



The Results of a 10-Year Study of the Impact of Intimate Partner Violence Primary Aggressor Laws on Single and Dual Arrest

David Hirschel, PhD, Professor Emeritus of Criminal Justice at the University of Massachusetts Lowell and at the University of North Carolina at Charlotte.

Philip D. McCormack, PhD, Assistant Professor of Criminal Justice at Fitchburg State University in Fitchburg, MA.

This project was supported by Grant No. 2015-TA-AX-K027 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this (document/program/exhibit) are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

A Ten-year Study of the Impact of Intimate Partner Violence Primary Aggressor Laws on Single and Dual Arrest

David Hirschel

Eve Buzawa

University of Massachusetts Lowell

Philip D. McCormack

Fitchburg State University

History of Arrest in Intimate Partner Violence

- 1970s/1980s
 - 7% to 15% arrest rate in IPV cases
 - Bayley, 1986; Dutton, 1984; Holmes & Bibel, 1988
- Warrantless arrest; Preferred and Mandatory arrest policies
 - Increased to above 30%
 - Bourg & Stock, 1995; Jones & Belknap, 1999; Robinson & Chandek, 2000.
 - Now near or above 50%
 - Durfee, 2012; Eitle, 2005; Hirschel et al., 2007; Hall, 2005

Effects of Warrantless and Preferred/Mandatory Arrest Policies

- Increase in arrest rates brings with it increase in
 - Dual arrest
 - Durfee, 2012; Epstein, 1987; Martin 1997
 - (unnecessary) Arrest of females
 - Comach et al., 2000; Frye et al., 2007; Miller, 2005
- Concern lies with application of arrest – where dual arrest subsumes the victim
- Have primary aggressor laws lessened this?

Primary Aggressor Laws

- Primary aggressor laws enacted to determine who the *real* offender was
 - First law enacted in WA, 1985
 - Now, 35 states have such a law
- State laws vary in discretion afforded officers
- This variation is to be seen in instructions regarding
 - A. *Determining and arresting the primary aggressor*
"shall" versus "should" or "shall attempt to" determine and arrest the primary aggressor
 - B. *The criteria to be considered*

Determination and Arrest of PA

- Ohio: Ohio Rev. Code. Ann. §2935.032(A)(1)(a)(ii)
 - *shall determine the primary physical aggressor*
- Iowa: Iowa Code §236.12(3)
 - *Shall arrest the person whom the officer believes to be the primary aggressor*
- NH: N.H Rev. Stat. Ann. §173-30B:10(11)
 - *Should arrest the person believed to be the primary aggressor*
- NY: N.Y.Crim. Proc. Law §140.10(4)(c)
 - *Shall attempt to identify and arrest the primary physical aggressor*

Other variations

Some states do not use primary or predominant aggressor language

- See e.g. Arizona, Colorado, Connecticut, North Dakota
- This ensures both parties are not assumed to be aggressors

Texas only mandates training of determination of PA and Minnesota instructs law enforcement agencies to adopt policies that “discourage dual arrests”

Criteria for Determining PA

- States vary in
 - Mandating versus suggesting criteria to be considered
 - Number of criteria to be considered

Mandating v. Suggesting

- Ohio: Ohio Rev. Code. Ann. §2935.03(B)(3)(d)
 - *Shall consider in addition to any other relevant circumstances, (a) history of dv or any other violent acts by either person, (b) self-defensive actions, (c) fear of physical harm and reasonableness of that fear, (d) comparative severity of injuries*
- NJ: N.J. Rev Stat. § 2C:25-21 (c)(2)
 - *In determining which party in a domestic violence incident is the victim where both parties exhibit signs of injury, the officer **should** consider the comparative extent of the injuries, the history of the domestic violence between the parties, if any, and any other relevant factors.*

The Criteria Used

Most commonly used criteria

- *Comparative extent of injuries; prior domestic violence history; self-defensive actions; likelihood of future injury*

Other criteria used

- *Welfare of minors on scene; size and strength of each person; evidence from witnesses*

AZ, CT, MD, MN list only self-defense

FL, RI, TX list no criteria

CA, MS, MI stress primary ≠ first

Prior Research

- After implementation
 - Female arrest rate decreased (McMahon & Pence, 2003)
 - Dual arrests are less likely
 - Large-scale (Dichter et al., 2011)
 - Small-scale (Hirschel & Deveau, 2016; Hirschel et al., 2007)
 - Winnipeg, CA (Fraelich & Ursel, 2014)
 - Hypothetical/vignettes (Finn et al., 2004)

Current Study

- National Incident-Based Reporting System
 - 2000-2009; 5,481 agencies in 36 states and DC
 - 2,625,753 incidents
 - Most serious offense: aggravated assault, simple assault, intimidation
 - Intimate partners: spouses, ex-spouses, boyfriends, girlfriends
 - Limited to one victim/one offender
- Multilevel logistic regression
 - State as *second level*

