evaluated in terms of the safety of police officers, not the safety of victims. Conventional wisdom held that there was very little the police could do about domestic violence and that domestic violence calls were the type of work most likely to result in the death of police officers. This was not just the view of the police profession. The position of the American Bar Association was that the police should, "engage in the resolution of conflict such as that which occurs between husband and wife . . . without reliance upon criminal assault or disorderly conduct statutes."

9. Id. at 57.
11. For instance, when requested to assess the evidence on the effectiveness of rehabilitation, the National Academy of Sciences did not rely on existing studies or even on a widely-acclaimed, comprehensive review of thousands of existing studies. See, DOUGLAS LIPTON ET AL., THE EFFECTIVENESS OF CORRECTIONAL TREATMENT: A SURVEY OF TREATMENT EVALUATION STUDIES (1975). Rather, the National Academy of Sciences commissioned an independent analysis of the samples from that review. See, STEPHEN FEINBERG AND PATRICIA GRAMBSCH, An Assessment of the Accuracy of the Effectiveness of Correctional Treatment, in THE REHABILITATION OF CRIMINAL OFFENDERS: PROBLEMS AND PROSPECTS 119-47 (Lee Sechrest et al. eds., 1980).
12. See infra notes 29-33.
15. AMERICAN BAR ASSOCIATION, PROJECT FOR STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO THE URBAN POLICE FUNCTION, 1981.
To the extent that victim safety was a concern, police officers were given conflicting advice on the best way to respond to domestic violence incidents. Superiors advised them to 1) arrest suspects; 2) separate the parties; or 3) counsel the couple and leave.\textsuperscript{16} On the basis of some highly dramatic anecdotal evidence, officers were warned that arresting the suspect might result in the offender returning to the home and inflicting more harm on the victim.\textsuperscript{17} At that time, there was no systematic evidence about what happened to victims after the police left.

This perspective changed dramatically in 1983 when the results of the Minneapolis Domestic Violence Experiment were released.\textsuperscript{18} In that experiment, street-level police officers' selections of the most appropriate response to misdemeanor domestic violence were determined by an experimental design of random assignment to one of three treatments: 1) arresting the suspect; 2) ordering one of the parties out of the residence; and 3) advising the couple. Using victim interviews and official records of subsequent police contact, this study reported that the prevalence of subsequent offending — assault, attempted assault, threats of assault and property damage — was reduced by nearly fifty percent when the police arrested the suspect.\textsuperscript{19}

The Minneapolis Domestic Violence Experiment was a critical event in changing public and scholarly perceptions of domestic violence from a "family problem" that was most amenable to mediation and other informal, nonlegal interventions, to a violation of the law requiring a formal criminal justice sanction.\textsuperscript{20} The results of the experiment were given widespread publicity in over 300 newspapers and on the evening news broadcasts of the three major networks.\textsuperscript{21} In addition, in 1984 the U.S. Attorney General's Task Force on Family Violence endorsed the findings of the study and recommended that state and local agencies adopt


\textsuperscript{17} Parnas, \textit{supra} note 15, at 914-60.


\textsuperscript{19} See infra note 20.


a pro-arrest policy toward domestic violence. Prior to 1981, fourteen states, including Virginia, did not even authorize law enforcement officers to make an arrest for misdemeanor assault, unless that assault occurred in the presence of the officer. This was true of misdemeanor assaults between strangers, as well as misdemeanor assaults by one family member on another.

Known limitations of the project's design and implementation tempered the enthusiasm for the deterrent effects of the legal sanctions reported in the Minneapolis experiment. That is, the experiment included only 330 cases with 114 arrests and the jurisdiction surveyed was not a particularly representative one. Other scientists balanced their praise of this study with criticisms of the overreach of its conclusions and concerns about the widespread publicity prior to substantiation of these results through secondary analysis and replication in other jurisdictions. Even the original authors and the Attorney General's Task Force on Family Violence called for replications of this study in other jurisdictions.

Between 1985 and 1990, police departments in five other jurisdictions — Charlotte, North Carolina; Colorado Springs, Colorado; Dade County, Florida; Milwaukee, Wisconsin; and Omaha, Nebraska — implemented clinical trials on the effectiveness of alternative police responses to domestic violence. Beginning in 1990, the results of these studies were published in scientific journals.


