BATTLING DOMESTIC VIOLENCE: REPLACING MANDATORY ARREST LAWS WITH A TRIFECTA OF PREFERENTIAL ARREST, OFFICER EDUCATION, AND BATTERER TREATMENT PROGRAMS

Amy M. Zelcer*

INTRODUCTION

On June 27, 2005, with its decision in *Castle Rock v. Gonzales*,[1] the United States Supreme Court delivered a crushing blow to mandatory arrest statutes—laws requiring police officers to arrest suspected batterers where there is probable cause to believe abuse has occurred, regardless of officer discretion or victim preference. The events of the Gonzales case were, in the words of the Supreme Court, "horrible" and "undeniably tragic."[2] In 1999, Jessica Gonzales obtained a domestic violence restraining order, shielding herself and her three daughters from her abusive ex-husband, Simon Gonzales.[3] About one month later, Mr. Gonzales abducted and eventually murdered their three daughters despite Ms. Gonzales's repeated calls to the Castle Rock Police Department notifying them of her ex-husband's violation of his permanent restraining order.[4] Colorado law mandates an arrest for such a violation.[5] However, the Supreme Court found that, despite Colorado's mandatory arrest statute, the enforcement of the restraining order was not, in fact, mandatory.[6] The Court dismissed Ms. Gonzales's complaint.[7]

The Court's holding in *Castle Rock* calls the validity of mandatory arrest statutes nationwide into question.[8] In the wake of this decision, advocacy organizations and legal scholars have decried the "backward step" the decision represents for victims of domestic abuse.[9] Many scholars are scrambling for ways to fight against the *Castle Rock* holding to ensure the effectiveness of mandatory arrest statutes.[10]

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* Symposium Editor, ACLR, 2012-13; A.B. Harvard University, 2007; J.D. Georgetown University Law Center, 2013; LL.M. in *taxation* Georgetown University Law Center, 2014. The author is currently an associate (pending admission) at Proskauer Rose LLP in New York.

1. 545 U.S. 748 (2005).
2. *Id.* at 751, 755.
3. *Id.* at 751.
4. *Id.* at 753–54.
5. COLO. REV. STAT. ANN. § 18-6-803.5(3)(b) (West 2004).
6. *Castle Rock*, 545 U.S. at 760.
7. *Id.* at 768.
8. Allison J. Cambria, *Defying a Dead End: The Ramifications of* Town of Castle Rock v. Gonzales *on Domestic Violence Law and How the States Can Ensure Police Enforcement of Mandatory Arrest Statutes*, 59 RUTGERS L. REV. 155, 157 (2006).
9. Sara Metusalem, Note, *Should There Be a Public Duty to Respond to Private Violence? The Effect of* Town of Castle Rock v. Gonzales *on Restraining Orders*, 38 U. TOL. L. REV. 1037, 1046 (2007).
10. *See, e.g.*, Cambria, *supra* note 8, at 159; Ethan Kate, *A "Supremer" Court?: How an Unfavorable Ruling in the Inter-American Commission on Human Rights Should Impact United States Domestic Violence Jurispru-*

Some advocate doing so by traditional means: state legislative action aimed at amending mandatory arrest laws by adding stronger language, which would give law enforcement clear direction, and by increasing penalties for violating restraining orders.[11] Other scholars look to the role of international tribunals in influencing United States policy.[12] Despite the tragedy of *Castle Rock* and the ongoing problem of domestic violence, such efforts to circumvent *Castle Rock* are misguided.

This Note posits that the *Castle Rock* decision presents an opportunity to attack domestic violence from a different angle, rather than an occasion to further enshrine mandatory arrest statutes. Part I will discuss the history of domestic violence law in the United States, the development of state law protection, and the birth of mandatory arrest statutes. Part II will argue that mandatory arrest statutes introduce major problems and should be replaced. To do so, the Part discusses several negative effects of mandatory arrest laws, including a lack of improvement in perpetrator behavior, the disempowerment of women, an increase in female arrests, particular threats to women with children, adverse effects on poor and minority communities, and various procedural problems. Finally, Part III will suggest a three-pronged strategy for effectively battling domestic violence: (A) preferential arrest statutes, (B) improved education of law enforcement officers regarding the seriousness of domestic violence, and (C) mandatory treatment programs for batterers.

I. THE HISTORY OF DOMESTIC VIOLENCE LAW IN THE UNITED STATES

Jurisprudence and attitudes regarding domestic violence have progressed significantly over the last several hundred years. Colonial law permitted spousal abuse based on the English common law of the "Rule of Thumb."[13] This turn of phrase referred to a man's authority to beat his wife with a "'rod not thicker than his thumb.'"[14] The traditional institution of marriage in the United States stemmed from English common law roots, in which a woman did not exist as an independent legal entity upon marriage to her husband.[15] Husbands were legally responsible for their wives' conduct.[16] By the same patriarchal reasoning, husbands had the right

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dence, 28 WIS. INT'L L.J. 430, 430–31 (2010); Lenora M. Lapidus, *The Role of International Bodies in Influencing U.S. Policy to End Violence Against Women*, 77 FORDHAM L. REV. 529, 530 (2008); Metusalem, *supra* note 9, at 1038.

11. Cambria, *supra* note 8, at 189–90; Metusalem, *supra* note 9, at 1055.

12. Lapidus, *supra* note 10, at 537.

13. Cambria, *supra* note 8, at 159.

14. *Id.* (quoting Marion Wanless, *Mandatory Arrest: A Step Toward Eradicating Domestic Violence, but Is It Enough?*, 1996 U. ILL. L. REV. 533, 535–36 (1996)).

15. Thomas L. Hafemeister, *If All You Have Is a Hammer: Society's Ineffective Response to Intimate Partner Violence*, 60 CATH. U. L. REV. 919, 926 (2011); 1 WILLIAM BLACKSTONE, COMMENTARIES *430.

16. Cambria, *supra* note 8, at 160 (quoting Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1661 (2004)).

to control their wives' behavior even by physical force or violence.[17] Interactions between husband and wife were considered private, and efforts to expose those interactions through spousal abuse proceedings would introduce unnecessary public shame. In fact, the Mississippi Supreme Court affirmatively gave husbands permission to hit their wives in emergencies.[18] Marital privacy was sacrosanct.

