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Arresting Victims: The Unintended Consequences of Pro Arrest Policies for Women and Girls

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Arresting Victims: The Unintended Consequences of Pro-Arrest Policies for Women and Girls

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ARRESTING VICTIMS:
THE UNINTENDED CONSEQUENCES OF PRO ARREST POLICIES FOR WOMEN AND GIRLS

Battered Women’s Justice Project
Webinar
June 20, 2016

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New York University

NYU Steinhardt
Steinhardt School of Culture, Education, and Human Development
My background
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• Evaluation of Coordinated Community Response Efforts in the State of Illinois (Allen et al., 2012)
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- Study of women’s use of violence nationally and in New York City
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- Evaluation of Coordinated Community Response Efforts in the State of Illinois (Allen et al., 2012)
- Study of women’s use of violence nationally and in New York City
- Development of treatment programs for adolescent boys and girls with histories of violence
Today’s Presentation

Data on Pro Arrest and Related Policies

Unintended Consequences of Arrest

National, State and Local Data

Empirically Supported Recommendations for Practice & Policy
Research References

- Osthoff, S. (2002). But Gertrude, I beg to differ, a hit is not a hit is not a hit: When battered women are arrested for assaulting their partners. *Violence Against Women, 8*, 1521-1544.
CONTEXT OF PRO ARREST
Pro Arrest

- Promising findings
  - Can enhance safety
  - Promotes accountability
  - Standardizes response to violence
- Particularly effective when
  - Collaboration is present
  - Through community coordinating councils
- Case example from effective implementation
  - Coordinated Community Response in State of Illinois
  - Examination of Orders of Protection and Arrest Records (Allen et al., 2012)
Pro Arrest

- Distinct from and related to:

- Mandatory Arrest
  - “Must Arrest”

- Dual Arrest
  - Arrest of $\geq 2$ parties

Increase Accountability / Promote Safety
Pro /Mandatory/ Dual Arrest

- National trends suggest that these policy and practice changes are affecting arrest rates for domestic violence.

- ~7% in 1970s
- ~30% in 2010’s
UNINTENDED CONSEQUENCES
National, State, and Local Trends and Data
Pro/Mandatory Arrest

- Increased emphasis on mandatory arrest
- Accompanied by
  - Increased arrest of women
  - Increased incarceration of women
  - For assault and aggravated assault
- Focus of this presentation on arrest:
  - Of Women
  - In heterosexual relationships
  - For Domestic violence
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Pro/Mandatory/Dual Arrest practices affect victims more
Disproportionate Impact on Women

- Estimated that 2/3 are victims of battering (Hamberger, 1997)

- Women who are victims are actually being effected MORE as a result of these policy and practice shifts – compared to men and non victims
  - Study of 25 states
  - Study of 6,000+ DV cases over 5 year period
  - Study of one State over 13 years
Disproportionate Impact on Women
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- Women’s arrests have increased by 35%
- Only 1 to 7% of these arrests are for women who are primary aggressors
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A **12-fold** Increase in women’s arrest occurs 7 months after mandatory arrest
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A 12-fold Increase in women’s arrest occurs 7 months after mandatory arrest

- Women are more likely to be charged with aggravated versus simple assault
- Women are less likely to receive leniency at sentencing stage
- Women are more likely to take harsher pleas
Women and Dual Arrest

• In 1997, about 30% DV arrests were dual arrest
• In 2002, about 60% DV arrests were dual arrest
• Over 40% of women dual arrested immediately report victimization history by the same partner.
  • Over 90% of women arrested for DV eventually disclose victimization history
Nature of Women’s Violence

- Direct self defense
- Retaliation for previous abuse
- Violence is reactive or protective (Miller, 2001)
- Mutual violence is rare
- Men are 8x more likely to be primary aggressor
Women’s motivations

Women engage in violence for different reasons, and in different ways

- Ending their own abuse
- Standing up for themselves
- Get partners to pay attention
- Get partners to take responsibility
- Make partners pay for their behaviors
- Hurt partner for threatening family
- To appear tough to prevent future abuse
2