These studies produced seemingly inconsistent results. The deterrent effect of arrest varied depending on whether success was measured by official records or victim interviews; whether only offenses against the same victim or all victims were counted; and depended on whether only violent crimes or all crimes were considered. None of these new studies used threats of violence as a measure of recidivism; whereas, in the original Minneapolis experiment threats of violence with no actual physical violence constituted about half of all the reported failures. In some jurisdictions arrest was associated with reduced victim harm for some measures; but, in other jurisdictions victims suffered no less subsequent harm when the police did not make an arrest compared to when they did. In one jurisdiction, Milwaukee, in terms of one measure of harm — the number of repeat offenses of any kind against the same victim — arrest was associated with more subsequent harm to victims of domestic violence.

These studies have resulted in a major re-evaluation of the effectiveness of arrest as a mechanism to protect victims of domestic violence. While some uncertainty remains, it is clear that the reductions of fifty percent reported in the original Minneapolis study have not been substantiated in any of the replications. In addition, effectiveness varies based on how subsequent harm to the victims is defined and measured. The current evidence is that, at best, arrest has a marginally positive effect in some jurisdictions; at worst, arrest could make some offenders more violent.

One explanation for the inconsistencies in the available evidence from the different research sites is the fact that the widely diverse jurisdictions surveyed included varying proportions of married and employed offenders. Secondary analyses of the data from four of the five replications indicate that arrest is effective for married and employed suspects, but that arrest results in increased violence among unmarried and unemployed offenders.

30. See Sherman et al., supra note 27, at 137.
These analyses are imperfect and subject to further testing; however, they constitute the most comprehensive and detailed assessment of the effectiveness of arrest available in 1997.

These findings have important implications for Virginia, or any other jurisdiction considering adopting state-wide policies for policing domestic violence. The primary implication is that the disparate findings from Minneapolis and the replication studies stem from the different mix of suspects included in the studies. If this hypothesis is true, then arrest will have generally negative effects in jurisdictions like Richmond, with relatively high unemployment and a high proportion of unmarried, intimate partners; and generally positive effects in Virginia jurisdictions with higher percentages of employed and married suspects. Under such circumstances, requiring a uniform state policy of mandatory arrest, which is not attentive to variations in local conditions, may endanger more victims than it protects.

III. Evidence on "Mandatory" Arrest

No systematic empirical evidence exists about the effectiveness of mandatory arrest policies. This makes the first concern of this paper — assessing the extent to which mandatory arrest has reduced domestic violence in other jurisdictions — quite easy to answer. No evidence establishes that mandatory arrest has ever worked anywhere. The lack of systematic evidence about mandatory arrest is not to say that it does not protect victims in any circumstances, nor that it will not protect victims in Virginia. It is merely an assertion that, at present, the systematic evidence does not yet support the belief that mandatory arrest will protect the victims of domestic violence.

While the Subcommittee does not provide evidence, it does provide a rationale for favoring a mandatory arrest policy over a policy that encourages, but does not mandate arrest. The Subcommittee contends that police officers should not be expected to make the decision to make an arrest. The basis for Subcommittee's assertion is that:

A pro-arrest policy unfairly places the arresting officer in the position of a mediator. A police officer's job is to preserve public order and prevent crime. By placing the burden on the police to decide whether to make the arrest in a domestic violence case, the law asks the officer to serve as a counselor, which he is not trained to do and is beyond the requirements of his position. It is unfair to the police officer for him to be required to do more than preserve public order and prevent crime.32

Thus, according to this Subcommittee report, police officers in Virginia are capable, or after training will be capable, of determining who is the primary physical aggressor, but incapable of deciding whether or not to make an arrest.

Police officers make discretionary decisions about whom to arrest in a large variety of situations and the best empirical evidence indicates that officers do this quite well. The primary determinants affecting an officer's decision to arrest are the seriousness of the offense, the extent of injury to the victims, and victim's preference for arrest. Extra-legal factors such as race, sex, and class play only a minor role, or no role at all, in officer decisions.