Descriptives

Arrest		
No	1,321,119	(50.3)
Yes	1,304,634	(47.7)
Dual Arrest		
No	2,563,508	(97.6)
Yes	62,245	(2.4)
Location		
Non-Residence	398,630	(15.2)
Residence	2,146,526	(81.7)
Other/Unknown	80,597	(3.1)
Offender Age, M (SD)	33.08	(10.5)
Victim Age, M (SD)	31.79	(10.5)
Racial Dyad		
White	1,589,049	(60.5)
Black	734,950	(28.0)
Other	301,754	(11.5)
Sex of Couple		
Heterosexual	2,524,665	(96.3)
Female	54,263	(2.1)
Male	43,361	(1.7)
Most Serious Offense Against First Victim		
Intimidation	359,115	(13.7)
Simple Assault	1,991,246	(75.8)
Aggravated Assault	275,392	(10.5)
Warrantless Arrest Law		
Mandatory	1,236,006	(47.1)
Preferred	1,014,122	(38.6)
Discretionary	375,625	(14.3)
Primary Aggressor Law		
No	525,635	(20.0)
Yes	2,100,118	(80.0)

Model 1 Results (DV: Arrest)

Location: Non-Residence^a				
Location: Residence	.121	.004	.000	1.129 (1.121, 1.137)
Location: Other/Unknown	-.199	.008	.532	.995 (.979, 1.011)
Offender Age	.008	.000	.000	1.008 (1.008, 1.008)
Racial dyad: White^a				
Racial dyad: Black	-.522	.003	.000	.594 (.590, .597)
Racial dyad: Other	-.169	.004	.000	.844 (.837, .852)
Sex of Couple: Heterosexual^a				
Sex of Couple: Female	-.384	.009	.000	.681 (.669, .693)
Sex of Couple: Male	-.367	.010	.000	.693 (.679, .707)
Most Serious Offense Against First Victim: Intimidation^a				
Most Serious Offense Against First Victim: Simple Assault	1.416	.004	.000	4.121 (4.085, 4.158)
Most Serious Offense Against First Victim: Aggravated Assault	1.803	.006	.000	6.069 (5.999, 6.140)
Warrantless Arrest Law: Mandatory^a				
Warrantless Arrest Law: Preferred	-.505	.074	.000	.603 (.522, .698)
Warrantless Arrest Law: Discretionary	-.406	.137	.003	.666 (.509, .871)
Primary Aggressor Law: No^a				
Primary Aggressor Law: Yes	-.285	.015	.000	.752 (.730, .774)

Model 2 Results (DV: Dual Arrest)

Location: Non-Residence^a				
Location: Residence	-.043	.013	.001	.958 (.935, .981)
Location: Other/Unknown	-.043	.031	.163	.958 (.907, 1.012)
Offender Age	-.008	.000	.000	.992 (.991, .993)
Racial dyad: White^a				
Racial dyad: Black	-.045	.012	.000	.956 (.936, .976)
Racial dyad: Other	-.606	.018	.000	.546 (.528, .564)
Sex of Couple: Heterosexual^a				
Sex of Couple: Female	3.666	.015	.000	39.095 (38.182, 40.029)
Sex of Couple: Male	3.967	.016	.000	52.802 (51.514, 54.122)
Most Serious Offense in Incident: Intimidation^a				
Most Serious Offense in Incident: Simple Assault				
	.903	.025	.000	2.467 (2.362, 2.577)
Most Serious Offense in Incident: Aggravated Assault				
	.760	.028	.000	2.139 (2.025, 2.261)
Warrantless Arrest Law: Mandatory^a				
Warrantless Arrest Law: Preferred	-.183	.198	.356	.833 (.627, 1.105)
Warrantless Arrest Law: Discretionary	-.130	.194	.502	.878 (.658, 1.171)
Primary Aggressor Law: No^a				
Primary Aggressor Law: Yes	-.028	.047	.550	.973 (.897, 1.550)

Conclusions

- Most results followed expectations
 - Seriousness of offense, mandatory arrest law associated with greater likelihood of arrest
- Primary aggressor laws do affect police actions
 - Any arrest
 - The statutes promote avoidance of dual arrest, thus any arrest may be avoided
 - No significant effect on dual arrest
 - Criteria to identify primary aggressor vary and may result in differential implementation
 - Conflict exists with mandatory arrest policies
 - *You must arrest....but only the primary aggressor.*
 - *7 of 9 states with PA law and dual arrest rates over mean of 2.4% mandatory arrest states, 8 of 9 detailed PA provisions*

Conclusions II

- Arrest model
 - Same sex couples 31-32% less likely to see arrest
- Dual arrest model
 - Same sex couples 39 (female) 53 (male) times more likely to see a dual arrest
 - 1.5% of all heterosexual couple incidents result in dual arrest; 24% of all same sex female; 29% same sex male
- Police may not be trained in identifying primary aggressors
 - “hands off” approach still in place?

Future Research

- Explore and explain
 - same sex disparities
 - racial disparities
 - state variation
- Update data