Arresting women and girls have particularly damaging social and health related consequences.
Social and Health Consequences
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• Consequences of arrest
  • Loss of employment
  • Loss of public benefits (e.g., housing)
  • Immigration complications
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• Reverberating legal consequences
  • Women are more likely to become chronic users of the criminal justice system
Social and Health Consequences

- Consequences of arrest
  - Loss of employment
  - Loss of public benefits (e.g., housing)
  - Immigration complications
- Reverberating legal consequences
  - Women are more likely to become chronic users of the criminal justice system
- Women involved in the criminal justice system
  - Increased mortality
  - Increased infant death
  - Increased HIV/AIDS
Children

• Women and girls are overwhelmingly the primary caretakers to children under the age of 18
• Retraumatization
• Loss of child custody (including to batterers)
• Cycle of violence
Community

• Removing women’s access has negative ripple effects for community
• Loss of access to important informal social networks and relationships
• This in turn is related to greater neighborhood disorganization
• Fewer women in the community influences lower overall community educational attainment
We are arresting women at higher rates even though data suggest that women are not becoming more violent AND have better outcomes if provided alternatives to arrest.
Arrest does not match behavior
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- While arrest of victims can decrease short term DV, it is associated with greater violence in the long run
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Arrest does not match behavior

- Women’s participation in the labor force has been steadily increasing
Women are more likely to succeed in Treatment

- Data show that women are disproportionately more likely to succeed in alternative to arrest type programming.
Women are more likely to succeed in Treatment

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Case Study – Kenosha

- All women who could have been arrested for violence were instead sent to treatment

- Main focuses of treatment
  - Advocacy and safety planning
  - Connection to resources
  - Substance abuse resources
There is bias in arrest trends. Women with chronic victimization histories and lower income are more likely to be arrested.
Arrest Bias

• More likely to arrest:
• Victims who contradict female stereotypes (Javdani et al, 2011)
  • Racial minority women
  • Younger women
  • More vocal women/argumentative
• Victims who use substances
• Women with chronic victimization history
Arrest Bias

- Manipulation of system

Case example: Delaware
- Challenging woman’s right to trial
- Claiming danger to children
- Self-inflicting wounds
- Calling 911 first
- Being calm once police arrive
- Using prior arrest history to instill fear
PRACTICE AND POLICY RECOMMENDATIONS
Best Practices

- Recommendations for leveraging an effective response

“Zooming In”
Prevention

Law Enforcement

Mental Health/Social Work

Childcare and Advocacy

Legal Advocacy

Prosecutor Training

Public Defender Coordination

Community Context

Referrals, Helplines, Coordination

Post Incident

* Coordinated Community Response
* Coordinated Community Response

- Community Context
- Law Enforcement
- Referrals, Helplines, Coordination
- Post Incident
  - Mental Health/Social Work
  - Childcare and Advocacy
  - Legal Advocacy
  - Prosecutor Training
  - Public Defender Coordination
- Prevention
- Childcare and Advocacy
Prevention
Prevention

• Intervene in the lives of children
  • Access to education and healthcare
  • Teach boys not to suppress their emotions
  • Give girls alternatives to succeeding
  • Access to sex education
  • WRAPAROUND services for youth
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- Intervention with JJ involved girls – access to resources
  - Example of ROSES Advocacy (Javdani & Allen, 2014)

- Intervention with JJ involved boys – hypermasculinity
  - Example of Sociopolitical Development (Watts et al., 2009)
*Coordinated Community Response*

- **Community Context**
- **Prevention**
- **Law Enforcement**
- **Referrals, Helplines, Coordination**
- **Post Incident**
  - Mental Health/Social Work
  - Childcare and Advocacy
  - Legal Advocacy
  - Prosecutor Training
  - Public Defender Coordination
Law Enforcement Training
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• Present data on women’s and men’s’ violence
  • Women’s violence is motivated for different reasons
  • Causes less injury
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- Enhance knowledge of why women “stay”
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- Present data on the impact of women’s arrest on children
Law Enforcement Training