Legal recourse against spousal abuse did not begin to take form until the late nineteenth century. In 1871, the Alabama Supreme Court delivered one of the first rulings that prohibited husbands from physically abusing their wives.[19] A Massachusetts court followed suit the same year,[20] and in 1883, Maryland enacted the first law criminalizing spousal abuse.[21] Public sentiment toward domestic violence began to shift as well, due in part to the increasingly "companionate" conception of marriage as an institution.[22] Indeed, a nineteenth century family law treatise recognized that "the rule of love [had] superseded the rule of force."[23]

Moving into the twentieth century, special family courts were established to field domestic relations issues. These courts were staffed with social workers who emphasized counseling for married couples to address domestic violence situations, rather than using the criminal justice system.[24] Prior to the 1970s, there were no shelters devoted specifically to aiding women escaping violent home or relationship situations. Battered women had to seek refuge in catchall homeless shelters or religious shelters, which stressed the importance of family unity—in effect, validating patriarchal relations within the home.[25]

A second wave of grassroots feminism in the 1970s brought the problem of domestic violence to the forefront of public opinion.[26] In response, many cities established shelters devoted specifically to caring for battered women and their children—a critical development for abused women.[27] "In 1979, President Jimmy Carter established the Office of Domestic Violence within the U.S. Department of Justice to disseminate information about spousal abuse."[28] Advocates also demanded police intervention on behalf of abused spouses and advocated further

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17. Hafemeister, *supra* note 15, at 926.

18. Bradley v. State, 1 Miss. 156, 158 (1 Walker) (1824); Deborah Epstein, *Procedural Justice: Tempering the State's Response to Domestic Violence*, 43 WM. & MARY L. REV. 1843, 1850 (2002).

19. Fulgham v. State, 46 Ala. 143, 146–47 (1871).

20. Commonwealth v. McAfee, 108 Mass. 458, 461 (1871).

21. *See* Hafemeister, *supra* note 15, at 927.

22. Reva B. Siegel, *"The Rule of Love": Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2142 (1996).

23. *Id.* at 2143 (quoting JAMES SCHOULER, A TREATISE ON THE LAW OF THE DOMESTIC RELATIONS 59 (1870)).

24. *See id.* at 2170–71.

25. *See* G. Kristian Miccio, *A House Divided: Mandatory Arrest, Domestic Violence, and the Conservatization of the Battered Women's Movement*, 42 HOUS. L. REV. 237, 256–57 (2005).

26. *See id.* at 257.

27. *See id.* at 257–59.

28. Hafemeister, *supra* note 15, at 929.

legislation to address domestic violence.[29] During this period, many states passed statutes to provide for civil protective remedies.[30] These developments signaled that domestic violence was a criminal harm against the public, not confined to the private sphere, and that it should be treated as seriously as an assault against a stranger.[31]

Yet, despite these developments, the response by the criminal justice system was still grossly insufficient. One study conducted in the early 1970s showed that out of twenty-three cases in which men were arrested for severely beating their wives, only nine of the defendants went to jail.[32] The author of the study attributed the lenient sentencing to the court's belief that the men were merely "responding to marital stress" or to their wives' incendiary conduct.[33] Women were "agents provocateurs" in their own thrashings.[34]

The "front end" of the criminal justice system was similarly toothless, as law enforcement officials were often unwilling to intervene in what they characterized as private, domestic matters.[35] This attitude is evident in a 1984 case, *Thurman v. City of Torrington*.[36] In *Thurman*, police failed to respond to ongoing, escalating abuse of Mrs. Thurman by her husband.[37] Although Mrs. Thurman had a judicially issued restraining order, her husband continued to harass, threaten, and abuse her over the course of several months.[38] During one such episode, she called the police, who did not arrive for twenty-five minutes.[39] Once an officer arrived, he watched without intervening as the man kicked his wife's head until her neck broke.[40] The officer continued to stand idly by while the batterer grabbed his child and told the child that he had "'killed [his] [expletive] mother.'"[41] It was not until another half-hour passed and the husband attempted to attack his wife again while she was on a stretcher being loaded into an ambulance that the police finally wrestled him to the ground and arrested him.[42] This case highlights the criminal justice system's failure to safeguard victims of domestic violence during this era. The *Thurman* tragedy, however, inspired a turning point of improvement in the

29. *See* Miccio, *supra* note 25, at 263–66.
30. *See* CLARE DALTON & ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND THE LAW 51 (2001).
31. *Id.*
32. Miccio, *supra* note 25, at 255.
33. *Id.*
34. *Id.*
35. Hafemeister, *supra* note 15, at 929–31.
36. Thurman v. City of Torrington, 595 F. Supp. 1521 (D. Conn. 1984).
37. *Id.* at 1525–26.
38. *Id.* at 1525.
39. *Id.* at 1525–26.
40. *Id.* at 1526.
41. Hafemeister, *supra* note 15, at 930 (quoting Patricia Brennan, *"A Cry for Help": The Victim's Own Story*, WASH. POST., Oct. 1, 1989, at Y8).
42. *Id.* at 930–31; Thurman v. City of Torrington, 595 F. Supp. 1521, 1526 (D. Conn. 1984).

legal system's response to domestic violence.[43]

Following 1983, "there was a dramatic shift in the police response to domestic violence."[44] This stemmed largely from the *Thurman* tragedy, but also resulted from the publication of an empirical study of the effects of mandatory arrest in domestic violence incidents.[45] The Minneapolis Domestic Violence Experiment[46] in 1984 was considered one of the most rigorous studies of its kind and was the first controlled, randomized experiment in history on the use of arrest for any offense.[47] The National Institute for Justice funded and the Police Foundation conducted the experiment.[48] The study involved 314 incidents of domestic violence, each randomly assigned to one of three experimental conditions: mandatory arrest of batterers upon reasonable suspicion, counseling by officers, or temporary separation of the parties with the threat of arrest for future incidents.[49] The results of the experiment were striking: "arrest worked best."[50] Arrest and a night in jail cut in half the risk of recidivism against the same victim over a six-month follow-up period.[51] The New York Times published these findings in April of 1983,[52] and shortly thereafter, the New York Police Commissioner issued orders that required mandatory arrest in domestic violence cases.[53] The United States Attorney General also issued a report recommending that arrest be the standard law enforcement response to domestic violence cases.[54] By the early 1990s, however, only seven states had passed mandatory arrest statutes for domestic violence.[55] It was not until the infamous murder of Nicole Brown Simpson and the media firestorm it ignited that a majority of states enacted mandatory arrest laws.[56]

Mandatory arrest laws remove a police officer's discretion in cases of domestic

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43. *See* Hafemeister, *supra* note 15, at 929–31 (noting that the *Thurman* case highlighted societal failures in protecting victims of domestic violence and prompted some improvement in the legal system).

