



## Economic Security of Survivors Overview

- Shelters reported that 74% of survivors **stayed with an abuser longer** due to financial issues.<sup>1</sup>
- Survivors of sexual violence or stalking at school are more likely to **drop out**.<sup>2</sup>
- Survivors **lose 8 million days** of paid work annually.<sup>3</sup>
- **25%** of survivors were asked to resign or were fired from their jobs due to stalking.<sup>4</sup>
- **82%** of single mother households live in economic insecurity.<sup>5</sup>

# Arrest Policy and Survivors

## Arrests and Survivor Safety

The arrest of offenders is the principal tool of law enforcement to keep survivors of intimate partner violence (IPV), sexual assault and stalking safe and financially secure. Removing the offender allows a survivor to maintain economic security by helping her continue work or school and stay in her home without fear or danger, in addition to preventing further physical or economic abuse and the resulting costs. By protecting a survivor's economic security, the risk of future victimization is also drastically decreased. Furthermore, an arrest for domestic violence, sexual assault or stalking is a critical **entrance to the criminal justice system**, which can provide further protections. It opens the door to criminal protection orders and restitution for victims.

Unfortunately, it took many years for law enforcement to recognize intimate partner violence and sexual assault as serious criminal issues and for courts to feel comfortable addressing what were previously regarded as private matters.<sup>6</sup> In the 1970s and 1980s, only **7% to 15%** of domestic violence incidents resulted in arrest<sup>7</sup> and by 1998 arrest still only occurred around 20% of the time.<sup>8</sup> Fortunately the concurrence of the women's rights movement, "tough on crime" criminal justice system reform, and several high profile domestic homicides led to the creation of specific policies that address law enforcement action in intimate partner violence cases.

## Policies that Impact Survivors

The **criminalization of domestic violence** culminated in the passage of the Violence Against Women Act of 1994 (VAWA).

Among many important new provisions, VAWA mandated that police make warrantless arrests of offenders of domestic violence if the officer witnesses or has probable cause that a crime occurred. VAWA's 2005 reauthorization, however, changed the language from "mandatory arrest" to "pro-arrest" following divisive research.<sup>9</sup>

While federal policy no longer mandates arrest, state policy varies widely. Policies may mandate arrest, encourage arrest or leave it to officer discretion,<sup>10</sup> though all authorize warrantless arrests with probable cause.<sup>11</sup> States can add special conditions like time limits for making an arrest (ranging from on site to 48 hours after the incident) or limiting coverage to certain types of relationships.<sup>11</sup> State policies may also define whether arrest policy is applicable to all IPV-related crimes, just for felonies or for protection order violations, and if mandated arrests produce automatic protection orders.<sup>12</sup>

- 22 states and the District of Columbia **require arrest**.<sup>13</sup>
- Eight states have preferred or **pro-arrest** policies.<sup>11</sup>
- Time or "noticeable injury" limits exist in nine discretionary arrest and ten mandatory arrest states.<sup>11</sup>
- In 11 states, officers must write an incident report if neither or both parties were arrested.<sup>14</sup>

In addition to mandatory arrest, survivors are also impacted by dual arrest and state-based policies on verifying primary aggressors, no-drop prosecution and record expungement, all detailed below.

## Mandatory Arrest Policies

While mandatory arrest policies enjoy

## IPV Arrests of Women Post-Mandatory Arrest

- In California, male arrests rose by 37%, compared to 446% for females.<sup>18</sup>
- In New Hampshire, female IPV arrests rose from 23 to 35% (1993-1999).<sup>19</sup>
- In Boulder County, CO, rose from 12 to 25% (1997-1999).<sup>19</sup>
- In Connecticut, rose from 11 to 18% (1987-1997).<sup>19</sup>