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  - Women’s violence is motivated for different reasons
  - Causes less injury

- Enhance knowledge of why women “stay”

- Present data on the impact of women’s arrest on children

- Enhance knowledge on problematic trends
  - If police have visited before, they are more likely to arrest woman
  - If police know about victimization history, they are less likely to arrest woman
Suggestions for officer training

Veteran Officers Suggest
Suggestions for officer training

Veteran Officers Suggest
- Role play to increase time spent talking with women when arrive at the scene
Suggestions for officer training

Veteran Officers Suggest

• Role play to increase time spent talking with women when arrive at the scene
• Talk to women
  • Study of officers showed that the more they are comfortable talking with victims, the less likely they were to make a dual arrest
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• Role play to increase time spent talking with women when arrive at the scene

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• Consider requiring arresting officer to justify probable cause independently and in separate reports
Suggestions for officer training

Veteran Officers Suggest

- Role play to increase time spent talking with women when arrive at the scene
- Talk to women
  - Study of officers showed that the more they are comfortable talking with victims, the less likely they were to make a dual arrest
- Consider requiring arresting officer to justify probable cause independently and in separate reports
- Avoid asking yes/no questions – ask for description of who initiated *pattern* of violence
  - Studies show that women over endorse questions about their own specific violent acts (Leherner)
* Coordinated Community Response

- Community Context
- Prevention
- Law Enforcement
- Referrals, Helplines, Coordination
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  - Mental Health/Social Work
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  - Legal Advocacy
  - Prosecutor Training
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* Coordinated Community Response
At the Scene

- Office Discretion Matters
- Talk to women away from partners
- Debunk common myths
  - It does not matter who called first
  - Holding a potential weapon does not justify arrest (women are more likely to do this) OR betray one as primary aggressor
  - Tone is unrelated to threat
- Offer alternatives to arrest (formal and informal)
- Offer referrals
- Provide specific contact information
- Opt for no formal system disposition
Avoid
Avoid

- Talking to women in front of partners (less likely to describe victimization history)
- Making the “whoever strikes first” error
- Making inferences because of emotional state
  - Women more likely to feel fear, powerlessness, and shame, so they are less “in control” of their tone.
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- Sole arrest of woman (~25%)
- Failure to make arrest when one is warranted
- Adding extra charges (e.g., resisting)
  - Resisting arrest can be trauma response
- Basing arrest on initial and visible injury
- DUAL ARREST
  - These are most likely to be dropped at prosecution stage
Case Studies

• San Diego Deputy Attorney
  • 2007 review of cases by 20 year veteran police officers
  • Self defensive red flags to look for
    • Scratches on men
    • Bite marks on men
    • Being choked by male partners hands
    • Women carrying a weapon in their hands
  • Children are often witnesses
    • Underscores importance of having a trained child interviewer
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• New York City Family Violence Project
  • Legal Advocacy Victim Helpline staffed with volunteers
  • *99.5% callers are women
Post-Arrest

- Advocacy
- Childcare
- Treatment
Coordinated Community Response

Community Context
- Prevention

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Prosecutor Collaboration
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- Greater discretion can be influenced by key collaborations
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- Understand context of women’s violence
- Collaborate with advocates
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  - Women more likely to take responsibility and admit actions are illegal; men more likely to deny actions as illegal.
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    - Women who do not conform to gender stereotypes are more likely to receive severe sentences
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- **Do not encourage pleas**
Legal Advocacy
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- Assist with referrals and follow up
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- Request pre-trial review team
Legal Advocacy

• Assist with referrals and follow up
• Request pre-trial review team
• Attend court and probation meetings
  • This is where women are recharged for technical violations even if they do not engage in any further violence
• Ensure understanding of legal mandates
  • Give complete explanation of choices to battered women at each stage of the legal process
  • Emphasize long-term consequences
Legal Advocacy