44. Dennis P. Saccuzzo, *How Should the Police Respond to Domestic Violence: A Therapeutic Jurisprudence Analysis of Mandatory Arrest*, 39 SANTA CLARA L. REV. 765, 771 (1999).

45. Machaela M. Hoctor, *Domestic Violence as a Crime Against the State: The Need for Mandatory Arrest in California*, 85 CAL. L. REV. 643, 655–56 (1997).

46. LAWRENCE W. SHERMAN, POLICING DOMESTIC VIOLENCE: EXPERIMENTS AND DILEMMAS 269–81 (1992).

47. *Id.* at 2.

48. *Id.*

49. Hoctor, *supra* note 45, at 655.

50. SHERMAN, *supra* note 46, at 2.

51. *Id.*

52. Philip M. Boffey, *Domestic Violence: Study Favors Arrest*, N.Y. TIMES, Apr. 5, 1983, http://www.nytimes.com/1983/04/05/science/domestic-violence-study-favors-arrest.html.

53. Saccuzzo, *supra* note 44, at 772.

54. TASK FORCE MEMBERS, U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL'S TASK FORCE ON FAMILY VIOLENCE: FINAL REPORT 17 (1984).

55. Miccio, *supra* note 25, at 239 n.2 (citing R. EMERSON DOBASH & RUSSELL P. DOBASH, WOMEN, VIOLENCE AND SOCIAL CHANGE 169 (1992)).

56. Miccio, *supra* note 25, at 238–40.

violence.[57] These laws require that a police officer arrest suspected batterers when there is probable cause to believe that abuse has occurred.[58] Officers are not required to have seen the violence firsthand.[59] Currently, twenty-nine states mandate arrest when there is probable cause to believe that the batterer has violated a protective order.[60] Twenty-one states and the District of Columbia mandate arrest in cases of domestic violence, regardless of whether a protective order has been violated.[61] There is widespread public awareness of domestic violence. Intimate partner violence is no longer quarantined within the private sphere; it is considered a serious crime.[62] Yet, despite these advances, domestic violence continues to be a pervasive and profound problem.

II. MANDATORY ARREST LAWS ARE NOT AN IDEAL WEAPON FOR COMBATING DOMESTIC VIOLENCE

Though mandatory arrest statutes are now widespread, they are not universally beloved.[63] Supporters of the statutes argue that such laws send a crucial societal message that intimate partner violence is unacceptable.[64] Although the symbolic significance of these laws is certainly powerful, in operation, mandatory arrest statutes are both ineffective and injurious. This Part will set forth six arguments against mandatory arrest statutes: (A) the ineffectiveness of mandatory arrest on recidivism; (B) the disempowerment of women (C) increased arrests of women; (D) adverse effects on women with children; (E) discriminatory consequences for poor, minority, and immigrant women; and (F) procedural challenges posed by mandatory arrest.

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57. Alexandra Pavlidakis, *Mandatory Arrest: Past Its Prime*, 49 SANTA CLARA L. REV. 1201, 1203 (2009).

58. *Id.*

59. *Id.*

60. Hafemeister, *supra* note 15, at 978.

61. *See* Miccio, *supra* note 25, at 239 n.2 (listing these state statutes as of 2005); ALASKA STAT. § 18.65.530(a)(1) (2010); ARIZ. REV. STAT. ANN. § 13-3601(B) (2010 & Supp. 2011); CONN. GEN. STAT. ANN. § 46b-38b(a) (West 2009 & Supp. 2011); D.C. CODE § 16-1031(a) (LexisNexis 2001); FLA. STAT. ANN. § 901.15(7) (West 2001 & Supp. 2013); 750 ILL. COMP. STAT. ANN. 60/301(a) (West 2009 & Supp. 2013); IOWA CODE ANN. § 236.12(2) (West 2008 & Supp. 2011); KAN. STAT. ANN. § 22-2307 (2007 & Supp. 2011); LA. REV. STAT. ANN. § 46:2140 (2010); ME. REV. STAT. ANN. tit. 19-A, § 4012(6)(D) (1998); MISS. CODE ANN. § 99-3-7(3)(a) (2007 & Supp. 2011); NEB. REV. STAT. ANN. § 42-928 (LexisNexis 2011); N.J. STAT. ANN. § 2C:25-21(a)(1) (West 2005); N.Y. CRIM. PROC. LAW § 140.10(4) (McKinney 2004 & Supp. 2013); N.D. CENT. CODE § 14-07.1-11(2) (2009); OR. REV. STAT. ANN. § 133.310(6) (West 2003 & Supp. 2011); R.I. GEN. LAWS § 12-29-3(b)(1)(ii) (2002); S.C. CODE ANN. § 16-25-70(B) (2003); S.D. CODIFIED LAWS § 23A-3-2.1(2) (2004); UTAH CODE ANN. § 78B-7-113(2)(f) (West 2007 & Supp. 2011); VA. CODE ANN. § 19.2-81.3 (2008 & Supp. 2013); WASH. REV. CODE ANN. § 10.31.100(2)(c) (West 2002 & Supp. 2012).

62. Pavlidakis, *supra* note 57, at 1211.

63. Hafemeister, *supra* note 15, at 979.

64. Cambria, *supra* note 8, at 165.

A. Mandatory Arrest Laws Are Not Always Effective at Combating Violent Recidivism

Despite the fact that the Minneapolis experiment hailed mandatory arrest as an effective means of eradicating domestic violence, the study contained structural problems that detracted from its conclusiveness. Geographical and temporal limitations are two of the most significant factors that weaken the findings of the experiment.[65] First, the geographical limitations stem from the fact that Minneapolis is not a perfect microcosm of America, nor is any city truly "comparable" to any other.[66] A plethora of factors contribute to the unique dynamic of a city. The reaction of domestic violence offenders is potentially dependent on a city's age distribution, ethnic composition, crime rate, and climate.[67] In fact, Minneapolis provides "extreme" circumstances that set it apart from most other American cities.[68] Minneapolis' cold climate prevents men from sleeping outside if their significant others kick them out.[69] The city's racial composition is exceedingly white and homogenous, and its crime rates are unusually low.[70] Thus, whether the results of the Minneapolis experiment would be the same in other cities is an "open question."[71]

Second, the Minneapolis study did not measure the long-term effects of arrest on repeat offenses. It looked only at the rates of recidivism after six months.[72] Long-term results could differ.[73] In analyzing the victim interview data of the original Minneapolis experiment, Wellesley College economics professor Ann Witte and her colleagues determined that most of the deterrent effect had disappeared by the end of the six-month follow-up period.[74]

The original authors of the Minneapolis experiment were candid about the study's other inherent flaws, both external and internal, including inadequate sample size, exclusion of batterer violence against different victims, variable jail time for perpetrators, and inconsistent mediation quality.[75]

Following the Minneapolis experiment, the National Institute of Justice financed a number of replication studies.[76] The first such experiment, conducted in Omaha, Nebraska, failed, finding no evidence that arrest deters batterers.[77] By the

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65. *See* SHERMAN, *supra* note 46, at 85–91 (discussing limitations of the Minneapolis experiment).
66. *Id.* at 90.
67. *Id.*
68. *Id.*
69. *Id.*
70. *Id.*
71. *Id.*
72. *Id.* at 83.
73. *Id.* at 87.
74. *Id.*
75. *Id.* at 85–91.
76. Saccuzzo, *supra* note 44, at 772.
77. *Id.* at 773.