## Dual Arrests

- **2% of IPV cases** result in dual arrest nationally.
- 0.8% of cases with male offenders/female victims and 3.0% with female offenders/male victims result in dual arrest.<sup>10</sup>
- 26.1% of female **same-sex cases** and 27.3% of male same-sex cases.<sup>10</sup>
- Dually arrested women are more likely to have been victimized by an intimate partner before.<sup>19</sup>
- Connecticut has the highest rate of dual arrest.<sup>10</sup>

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much support, they remain controversial. Research shows that arrest is a greater deterrent to future abuse than mediation or separating the parties.<sup>15</sup> However, other research suggests that **arrest deters selectively**: for some offenders it delays abuse for a time until it becomes more severe later, for others it provokes immediate violence,<sup>15</sup> and it has little effect on chronic batterers.<sup>6</sup>

Further studies revealed other negative unintended consequences.<sup>16</sup> Chiefly, they show **increased abuser retaliation** post-arrest and **decreased reporting** by victims who do not want the abuser to be arrested for many reasons. Possibly due to these trends, mandatory arrest states have a domestic homicide rate around 50% higher than discretionary states.<sup>6, 13</sup>

One common criticism of mandatory arrest policies is that they force survivors into the justice system against their will. As a result, they incur court costs or fees and miss days at work or school to attend hearings, hindering economic security. Such inflexibility disempowers survivors while putting them at further risk.

Mandatory arrest laws achieved their purpose of forcing police departments to take IPV seriously: their enactment was followed by a clear increase in arrests.<sup>17</sup> Compared to states with discretionary arrest laws, arrest rates in IPV cases were **97% higher** in states with mandatory arrest laws and 177% higher in states with preferred arrest laws.<sup>10</sup>

*“The arrest of female victims for IPV has significant impacts on their future help-seeking behaviors”  
(Durfee, 2012)*

In IPV cases, arrest is more likely if the offender is over 21,<sup>10</sup> has prior reports of abuse,<sup>18</sup> is intoxicated or unmarried.<sup>17</sup> One reason for the huge increase in arrests lies in the **disproportionate increase in female arrest** (see side bar for examples). This is a result of a rise in both female single arrests and dual arrests.<sup>10</sup>

## Dual Arrests

Dual arrests occur when an officer arrests both parties involved in an IPV incident. Most often, the officer does not know who the primary perpetrator is, arrests both parties and defers to the court to determine guilt.<sup>20</sup> It can also result from parties committing crimes against each other or when one reacts in self-defense.

Mandatory arrest policies significantly **increase dual arrests** rates, but preferred arrest laws do not.<sup>10</sup> Dual arrest is more likely in simple assault cases than in intimidation or aggravated assault. Other factors that increase the chance of dual arrest include age, race, prior abuse and if the offender remained at the scene. See sidebar for additional information.<sup>10</sup>

While the number of dual arrests is small compared to all IPV arrests, the economic **impacts of an arrest** on a victim are vast, with both short and long-term costs.<sup>16, 21</sup>

- Attorney fees, court costs and bail
- Loss of custody and child support
- Loss of a job or a scholarship
- Loss of welfare/services eligibility
- Deportation or loss of visa
- Eviction from housing

An arrest can still appear on a criminal record even without a conviction, which can prevent survivors from receiving housing or other services and create serious **employment barriers** over a lifetime. Having a record can also reduce a survivor's credibility for legal action,<sup>16</sup> precluding her from restitution, crime victim compensation and civil protection orders. These restrictions will impede her ability to recover from the costs of abuse.

One reaction to the sharp rise in dual arrests has been for states to create **primary aggressor policies**. These policies direct officers to verify who the “real” offender is and often include exceptions for self-defense.<sup>10</sup> They currently exist in 24 states and in 44% of law enforcement agencies in states without them. The laws reduced dual arrest rates by 75%.<sup>7</sup>

## Removing Barriers: Expungement

Expungement is the process of concealing or sealing criminal records from the public. Regardless of conviction, an arrest remains on a criminal record and can impede a survivor from retaining or regaining economic security.<sup>25</sup>

State expungement laws vary by type of alleged crime, what the outcome of the case was, and length of time since the arrest or conviction. Some seal arrest records if no charges were filed, while others allow it as long as no conviction occurred.