The movement to mandate arrest in domestic violence cases is based upon what one author refers to as "the myth of full enforcement."33 Many studies have documented that in cases when probable cause to make an arrest exists, the police choose not to make arrests in domestic violence incidents. Most of these studies have asserted that the police treat female victims differently than male victims, or that they treat the victims of domestic violence differently than victims of stranger violence. These conclusions hinge on an assumption that the police make arrests in all or most incidents of violence with male victims, or among strangers. This is not the case. Systematic field observations of police in Washington, D.C.; Boston, Massachusetts; and Chicago, Illinois during 196634 and in St. Louis, Missouri; St. Petersburg, Florida; and Indianapolis, Indiana35 during 1977 established that the police do not make arrests in a majority of

32. Law Enforcement Subcommittee Report, supra note 4 at 57.
34. Donald Black, The Manners and Customs of the Police (1980).
incidents of violence, whether these incidents are misdemeanors or felonies, have male or female victims, or are between strangers or acquaintances. Furthermore, in most instances of violence, the suspect has left before the police arrive; that is, there is no one to arrest. While there are well-documented accounts of grievous errors by police officers, the systematic evidence produced by independent observation of police behavior reveals that the relationship of the suspect to the victim plays no role in arrest decisions.

IV. OBSERVATIONAL STUDY OF THE POLICE IN RICHMOND, VIRGINIA, 1990-1991

The Commission’s report provides no information on the frequency with which police officers in Virginia, or any other jurisdiction, encounter instances of assault and battery, already make arrests in those circumstances, or face domestic violence incidents when neither of these conditions are met. This type of information is available, however, at least for the city of Richmond. During 1992, independent field observers rode with officers of the Richmond Police Department on all three shifts for over 1200 patrols and systematically recorded what they observed in 1630 police-citizen encounters. While the published findings from this research have not yet focused on the issue of domestic violence, this study provides a rare opportunity to examine those arrest practices of the Richmond police that the Commission and the legislature have decided to change.

The Subcommittee’s assertion about the capability of police officers to make judgments about arrest decisions seems unsubstantiated in light of decades of research on police decision making. Furthermore, the Subcommittee’s assertion is also at variance with contemporary approaches to community policing adopted in Virginia and around the nation. These contemporary practices call upon police managers and patrol officers to abandon rigid authoritarian and hierarchical models of management and to use their minds and their best professional judgment to solve problems and to respond to the priorities of the communities they police. Thus, neither the available evidence, nor the Subcommit-

tee's logic, provide a solid basis for implementing a uniform statewide mandatory arrest policy for domestic violence in Virginia. And where evidence exists, the Subcommittee has chosen to ignore it.

*Mandatory Arrest for What Offenses*

The legislation adopted in Virginia does not propose that the police should arrest in all cases of domestic violence. Rather, the legislation advocates arrest only in those instances when the police have probable cause to believe an assault and a battery have occurred between individuals of the same family, or when an offender has violated a previously issued protection order. Because this formulation has no apparent model in any other state, it deserves particular attention. In addition, the Commission and its Subcommittee provide no rationale for limiting mandatory arrest to these circumstances. Why, for instance, are not all domestic assaults included? Are police officers in Virginia capable of making decisions for arrests in domestic assaults, but not capable when those assaults include battery? If mandatory arrest is a good approach to protecting the victims of domestic violence, why is it not mandated for all violence offenses? The reports of the Commission and its Subcommittee include no justification.

V. EVALUATING MANDATORY ARREST

This critique of the logical and empirical bases of the Commission's recommendations does not establish that the newly adopted mandatory arrest policies will not improve the safety of victims of domestic violence for the simple reason that the process of adopting new policies need not have any impact on the effectiveness of that policy. The critique does, however, establish that it is not self-evident that the mandatory arrest provisions will improve the safety of the victims of domestic violence in Virginia. Actually, more doubt arises after a close analysis of the empirical data supporting the Commission's choice of policy. From this doubt the idea originates that the safety of domestic violence victims might be improved if Virginia first knew more

about the behavior of its police, as well as the behavior of the victims and offenders of domestic violence.