1990s, the results of six other replication studies had produced a "hodgepodge of often conflicting results."[78] The new experiments reported both deterrent and backfiring effects of arrest.[79] In some cases, recidivism not only occurred, but actually occurred with increased severity.[80] The overall finding seemed to be that "sometimes arrest works; sometimes it does not."[81] Ultimately, Lawrence W. Sherman, one of the authors of the original Minneapolis experiment, reasoned that mandatory arrest laws should be repealed in light of the ambiguity of their effectiveness.[82]

B. Mandatory Arrest Laws Result in the Disempowerment of Women

An overreliance on mandatory arrest laws has actually resulted in the disempowerment of women because the laws fail to consider victim preferences with regard to arrest. Many women who seek police intervention do not want their husbands or partners to be arrested. Women call the police for various reasons in cases of domestic violence. Some merely use the police as a threat to control abusive spouses.[83] However, mandatory arrest laws take the authority to make that decision away from battered women and often force them to prosecute these men against their wishes.[84] Thus, women are subject to the "paternalistic presumption" that the state knows better than the victim.[85] The ultimate cost is that women lose control.

Mandatory arrest laws also deprive women of an important part of their own healing processes.[86] They strip battered women of a crucial opportunity to "'acknowledge and reject patterns of abuse and to partner with state actors (law enforcement officers, prosecutors, and medical professionals) in imagining the possibility of a life without violence.'"[87] When women have not had a role in the decision to arrest, the arrest becomes merely a temporary solution.[88] Battered

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78. *Id.*

79. *Id.* at 773–74 (quoting Janell D. Schmidt & Lawrence W. Sherman, *Does Arrest Deter Domestic Violence?*, *in* DO ARRESTS AND RESTRAINING ORDERS WORK? 46 (Eve. S. Buzawa & Carl G. Buzawa eds., 1996)).

80. *See id.*; Miriam H. Ruttenberg, Note, *A Feminist Critique of Mandatory Arrest: An Analysis of Race and Gender in Domestic Violence Policy*, 2 AM. U. J. GENDER & L. 171, 194 (1994).

81. Saccuzzo, *supra* note 44, at 773.

82. *Id.* at 774.

83. *See id.* at 777.

84. *Id.*

85. Pavlidakis, *supra* note 57, at 1212.

86. *See generally* LENORE E. A. WALKER, THE BATTERED WOMAN SYNDROME 389–435 (3d ed. 2009) (discussing Battered Woman Syndrome and the Survivor Therapy Empowerment Program, a psychotherapeutic program for women who have experienced intimate partner violence).

87. Pavlidakis, *supra* note 57, at 1212–13 (quoting Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention,* 113 HARV. L. REV. 550, 555 (1999)).

88. *Id.* at 1213.

women are freed from the claws of their batterers only to be further constrained by the state.[89]

In addition to the more tangible detractions from female power, mandatory arrest policies also achieve disempowerment through patronizing discourse.[90] Supporters of mandatory arrest have chosen a "lexicon that revives nineteenth-century notions of women's inherent irrationality and inferiority."[91] Lenore Walker put forth an illustration of this phenomenon in her book *The Battered Woman Syndrome*, in which she explains and analyzes the psychological condition that traps women in abusive relationships.[92] She argues that Battered Woman Syndrome is essentially a "psychological paralysis" that affects the abused woman's perceptions and behavior.[93] "Such psychological paralysis results in a loss of control, an inability to predict outcomes, and an incapacity to identify or to take advantage of opportunities to escape or exit the relationship."[94]

While the psychological harm to victims of domestic violence cannot be denied, feminist scholars and activists have criticized Battered Woman Syndrome's fixation on a "learned-helplessness paradigm."[95] As a result of such framing, the problem ceases to be about the pervasiveness and degree of male violence against women; it becomes instead about women and their pathological inability to leave their batterers.[96] This misplaced focus obscures the various reasons that may account for an abused woman's decision not to call the police or leave her abuser, including personal safety or safety of her children, cultural taboos, community or familial responses, and economic support.[97] Victims certainly want protection, but they do not always want an arrest to take place.[98]

Proponents of mandatory state intervention have come up with a simplistic solution to domestic violence: arrest is mandatory because all battered women are incapable of rational decision-making in the face of trauma.[99] This remedy "distills complex and nuanced conceptions of the self and autonomy" into a catchall formula, whereby autonomy is measured solely by the choice to leave.[100] Yet autonomy is not singular. It should not be assessed solely by its outcome; rather, "autonomy is a process defined by self-definition and direction."[101] Mandatory

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89. *See id.*
90. *Id.*
91. Miccio, *supra* note 25, at 303.
92. WALKER, *supra* note 86, at 430–34; *see also* Miccio, *supra* note 25, at 303–04.
93. Miccio, *supra* note 25, at 304.
94. *Id.*
95. *Id.* at 304–05.
96. *Id.* at 305.
97. *See* Pavlidakis, *supra* note 57, at 1213; Radha Iyengar, Op-Ed., *The Protection Battered Spouses Don't Need*, N.Y. TIMES, Aug. 7, 2007, http://www.nytimes.com/2007/08/07/opinion/07iyengar.html.
98. *See* Iyengar, *supra* note 97.
99. Miccio, *supra* note 25, at 305–06.
100. *Id.* at 316.
101. *Id.* at 317–18.

arrest undermines victim autonomy by predetermining what recourse victims must take.

