

Bellingham-Whatcom County Commission Against Domestic Violence
Review of Arrests of Women on Domestic Violence Related Charges
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History and Purpose:

The Bellingham-Whatcom County Commission Against Domestic Violence published the findings of its first Domestic Violence Safety and Accountability Audit in February 2003. The audit was an in-depth look at domestic violence case processing within What-Comm (911), the Bellingham Police Department, the Whatcom County Sheriff's Office and the Whatcom County Jail. Case processing was evaluated for victim safety and offender accountability. The audit resulted in 61 recommendations specific to the four systems noted above and 5 overarching recommendations.

While reviewing a random sample of jail bookings during the audit process, it was noted that while approximately 10% of the inmate population was female, women comprised nearly 20% of individuals booked under domestic violence related charges. Based on this finding, as well as concerns raised by a corrections officer during the audit team observations and by focus group participants, the following recommendation was included in the Safety Audit Report.

Working backward from jailing booking records, use Safety Audit methodology to examine the arrests of women on domestic abuse related charges in order to identify any problematic practices concerning victim safety. (R #57)

Over the past two years, What-Comm (911), the Bellingham Police Department, the Whatcom County Sheriff's Office and the Whatcom County Jail have implemented the majority of safety audit recommendations. The Commission provided technical assistance on some of the recommendations and actively addressed a few of the overarching recommendation. Knowing that no other entity would likely take the lead in addressing R #57 noted above, the Commission, through its Community Projects Committee, decided to conduct an initial assessment of arrests of women in the fall/winter of 2004/2005.

Additionally, the Commission co-sponsored a CLE in October 2004 in which one of the presentations focused on a recent study of Victim-Defendant Issues by the King County Coalition Against Domestic Violence.

This paper is not meant to provide history and analysis of current national discussions and concerns regarding the arrests of domestic violence victim/survivors for domestic violence related charges. (In some cases referred to as victim-defendants). The following study provides a thorough discussion of the issue as well as details the findings of a comprehensive analysis conducted in King County:

Victim-Defendants: An Emerging Challenge in Responding to Domestic Violence in Seattle and the King County Region, April 2003, King County Coalition Against Domestic Violence, Prepared by Meg Crager, Merrill Cousin, and Tara Hardy.

In general, it appears that a 10–15% arrest rate for women for domestic violence related offenses falls within a range that is “acceptable”. However, the rate should be examined over a period of time to see if there have been significant changes, and the rate should be clarified to separate out intimate partner violence from other forms of domestic violence that women can be charged for, such as violence toward a parent, sibling, or child. Arrests rates alone should never be the sole indicator of whether or not there is a problem. (This is why the safety audit methodology is so useful in examining an issue.)

Methodology:

A variety of methods to examine arrests of women were explored. Although the use of safety audit methodology was recommended, the Commission decided it did not have the resources to do so at this time. (Safety audit methodology would normally include the creation of small audit team, focus groups with victim-defendants, interviews and observations with select practitioners, and text analysis.) Based on consultation with the Bellingham Police Department and the Whatcom County Sheriff’s Office, the Commission decided that a brief initial assessment based on case file analysis conducted by the Commission Director, in conjunction with individual interviews with victim-defendants, would be an important first step. If concerns were identified in the initial assessment, a decision could be made to conduct a more thorough analysis.

Between November 2004 and February 2005, the Commission Director conducted the following work:

- Notice was sent to all Whatcom County domestic violence service providers to invite any women who had been arrested for domestic violence, yet identified themselves as the primary victim, to talk with the Commission Director about their experiences. Three women were interviewed by phone during the month of November. One woman had been arrested by the Whatcom County Sheriff’s Office, one by the Bellingham Police Department, and one by the Blaine Police Department. All of these arrests had occurred in 2004. A few summary statements on these interviews can be found in the Findings section.
- 15 case files were reviewed in the Whatcom County Sheriff’s Office in December 2004. The Sheriff’s Office had prepared a printout of all domestic violence related arrests from November 2003 to October 2004. The Commission Director reviewed the list and highlighted those cases where a woman was arrested and the victim was a male. Cases where the male was significantly younger and appeared to be the suspect’s child were not included. Of this list, the Commission Director randomly selected 15 case files over the one-year period to review.
- 40 case files were reviewed in the Bellingham Police Department in February 2005. All cases from the calendar year 2004 involving an arrest of a female on a

male victim, where there had been a history of a relationship, were compiled for the Commission Director to review.