- 36 states allow expungements for arrests
- 24 allow expungements for convictions
- 12 automatically seal records if all set conditions are met.<sup>25</sup>

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## No-Drop Prosecution

Once a mandatory arrest is made, survivors may have limited options due to no-drop prosecution policies. No-drop policies, also known as evidence-based prosecution or victimless-prosecution, prohibit dismissing or not filing a case if the victim does not support or want to pursue it. Arising from extremely high dismissal rates of domestic violence cases, two-thirds of prosecutor's offices adopted no-drop policies by 1996.<sup>22</sup>

While they produced an increase in convictions over dismissals,<sup>24</sup> one study found that giving survivors the option to drop charges resulted in lower abuser recidivism and recurring abuse.<sup>23</sup> Not only are no-drop policies expensive for the justice system,<sup>22</sup> they can impact the economic security of survivors. "Hard" no-drop policies force the victim to participate through subpoenas, warrants and threats to hold her in contempt.<sup>23</sup> Besides being personally disempowering,<sup>16</sup> these policies can reduce a survivor's willingness to report domestic violence if she is dependent on him economically.<sup>22</sup>

## Survivor Barriers to Security

The unique relationship between victims of domestic violence and their abusers is both the rationale for mandatory policies and the reason they are particularly troubling for survivors. Some supporters argue that these policies remove pressure from the abuser or community on the victim to prevent an arrest or drop charges.<sup>19</sup> Yet if she is unable to survive on her own, mandated arrests and prosecution of an abuser may put a survivor at risk of destitution. **Dependency on an abuser** can be a particularly strong barrier to accessing police protection if she has children to care for or has suffered economic abuse.

Crimes become more severe and arrest policies less effective at protecting survivors because abuse is **rarely reported** to law enforcement promptly, if at all. Survivors typically suffer multiple assaults or long-term abuse before calling the police or requesting a protection order. In Texas,

68% of those seeking protection were abused in the preceding two years.<sup>24</sup> This allows economic costs to accumulate, increases the chances of retaliation after arrest and prevents the justice system from best serving survivors. Equally dangerous for survivors, mandatory arrests often fail to result in corresponding convictions. Only 43% of IPV arrests resulted in conviction. Conviction was **60% less likely in states with mandatory arrest laws** and 30% less likely for white defendants.<sup>10</sup>

These abusive relationships can also lead to a victim being arrested for real crimes, not just erroneous dual arrests. One aspect of economic abuse is to coerce a survivor into committing crimes such as tax fraud, credit card fraud or shoplifting.<sup>21</sup> **Economic crimes** may also take place as a survivor tries to support herself and her children after escaping abuse. Retaliatory arrests occur when a chronically or previously abused individual responds with significant physical violence and is subsequently arrested.<sup>17</sup> Along with violence in self-defense, these types of arrests can produce **costly records** that are harder to expunge.

*"Some abusers call the police to have their partners arrested and use arrest as an additional tool of power and control." (Gilfus, 2002)*

While mandatory and dual arrest mostly impact domestic/dating violence, sexual assault and stalking cannot be overlooked. Higher rates of arrests for acquaintance or stranger cases were seen in states with mandatory or pro arrest policies, indicating a **spillover effect**.<sup>10</sup> Mandatory arrests can also affect sexual assault and stalking victims who are at risk from violated protection orders. Though it is often clearer who the real victim is, dual arrests present the same risk to economic security if the victim is arrested for acting out in **self-defense** or if the abuser accuses her of crimes. No-drop policies may also be problematic because a victim's economic security may depend on not prosecuting.

## Making Progress

No policy system is perfect and policy implementation can be challenging.