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  - Give complete explanation of choices to battered women at each stage of the legal process
  - Emphasize long-term consequences
- Forge relationships with providers of female offender programs
  - Ensure women understand how to comply
Coordinated Community Response

Prevention

Law Enforcement

Community Context

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Childcare and Advocacy

Legal Advocacy

Prosecutor Training

Public Defender Coordination
Mental Health/Social Work

• Provide letters for court underscoring the potential harmful effects of arrest or incarceration given women’s
  • Histories of sexual, physical, emotional victimization
  • Trauma response/triggering
• Provide skills training in frustration tolerance/ how to report violence
• Provide on-scene interviewing of child witnesses
Role of Children

- Over 2/3 of women arrested for domestic violence are primary caregivers to children

- Women without childcare will inevitably incur new charges

- National data show that women do whatever it takes to get home quickly
  - Make statements of admission
  - Participate in early hearings without defense counsel
  - Take harsher pleas
General Recommendations

• Recommendations for creating a context for institutionalized change

“Zooming Out”
Policy & Practice Recommendations

- Current policies are disproportionately affecting women and victims (Javdani et al., 2011)
- Employ full range of police and legal options (Hirschel & Buzawa, 2002)
- Examine context of violence
  - Understand women’s motivations
    - Ending abuse (Dasgupta, 2000)
    - Women less likely to call police (Hamberger & Guse, 2002)
- Distinguish battering from assault (Osthoff, 2002)
  - Pattern based versus act based investigation
- Defer to informal options for women
Policy & Practice Recommendations

• Reduce frequency of dual arrests

• Training in the context of collaboration
  • Debunking DV myths
  • Exposing assumptions about women who use violence
    • Data on consequences of arrest for women
    • Data on female criminals reduced recidivism following treatment – women have violence limited trajectories

• These strategies have worked in other communities (Hamberger, & Potente, 1994).
Prevention

Law Enforcement

Community Context

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* Coordinated Community Response
COMMUNITY CONTEXT

PREVENTION

LAW ENFORCEMENT

REFERRALS, HELPLINES, COORDINATION

POST INCIDENT

MENTAL HEALTH/SOCIAL WORK

CHILDCARE AND ADVOCACY

LEGAL ADVOCACY

PROSECUTOR TRAINING

PUBLIC DEFENDER COORDINATION

EVALUATE!
Evaluation Matters
Evaluation Matters

Process
Evaluation Matters

Process
1. Set up Post-Arrest Helpline and Obtain Feedback
Evaluation Matters

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2. Evaluate Perceptions
   • Law Enforcement and Prosecutors
   • Survivors
   • Pre and Post Training / Collaboration (public defenders, advocates)
Evaluation Matters

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6. Submission of mental health evaluations to court
7. Social networks of key stakeholders
Evaluation Matters

Outcome
Evaluation Matters

Outcome

1. Monitor Dual Arrest Rate
   • What is the rate at which Dual Arrests result in prosecution?
Evaluation Matters

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2. Arrest Rate of Women as Outcome of CCR
Evaluation Matters

Outcome

1. Monitor Dual Arrest Rate
   • What is the rate at which Dual Arrests result in prosecution?

2. Arrest Rate of Women as Outcome of CCR

3. Pilot and Evaluate Community Based Alternative
   • Do victims in these programs show reduction in violent recidivism?
   • Are children more likely to stay in custody of primary caregiver?
Concluding Thoughts

• What do we mean by victim?
  • Violence that threatens physical integrity, with emphasis on harm that takes away rights and choice in a way that is sustained
  • Law is for the safety of communities
  • Most victims are women
  • Arresting victims does not make communities safer in the long term
• Most of the violence by women is isolated, deeply contextual
• Current policies and practices may harm victims
• Women are being arrest more and more, for less severe violence, even though their behaviors are not increasingly violent
• Arresting women has different consequences
Concluding Thoughts

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“Gendered Neutrality” under the law may become “Gendered Injustice”
Thank you

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