Because of the certainty of arrest, many women are actually deterred from calling the police.[102] As a result, an unintended and literally deadly byproduct of mandatory arrest statutes is an increase in domestic violence homicides.[103] Although, in general, intimate partner homicides have decreased over the last twenty years, in states with mandatory arrest laws, the intimate partner homicide rate is approximately fifty percent higher than it is in states without mandatory arrest laws.[104]

C. Mandatory Arrest Laws Result in an Increase in the Number of Women Arrested

Mandatory arrest laws have resulted in a dramatic increase in the number of women arrested.[105] In states that have adopted mandatory arrest laws, the rate of female arrests has risen from a range of four to twelve percent to between fifteen and thirty percent.[106] Further, mandatory arrest policies often lead to dual arrests where police arrest both the batterer and the victim.[107] This occurs when police cannot identify who the initial or primary aggressor was—a situation that is particularly likely when the woman acted out of self-defense.[108] It is estimated that women were the primary aggressors in thirteen percent of domestic violence cases nationally; however, women account for up to thirty percent of domestic violence arrests.[109]

In addition to the obvious problem of causing the arrests of abused women, these policies further deprive these arrested women of many rights that are otherwise granted to victims of domestic violence.[110] These women lose temporary access to battered women's shelters and safe houses, and more importantly,

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102. Saccuzzo, *supra* note 44, at 778; Pavlidakis, *supra* note 57, at 1214; Iyengar, *supra* note 97.

103. Iyengar, *supra* note 97.

104. *Id.*

105. *See* Carol Bohmer et al., *Domestic Violence Law Reforms: Reactions from the Trenches*, 29 J. SOC. & SOC. WELFARE 71, 78 (2002) ("One Ohio study indicates that, while arrest rates in general have risen 142% in the year since the implementation of preferred arrest policies, the increase in arrests of women has been 428%."); *see also* David Hirschel et al., *Domestic Violence and Mandatory Arrest Laws: To What Extent Do They Influence Police Arrest Decisions?*, 98 J. CRIM. L. & CRIMINOLOGY 255, 256, 259–61 (2007) (finding higher dual arrest rates in states employing mandatory-arrest laws).

106. Pavlidakis, *supra* note 57, 1218.

107. *Id.*

108. Hafemeister, *supra* note 15, at 980–81.

109. *See id.* (noting that women account for up to twenty-five percent of intimate-partner violence arrests but were the primary aggressor in thirteen percent of cases); Pavlidakis, *supra* note 57, at 1218 (indicating rate of arrest up to thirty percent).

110. Pavlidakis, *supra* note 57, at 1219–20.

they are not granted the protection of an automatic restraining order.[111] The fear of a dual arrest thus provides additional disincentive to calling the police.[112]

D. Mandatory Arrest Policies Are Especially Problematic for Women with Children

Mandatory arrest policies create particular difficulties for women with children living in the home.[113] They open a "'Pandora's box' of . . . institutional responses," whereby women face a potential loss of custody.[114] Even if women are merely arrested without being charged, child custody laws could disfavor the mother.[115] More significantly, many child protection organizations have expanded their definitions of "child abuse" to include situations in which a child merely resides in a home where intimate partner violence has taken place.[116] As a result, children may be removed from the home after a one-time incident, even if the mother is merely the victim of violence and the child did not witness the episode.[117] Mandatory arrest laws presume that compulsory state involvement will materially improve women's lives. However, the outcome often exacerbates the tragedy of a victim's experience, places a child in a more precarious situation, and further deters women from calling the police.

E. Mandatory Arrest Laws Exacerbate Hardship for Poor and Minority Women

Mandatory arrest policies often have disproportionately negative effects on poor, minority, and immigrant communities. In looking at the effect of arrest on recidivism, the results vary based on race.[118] A study of mandatory arrest laws in Milwaukee demonstrated that, among whites, arrest cuts the frequency of repeat violence in half.[119] Among blacks, arrest *increases* the frequency of repeat violence by one third.[120] Thus, for this group, arrest encourages higher rates and severity of violence among batterers who repeat their violent behavior.[121] This

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111. *Id.* at 1220.

112. *See* Iyengar, *supra* note 97 (noting victims may avoid calling police for fear that they may be arrested for defending selves); *see also* Hafemeister, *supra* note 15, at 980–81 (noting risk of dual arrest when police cannot identify aggressor, including when women act out of self-defense).

113. Iyengar, *supra* note 97.

114. *See* Miccio, *supra* note 25, at 296–97 (including the use of the child protective system among the possible institutional responses).

115. Pavlidakis, *supra* note 57, at 1221.

116. *Id.*

117. *Id.*

118. SHERMAN, *supra* note 46, at 179.

119. *See id.* at 179–80 (finding arrest among whites reduces violent acts per 1,000 suspects per year to 271 from 521).

120. *Id.* at 179.

121. *See id.* at 179–80 (noting increased rate in frequency of arrested blacks and higher rates of violence among those who engage in repeat violence).

phenomenon is often called the "proud and angry" effect.[122]

The effects of arrest are similarly disparate when comparing employed and unemployed batterers.[123] Repeat violence decreases among employed people following arrest; however, the result is the opposite where abusers are unemployed.[124] In fact, the "escalation effect" of arrest for unemployed suspects exceeds "the modest deterrent effect" of arrest among abusers who are employed.[125] Thus, mandatory arrest laws have an adverse effect on poor communities with a higher than average unemployment rate.[126]

The drawbacks of mandatory arrest extend beyond potential retaliatory or recidivistic violence. Poor minority women must also face threats of police brutality and dual arrest.[127] An evaluation of mandatory arrest laws is incomplete without reference to the history of police misconduct towards many minorities.[128] Certain minorities in the United States have confronted a "legacy of police brutality and disproportionately harsh prosecutorial treatment . . . ."[129] The potential for such discrimination affects both the arrests of batterers and of female victims in cases of dual arrest.[130] Further, the collective thorny history with police could contribute to a feeling of suspicion toward law enforcement and thereby deter minority women from calling the police during incidents of domestic violence, especially where an arrest is assured.[131]

Mandatory arrest policies also have a considerable chilling effect on immigrant women.[132] They may fear that if they call the police during episodes of intimate partner violence, they or their partners will face deportation if later convicted of a domestic violence offense.[133] Fear of cultural banishment as a result of arrest also colors the behavior of immigrant women and discourages them from calling the police.[134] Ultimately, therefore, mandatory arrest laws impose high costs for poor, minority, and immigrant women.

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122. *Id.* at 180.

123. *See id.* at 174 (observing arrest has different effect for employed as opposed to unemployed suspects).

124. *Id.* at 175.

125. *Id.*

126. *See id.* at 174–77 (finding escalation of violence after arrest coincident with unemployment).

127. Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color,* 33. U.C. DAVIS L. REV. 1009, 1042 (2000).

128. *See id.*

129. Barbara Fedders, *Lobbying for Mandatory-Arrest Policies: Race, Class, and the Politics of the Battered Women's Movement*, 23 N.Y.U. REV. L. & SOC. CHANGE 281, 292–93 (1997).

130. It is worth mentioning that arrest laws that provide law enforcement with discretion in making arrests could have the adverse effect of increasing discrimination due to potential racial profiling.

131. *Id.*

132. Pavlidakis, *supra* note 57, at 1222.

133. *Id.* at 1222–23.

134. *Id.* at 1223.

F. Mandatory Arrest Generates Various Procedural Challenges

Mandatory arrest laws cause unintended procedural problems that have further potential to substantively harm victims. Although more individuals are arrested in mandatory arrest states, fewer are prosecuted because mandatory arrest policies tend to confound mere conflict with actual physical abuse, and because district attorneys' offices lack the resources to pursue weaker cases.[135] Mandatory arrest also increases costs to public agencies because arrest costs are high and each arrest takes between three and four hours to process.[136] In addition to the fact that mandatory arrest laws increase domestic violence arrests threefold, these policies can cost local governments millions of dollars for additional police, jails, prosecutions, public defenders, and court services.[137] They can also lead to overcrowding in jails.[138] Finally, mandatory arrests entail a number of other adverse consequences, such as officer frustration, which stems from a lack of discretion, and repressive call screening by dispatchers, which could actually diminish the police response to calls of domestic abuse.[139]

The sociological symbolism of mandatory arrest statutes is not sufficient reason for their continued prevalence. At best, they yield either nonexistent or inconsistent results. At worst, these statutes exacerbate recidivism and cause other damaging consequences for women, who should be protected and empowered by domestic violence policy.

III. A THREE-PRONGED METHOD INTEGRATING PREFERENTIAL ARREST, OFFICER TRAINING, AND BATTERER TREATMENT IS THE OPTIMUM MEANS OF ADDRESSING DOMESTIC VIOLENCE

Based on the analysis above, mandatory arrest policies may not be the most effective method to curb domestic violence. Proponents of mandatory arrest emphasize the crucial message it sends to batterers, to victims, and to society regarding the unacceptable nature of domestic violence. Mandatory arrest is not the exclusive means of communicating this sentiment, however. A preferential arrest policy offers a promising compromise. However, preferential arrest alone is not the most advantageous means of deterrence. Instead, the criminal justice system will be most effective at tackling domestic violence when it is integrated with educational and therapeutic methods. This Part will present a three-pronged solution to domestic violence: preferential arrest policies, police officer education programs, and treatment programs for batterers.

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135. Saccuzzo, *supra* note 44, at 778 (discussing the views of Eve S. Buzawa and Carl G. Buzawa, two experts in the field of the criminal justice response to domestic violence).

136. *Id.*

137. Marion Wanless, *Mandatory Arrest: A Step Toward Eradicating Domestic Violence, but Is It Enough?*, 1996 U. ILL. L. REV. 533, 564 (1996).

138. *Id.*

139. Saccuzzo, *supra* note 44, at 778.

A. Preferential Arrest Statutes

Mandatory arrest statutes should be replaced with preferential arrest statutes. The hallmark of a preferential arrest law is language indicating that the state expects an arrest to occur in certain circumstances.[140] Unlike mandatory arrest statutes, preferential arrest statutes strongly encourage the police to arrest suspects, but do not require it. These laws restrict police discretion, but unlike under mandatory arrest statutes, police do retain some discretion, which they may exercise if necessary.[141] Preferential arrest policy is rooted in the notion that there is more than one response to intimate partner violence, and that victim responses vary based on different methods.[142] Thus, it balances society's desire to publicly admonish abusive behavior with the need for marginal police discretion to determine whether arrest would increase the risk to the victim.[143]

Preferential arrest statutes benefit victims by taking into account their preferences. Under these laws, officers would be permitted "to consider both a victim's expressed wishes and her analysis of what will keep her safe."[144] Studies show that an abuser's likelihood of revictimizing his partner increases where the victim truly desires his arrest; when a woman does not want her abuser to be arrested, he is less likely to resume violent behavior.[145] This suggests that police should take into account whether or not the victim wants her batterer to be arrested.[146]

Preferential arrest laws also provide an opportunity for police officers to listen seriously to a suspect's account, making accused batterers feel that they are being treated fairly. This in turn increases the likelihood that they will obey police orders and refrain from further violence.[147] Police still operate under a presumption of arrest; however, they are given the freedom to exercise discretion when necessary.

California is one of several states that have adopted preferred arrest statutes. California's statute states:

> (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred.

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140. Pamela Blass Bracher, Comment, *Mandatory Arrest for Domestic Violence: The City of Cincinnati's Simple Solution to a Complex Problem*, 65 U. CIN. L. REV. 155, 179–80 (1996).

141. *Id.* at 180.

142. *Id.* at 179–80.

143. *Id.* at 180.

144. Pavlidakis, *supra* note 57, at 1231.

145. *Id.*

146. *Id.*

147. *Id.* at 1231–32.

> (b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed.[148]

The California statute outlines certain factors that officers should consider when deciding whether to make an arrest. First, officers are required to make reasonable efforts to identify the "dominant aggressor" in each incident.[149] The law defines the dominant aggressor as "the person determined to be the most significant, rather than the first, aggressor."[150] Law enforcement officers are also directed to take into account any threats of further physical injury, whether either party acted in self-defense, and the history of domestic violence between the parties involved.[151] The inclusion of these factors in the statute is especially important because "the most telling sign of future violence is past violence."[152] The availability of arrest as a recourse for domestic violence is certainly important. However, mandatory arrest is an extreme solution that narrowly addresses domestic violence as a crime rather than as a deeper social problem. Preferential arrest statutes provide a crucial in-between point. They punish perpetrators of domestic violence through the criminal justice system without ignoring the unique complexities of intimate partner violence. These laws achieve even greater success in addressing domestic violence when combined with educational and therapeutic methods outside of the criminal justice system.