VI. IMPEDIMENTS TO EVALUATION

Many factors serve as impediments to using systematic evidence about the implementation of mandatory arrest in Virginia in order to help protect the victims of domestic violence. First, the policy makers in the Legislature and in the Commission have not identified what the objectives of these provisions are, nor when domestic violence victims can expect these improvements to become evident. These are serious omissions.

The Commission and the Legislature are very detailed in telling police agencies what to do; however, they fail to provide any detail on the objectives of this action. It is unclear whether the goal is to increase the number of arrests, or to reduce the workload of the police; or whether to decrease the number of victims of domestic violence, or reduce the extent of harm to the individuals who are victimized. Specificity in articulating the objectives is of vital importance because, as is apparent in the published findings of the replication studies on the effectiveness of arrests, different results can occur with different measures. An evaluation requires not only specific objectives, but some notion about when it is reasonable to expect that the measures will produce results. For instance, if, as the Subcommittee's San Diego anecdote might suggest, reductions in the number of domestic homicides are one objective, it would be useful to identify a time frame in which those reductions should occur; that is, for example, in July 1997, the last six months of 1997, in 1998, or not until the year 2000. The final aspect of marking objectives is to state by what margin those objectives should change before the Commission considers the mandatory arrest policies a success. The Commission does not indicate, for example, whether they anticipate that the policy will completely eliminate the number of domestic homicides, cut the number in half, or limit the homicides to the current number.

VI. EVALUATION RESOURCES

Even if the Commission or the Legislature had provided detailed objectives, there are additional hurdles to evaluating the mandatory arrest provisions. The Legislature has mandated numerous domestic violence reduction activities that will cost
millions of dollars a year to implement, but has provided no resources for evaluating the impact of those activities. The job of the Legislature is to set priorities, and their budgeting evinces that increasing knowledge about mandatory arrest in instances of domestic violence is not one of those priorities.

Knowledge can be expensive. Each of the studies charting the effectiveness of arrest cost the Federal government over $500,000. This figure does not include the time and effort expended by the implementing police agencies nor the subsidized salaries received by the university-based researchers.\textsuperscript{40} Research on Virginia’s mandatory arrest provisions, however, need not be that expensive. Ignorance of the new law’s effectiveness, however, may have a high price tag for the victims of domestic violence in Virginia.

VII. COMPETING ACTIVITIES

The simultaneous adoption of several, interrelated provisions that have the same general objective of improving the safety of the victims of domestic violence impedes the effectiveness of the evaluation of the productiveness of mandatory arrest in Virginia. Scientists prefer to vary one, or maybe two things at a time, and hold everything else constant. This approach is thought to maximize the generation of knowledge. Policy makers favor implementing new policies as a bundle of activities, each addressing the problem at hand in slightly different ways. This practice is understood to achieve the greatest public good in the form of the reduction of domestic violence. The success of some of the provisions, however, such as the implementation of a new automated information system about the processing of domestic violence cases, can skew the perceived success of mandatory arrest. A more comprehensive review of all the provisions recommended by the Commission and adopted by the Legislature is beyond the scope of this paper. Some of the provisions, however, such as the implementation of new automated information systems about the processing of domestic violence cases, may have such large positive effects that they prevent scientific methods from detecting the relatively modest impact of mandatory arrest, if any.

\textsuperscript{40} Joel Garner et al., \textit{Published Findings from the Spouse Assault Replication Program: A Critical Review}, 11 \textit{J. Quantitative Criminology} 3 (1995).
This impediment to evaluation is not unique to questions about the effectiveness of mandatory arrest, or to the other provisions recommended by the Commission, or to the problem of domestic violence. It is generic to public policy evaluation.\(^\text{41}\) Thus, even if the Commission had specified detailed objectives for mandatory arrest and the Legislature had provided sufficient resources for an evaluation, the adoption and implementation of multiple programs at the same time constrains the ability of social science to provide definitive or even useful information.