However, it is important to recognize where successes and improvements are happening. While these are not the only states that implement strong, victim-supportive arrest policies, the three states highlighted here exhibit the majority of our policy recommendations in a cohesive manner.

Maryland, Minnesota and New Hampshire all provide the tools to protect the physical safety, and therefore the economic security, of survivors. They leave arrests at the officer's discretion with time limits in addition to expunging arrests so that survivors are not held back by a criminal record. Each state also utilizes unique policies to keep a survivor safe.

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## Recommendations

- Collect data on arrest policy, economic security and arrests for coerced economic crimes
- Repeal mandatory arrest laws in favor of pro-arrest or officer discretion policies.
- Establish written policies and procedures for police and prosecutors on determining primary aggressor, discouraging dual arrest, threat assessment, obtaining arrest warrants, and required incident reporting of why no arrests or dual arrests were made.
- Train officers to identify the true victim (fear, history of physical/economic abuse, body language, defensive vs. offensive injuries, destroyed property).
- Train police and prosecutors on arrest practices for minorities and same-sex couples.
- Use 911 calls and civil protection orders as evidence, to prove probation violation, and to identify victims and uncharged crimes that can be combined with recent crimes.
- Acknowledge the physical and economic history of abuse in definitions of self-defense.
- Offer domestic violence and sexual assault services in jails and prisons.
- In place of hard no-drop prosecution strategies and short case screening periods, file initially then allow a few weeks to decide with the victim whether to drop or proceed.
- Enact sanctions for intimidating, interfering with or retaliating for filing a police report.
- To reduce retaliation, hold the defendant without bail if probable cause that the victim is in danger and impose higher penalties for IPV committed within 72 hours of release.
- Allow expungement if convicted for coerced economic crimes or for self-defense after a history of abuse. Automatically expunge records for free if arrested erroneously.

## Innovative State Policies

**Maryland:** (Md. Crim. Proc. § 2-204 (A)(1), (A)(2), and (B); Ann sec. 10-103 § 5-202 (e))

- Arrest is at the officer's discretion if probable cause of abuse or evidence of an injury *and* the person may flee, cause further injury/damage or destroy evidence.
- Warrantless arrests only valid if a police report was made 48 hours of the incident.
- Instituted a policy of determining the primary aggressor to reduce dual arrests.
- Prohibits releasing defendants on bail if charged with a protective order violation.
- All arrests and non-violent crime convictions if no subsequent convictions are eligible for expungement within eight years of trial.

**Minnesota:** (Minn. Stat. Ann. § 629.341 Subd.1, § 609A.01-03, § 609.2242-2243)

- Discretionary warrantless arrest valid if the officer has probable cause that within the previous 24 hours the suspect committed domestic abuse.
- Impose mandatory jail time for repeat domestic violence.
- In warrantless arrest, officer must provide the victim with a list of services/rights.
- In IPV incidences, officer must file a police report regardless of arresting.
- All arrests without conviction are eligible for expungement. The fee is waived if the petitioner was not charged or if it was dismissed in favor to the petitioner.

**New Hampshire:** (N.H. Rev. Stat. Ann. § 594:10 (I)(B), § 173-B:9, §651:5 )

- Warrantless arrest is at the officer's discretion if probable cause exists that in the previous 12 hours the person committed an abuse, including domestic violence.
- Warrantless arrest is mandatory if a restraining order was violated.
- Directs that police should arrest the primary aggressor and set guidelines for them.
- Allows preventive detention or electronic monitoring if the victim is in danger.
- Free expungement for arrests not prosecuted or found not guilty. If convicted of a non-violent crime, can petition one, three, five or ten years after sentence (\$100).

For recommendations on integrating economic security into the work of the criminal justice system, see WOW's [Economic Security and Safety Guide for the STOP Grant Program](#).

For state statutes and case law, see [www.victimlaw.com](http://www.victimlaw.com) and [Aequitas: The Prosecutors' Resource on Violence Against Women](#)

For further information, visit the [ESS Project webpage](#).

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