B. Officer Training Programs Can Improve the Effectiveness of Preferential Arrest

Preferential arrest policies must be part of a more comprehensive effort to effectively tackle domestic and family violence. Another important component of the response to domestic violence is both the quantity and quality of training and education for police officers as well as dispatchers. Police officers serve as the gatekeepers to the criminal justice system. They are the most visible actors, and thus, it is crucial that officers are prepared to respond effectively to calls of domestic violence and to enforce restraining orders.[153] The quality of law enforcement response to domestic violence has improved considerably over the last several decades. State legislatures have "done a service to the field" by including definitions of domestic violence in state statutes, providing consistency

148. CAL. PENAL CODE § 13701 (West 2012).
149. *Id.*
150. *Id.*
151. *Id.*
152. Pavlidakis, *supra* note 57, at 1233; *see also* IACP NAT'L LAW ENFORCEMENT POLICY CTR., DOMESTIC VIOLENCE: CONCEPTS AND ISSUES PAPER 1 (2006), *available at* http://www.theiacp.org/LinkClick.aspx?fileticket=cRDBxr2Wy6M%3d&tabid=372.
153. Metusalem, *supra* note 9, at 1061–62.

across departments.[154] Additionally, the majority of police departments have written policies and procedures in place for how to respond to reports of domestic violence.[155]

Still, there is room for improvement. In terms of quantity, police officers receive only fragmented and negligible training on the topic of domestic violence. Recent studies have indicated that ninety-eight percent of police academies offer domestic violence training to officers for an average of merely twelve hours.[156] This amount pales in comparison to the amount of time devoted to many other topics addressed in training academies.[157] Training programs should increase the number of required hours in order to emphasize the significance of domestic violence. One low-cost, highly flexible option that has been implemented by New Jersey police departments is an online training program for domestic violence.[158]

Additionally, while basic domestic violence training for officers is ubiquitous, albeit limited, only about half of police departments in the United States require specialized training for call dispatchers. Implementing domestic violence training for dispatchers is a critical step in improving the response of law enforcement generally.[159]

The quality of police education is also central to the effectiveness of fighting domestic violence. Officers may need more guidance on how to handle the particularly complicated aspects of domestic violence calls, such as "uncooperative parties, mutual combatants, alcohol or drug involved violence, and violations of protection orders."[160] The improvement and expansion of police training is rife with challenges, including institutionalized racism and sexism, inadequate federal and state funding, and problems within police culture.[161] Partnerships between police departments and victim advocacy organizations are a valuable means of confronting these challenges.[162] At present, approximately sixty-five percent of departments have partnered with victim advocacy groups.[163] A small number of larger police departments have even expanded this partnership by creating an

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154. Meg Townsend et al., *Law Enforcement Response to Domestic Violence Calls for Service* 48–49 (Dep't of Justice, Working Paper No. 215915, 2005), *available at* https://www.ncjrs.gov/pdffiles1/nij/grants/215915.pdf.

155. *Id.*

156. MATTHEW J. HICKMAN, OFFICE OF JUSTICE PROGRAMS, U.S. DEP'T OF JUSTICE, STATE AND LOCAL LAW ENFORCEMENT TRAINING ACADEMIES, 2002, at 9 (2005), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/slleta02.pdf.

157. A vast majority of police training academies devotes more than forty hours to Criminal law, Self-defense, Firearms skills, Investigations, Patrol procedures and techniques, and Health and fitness. *Id.*

158. Jerry DeMarco, *NJ Authorities Unveil Online Domestic Violence Training for Police Officers*, CLIFF VIEW PILOT, Nov. 19, 2012, http://cliffviewpilot.com/nj-authorities-unveil-online-domestic-violence-training-for-police-officers.

159. Townsend et al., *supra* note 154, at 5.

160. *Id.* at 4.

161. Metusalem, *supra* note 9, at 1062.

162. *See* Townsend et al., *supra* note 154, at 49.

163. *Id.*

internal position for a victim advocate. Victim advocacy organizations can be involved in the development and revision of domestic violence policy. These groups can also assist in the training of dispatchers and officers.[164] The most effective advocate-department partnerships are ones that collaborate to explore the deeper issues affecting police response to domestic violence, such as inherent stereotypes and power imbalances.[165]

Finally, training without accountability is an empty effort. Ensuring the accountability of both first responders and dispatchers would better cement the effectiveness of officer and dispatcher training. Dispatchers could be monitored and reviewed by supervisors. Officers could be subject to periodic reviews focusing on "response patterns and weaknesses" rather than the identification of "missing or incomplete information."[166] Another way to improve officer accountability is to require officers to contact their supervisors and submit written explanations of their responses in particular kinds of cases.[167]

C. Court-Mandated Treatment Programs for Batterers

Despite the drastic increase in the number of domestic violence arrests that have accompanied mandatory and preferential arrest statutes, arrest alone rarely deters further violence. Batterer treatment programs are also critical to effectively prevent recurring abuse. The goals of these treatment programs are victim safety as well as offender accountability and rehabilitation.[168] To meet these goals, the programs use a variety of techniques and treatment plans to curb abusive behavior. There are three major models of court-ordered batterer treatment programs: psychoeducational intervention programs known under the umbrella of the Duluth Model, integrated treatment models that combine psychoeducational curriculum with mental health treatment, and individualized therapy programs.[169]

The first and most common form of batterer intervention program is the Duluth Model, which originated in Duluth, Minnesota.[170] Parts of the well-respected Duluth Model are incorporated in most treatment programs around the world. This program has also been adopted by most states.[171] It is a psychoeducational intervention program that does not deal with men's individual psychological problems.[172] Rather, it concentrates on "sociocultural underpinnings of men's

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164. *Id.*

165. Kimberly Huisman et al., *Training Police Officers on Domestic Violence and Racism: Challenges and Strategies,* 11 VIOLENCE AGAINST WOMEN 792, 807–16 (2005).

166. *See* Townsend et al., *supra* note 154, at 49.

167. *Id.*

168. Hafemeister, *supra* note 15, at 996.

169. WALKER, *supra* note 86, at 321.

170. *Id.*

171. *Id.* at 321–22.