**The Need for Theory**

The lack of theory presents another major impediment to the evaluation of mandatory arrest in Virginia. Social scientists designed the Minneapolis Domestic Violence Experiment as a test of deterrence theory.\(^\text{42}\) The central criminological interest in that experiment was whether a criminal sanction of arrest would by itself deter persons from engaging in similar behavior, that is, violence against the same victim, for a period of six months. The replications were designed with a similar theory testing goal in mind.\(^\text{43}\)

In those studies, and in any evaluation of mandatory arrest in Virginia, a well-developed theory helps scientists and policymakers interpret the findings of the study. Evaluation findings typically are stated in terms of whether subsequent criminal behavior increased, decreased or stayed the same following the adoption of a new law. More often than not, evaluations of criminal law reforms find no changes in behavior following changes in the criminal law.\(^\text{44}\)

With a well-developed theory, an evaluation can provide insight into why a particular law succeeded or failed to change criminal behavior or the safety of victims. This understanding of why laws are effective or ineffective can inform the nature of future laws.\(^\text{45}\) The Virginia Commission provides no detailed


\(^{42}\) Lawrence W. Sherman, The Specific Deterrent Effects of Arrest on Spouse Assault (Nov. 1980) (proposal submitted to the Crime Control Theory program of the National Institute of Justice).


account of the mechanisms by which a statewide mandatory arrest policy will affect police behavior, victim behavior, or suspect behavior. Unless the Commission articulates such a theory, an evaluation of mandatory arrest cannot address why the law did or did not protect the victims of domestic violence.

Scientific Commitment

In general, the failure of commissions and legislatures to involve the scientific research community constitutes a significant impediment to the evaluation of mandatory arrest. Well-specified objectives, the commitment of sufficient resources, the evaluation of the several reforms as a package, and the development of theory about mandatory arrest are, in themselves, insufficient to produce a rigorous assessment of the costs and the benefits of mandatory arrest. An evaluation requires the professional expertise of well-trained scientists. Virginia is not without such individuals and their talents could be utilized to assess mandatory arrest. As of yet, however, this has not happened. Two factors may account for this fact. First, the research community in Virginia, like the nation, is rewarded primarily for publishing in scientific journals. Improving public policy is not a traditional goal of university-based researchers. Few, if any, academics get promotion or tenure for such practical contributions.

The second factor preventing the scientific evaluation of the effects of mandatory arrest in Virginia is the lack of appreciation for research on the part of state policy makers. The work of the Commission and the Legislature reveals no expectation that their work might be improved if knowledge from social research were brought to bear. Ironically, this was not the attitude nor the experience of law enforcement officials in Minneapolis, Charlotte, Dade County, Colorado Springs, Milwaukee, and Omaha who worked closely with researchers to design and implement the studies on the effectiveness of arrest for domestic violence. The police in Richmond have demonstrated a willingness to subject all of their patrol activities to independent evaluation and that willingness might extend to examining the new mandatory arrest provisions.

Taken together, these impediments are formidable and the prospects for any systematic evaluation of mandatory arrest in Virginia appear slim. The only silver lining is that the Commission and the Legislature have imposed no restrictions on law enforcement agencies in Virginia that would preclude them from conducting their own evaluations independently or in conjunction with other agencies. If an evaluation of mandatory arrest for domestic violence in Virginia were ever to be properly conducted, the local law enforcement agencies responsible for implementing mandatory arrest must actively participate in the project. As was done in Minneapolis and other jurisdictions, Virginia law enforcement agencies, in collaboration with local researchers, could design and implement their own evaluations. They need not wait upon State officials for approval or direction. Law enforcement agencies in Virginia would be responsible for implementing a variety of procedures and regulations to complement the state-wide mandatory arrest policies. After all, they, not the Legislature nor the Commission, would be the primary users of the information about the impact of those policies, procedures, and regulations on the safety of the victims of domestic violence.

To evaluate mandatory arrest, law enforcement agencies would need to identify what they think the primary objectives are, mobilize the necessary financial resources, focus on which aspects of the new law will be evaluated, articulate a theory of how the law's provisions would work if effective, and recruit the necessary scientific talent. The need for information and the willingness to examine current practices critically and objectively have become the hallmark of police professionalism and may be the necessary elements to overcome the existing impediments to evaluating the effectiveness of mandatory arrest in Virginia.