172. *Id.* at 322.

attitudes towards women," positing that patriarchal ideology, which encourages men to control their partners, causes domestic violence.[173]

Various evaluations have been conducted to assess the efficacy of the Duluth Model of batterer treatment. One such study found the Duluth Model as implemented in the State of Florida to be generally successful at curbing recurrent violence among court ordered participants.[174] Individuals who completed the program were less likely to be arrested for domestic violence and scored higher on post-assessments testing their knowledge of domestic violence.[175] Additionally, the partners of these individuals reported less physically abusive behavior.[176] "Power and control issues" were still reported.[177] Self-awareness of violent behaviors did improve, however.[178] Participants themselves were more likely to admit to the continued use of abuse towards their partners, and in light of the "high rate of denial reported in this population, this may be an important step in learning self-control of their behavior."[179] These positive findings are somewhat eclipsed by the fact that verbal and emotional abuse continued or worsened among program participants.[180] Also, despite the reduction in violence for many participants, at least half of those who completed the program continued to engage in abusive behaviors.[181]

The chief drawback of the Duluth Model is perhaps its overemphasis on group therapy and its exclusion of individual differences, psychopathology, and anger-management treatment.[182] Thus, the Duluth Model is not suited to batterers who require more specialized, individual treatment or who are socially deficient such that they do not feel comfortable with group treatment.[183] Abusers who have themselves experienced abuse, in particular childhood sexual abuse, would most likely find the Duluth model fruitless.[184]

A second treatment program model combines domestic violence intervention and mental health treatment. Examples of these programs include EMERGE from Boston and AMEND (Abusive Men Exploring New Directions) from Denver.[185] However, because these programs require trained therapists and other additional resources in order to conduct the sessions, they are less widely used.[186] The

173. *Id.*
174. *Id.* at 322–25.
175. *Id.* at 324–25.
176. *Id.* at 325.
177. *Id.*
178. *See id.* at 324–25.
179. *Id.*
180. *Id.* at 325.
181. *Id.*
182. *Id.* at 327.
183. *Id.* at 325.
184. *Id.* at 327.
185. *Id.* at 321.
186. *Id.*

EMERGE and AMEND models work from the premise that battering has multiple causes and therefore combines a psychoeducational curriculum, cognitive-behavioral techniques, and an assessment of individual needs in group format.[187] These integrated models have a reported success rate higher than that of the Duluth programs alone.[188]

The third type of program, which is based on batterer typologies or psychological profiles, is relatively new and gaining popularity.[189] This model is not integrated with sociocultural feminist perspectives, but rather focuses on individualized therapy.[190] Due both to the novelty and the highly individualized nature of this type of program, limited information is available, thus preventing a fuller discussion in this Note.

Critics of batterer treatment programs question the effectiveness of the methods, in particular those with a strong focus on feminist psychoeducation. Others contend that domestic violence is a societal problem that would be more appropriately addressed through ground-up education to address gender discrimination, rather than through ad hoc therapy for individual batterers.[191] While each of these critiques is valid, the first ignores the variety of different treatment methods and the second is exceedingly defeatist.

Of the multiple batterer treatment models, each offers different advantages, and ideally, batterers should be assigned to treatment programs based on an assessment of individual personality characteristics and a determination of which program would be best suited to the individual.[192] This can help to "ensure that proper interventions are used that would effectively reduce recidivism and address the individual treatment needs of the batterer."[193] Such screening and assessment could be effectively completed via the use of certain psychological tests. Particularly useful identification instruments could include items from the "Hare PCL-R [Psychopathy Checklist-Revised], the Spousal Risk Assessment Guide (SARA), and the MacArthur Variables obtained from the Assessment Scale for Potential Violence (ASP-V)" that measure individual psychosocial history, including presence of abuse, substance-abuse, and psychopathology.[194]

Batterer treatment is still a burgeoning field. Useful research has been conducted on batterer profiles, and new treatment methods are being designed to match those profiles with appropriate interventions.[195] Although this more specialized approach still needs to undergo testing, it may prove to be more valuable than a

187. *Id.* at 322.
188. *Id.*
189. *Id.* at 321.
190. *Id.*
191. Hafemeister, *supra* note 15, at 998–99.
192. WALKER, *supra* note 86, at 327.
193. *Id.*
194. *Id.*
195. *See id.* at 321–22.

blanket approach to batterer treatment.[196] Thus, rather than question whether batterer treatment programs are at all effective, it is more productive to examine which programs work best for which batterers under which circumstances. Additionally, it is important to view batterer treatment programs in the context of a broader response to domestic violence that integrates community response with the criminal justice system. For one, battered women are more likely to cooperate with the criminal justice system if they believe their partner will be able to participate in a treatment program.[197] Thus, the effectiveness of batterer treatment programs should not be evaluated in a vacuum, but rather in conjunction with other responses to domestic violence.

The criminal justice system on its own can only go so far in addressing domestic violence. It is not enough to merely replace mandatory arrest statutes with alternative legal remedies. To be sure, preferential arrest laws provide a more balanced and well-tailored response to intimate partner violence than do mandatory arrest laws. However, domestic violence is a deep societal illness that can only be eradicated with a more offensive and comprehensive approach. Improved training and education for law enforcement officials is one such approach. Compulsory treatment and rehabilitation for batters is another. Although in isolation each of these devices can achieve only limited results, once integrated, the resulting three-pronged weapon can better encircle and target the complexities of the domestic violence epidemic.

CONCLUSION

Mandatory arrest policies oversimplify the issue of domestic violence, offering a one-size-fits-all solution to a complex social problem. The chief triumph of mandatory arrest laws is the important message that they send to batterers, victims, and society that intimate partner violence is unacceptable and that the victim is not to blame. Yet, the symbolic significance of these policies is not enough to overshadow the considerable drawbacks that they engender. Mandatory arrest statutes are largely ineffective in deterring repeat violence. Various experiments conducted to examine the effects of mandatory arrest laws produced inconclusive and inconsistent results. Although sometimes arrest did prevent recidivism, sometimes it had no effect, and sometimes it actually increased recidivism among batterers. Additionally, mandatory arrest laws strip women of any voice in whether their batterers will be arrested. These policies embody the paternalistic presumption that the state can better determine what is in a victim's best interest than the victim herself. The unintended consequence is the disempowerment of women. Mandatory arrest has also resulted in an increase in the number of women arrested—a result that poses particular problems for women with children. Further,

196. *Id.*
197. *Id.* at 121.

these policies have a particularly negative impact on poor, minority, and immigrant women. Overall, mandatory arrest laws often have a chilling effect on women's inclination to call the police, further increasing female hardship. Policies of mandatory arrest also produce a number of unintended procedural disadvantages.

If the goal of domestic violence policy is simply retribution, then mandatory arrest is an arguably well-suited tactic. However, punishment is only a small component of what should be a policy aimed at the eradication of intimate partner violence. Preferential arrest policies provide an effective compromise. They communicate fierce disapproval of domestic battering. However, they also provide for enough police discretion to avoid many of the drawbacks that accompany mandatory arrest policies. Still, preferential arrest alone is not the most advantageous means of deterrence. A better approach to expunging domestic violence is with an integrated response that combines elements from the criminal justice system with educational and therapeutic methods.