- Case file review included a review of all pertinent documents in the case file, with a focus on the dispatch slip, all narratives submitted by the responding or follow up law enforcement personnel, the probable cause statement, domestic violence supplementals, and victim/defendant statements. Brief notes were made on each case indicating whether key pieces of information were missing, whether best practices were generally followed, whether there were questions about the arrest decision, and whether there were inconsistencies between the information available to the officer and the arresting decision.
- Following review of the case files, the Commission Director met individually with Chief Parks of the Whatcom County Sheriff's Office and Sgt. Lintz of the Bellingham Police Department to share findings and discuss any select cases of concern.

Limitations:

It is important to keep in mind that these findings are not based on conducting the full safety audit methodology, nor are they based on conducting full text analysis, as is typically done as part of a safety audit. Case files were reviewed to provide a general overview on whether or not there appeared to be any systemic patterns and problems in arresting women who are primarily victims of domestic violence. (It should be emphasized that there was never an assumption that a victim of domestic violence should not be arrested.)

Full text analysis typically includes a spreadsheet analysis on whether or not key pieces of information (or best practices) are included in a case file. After reviewing a certain number of files, an overview of the spreadsheet will show gaps and inconsistencies. Text analysis can also be done by comparing case files where women were arrested for domestic violence to case files where men were arrested. In this way, one can note whether or not there are differences based on gender. Text analysis can also include requesting a full history and all case files on specific individuals or couples and reviewing law enforcement responses over time. These types of analyses were not conducted as part of this assessment.

This analysis did not include women who were charged with assaulting other women in the context of a lesbian relationship. However, recommendations from this analysis should apply to all domestics, whether the couples are heterosexual or homosexual. Especially in situations of same-sex partner violence, evaluation of primary aggressor and context of the incident is essential.

Findings:

In late 2003, the Bellingham Police Department instituted a new risk assessment policy. This policy requires the arresting officer to ask the victim a series of questions that help

to contextualize the violence and determine the level of risk the offender poses to the victim. The questions are:

- *Do you think that he or she will seriously injure or kill you or your children? What makes you think so? What makes you think not?*
- *How frequently & seriously does he/she intimidate, threaten or assault you?*
- *Describe the most frightening event/worst incident of violence involving him/her?*

The response is documented in the police report. The Whatcom County Sheriff's Office instituted this policy in late 2004. The case files that were reviewed were generally for the year 2004. This timing difference in policy implementation is reflected in the findings.

Three Phone Interviews with Women:

- All interviews involved middle-aged women who were arrested for assaulting their husbands. One woman was in the process of separating from her husband. All women stated that they had experienced verbal and emotional abuse with no prior physical assaults; there had been no prior calls to law enforcement. (One woman mentioned a few incidents of attempted physical violence and violence towards her pets. Her husband had experience with law enforcement from assaulting his previous wife.)
- All women recounted a mutual struggle with an explanation of how the violence occurred. Two women stated that their "violence" was in response to an action by their husband whereas one woman stated that she grabbed his necklace, which then led to a struggle. Two of the three women reported that they had injuries as well.
- All women recounted the situation as one where "they couldn't take it anymore" and were "fed up" with their husband's behavior, and in one case, felt threatened by an action on the part of their husband.
- One woman stated that she was actually protecting herself, but she did not disclose that to the police as she had been in the habit of protecting her husband.
- Two women stated that law enforcement said: "We have to arrest someone." One woman was told "you threw the first punch".
- Two women were convicted of disorderly conduct (reduced from 4th degree domestic violence assault) and in one case charges were dropped based on her agreement to attend classes. In two cases the husband asked that the charges be dropped.
- None of the women had received domestic violence services prior to this time and all women stated that they have learned a great deal about their relationships since contacting a domestic violence program.
- One woman stated that she was treated very poorly in jail and that she would never call the police again.
- Two of the three women had initiated the call to 911.
- Two of the women stated they were not asked about a history of domestic violence or if they were afraid. One woman stated that the police report quoted

her as saying “I can’t take this anymore.” She wondered why no one asked what she couldn’t take anymore. Information is not available as to whether or not the third woman was asked about a history of domestic violence.

Case files were reviewed on two of the above cases. Upon review, one case appeared to be complete and the other left a few questions. These interviews highlight the challenges faced by law enforcement when the parties do not disclose full information, when there is no history of physical violence, or when a non-physical act leads to a response of “violence” by the other party. Violence is in quotes due to the fact that two of the women described their response as a cross between “self-defense” and reactive violence to what they describe as years of emotional and verbal abuse.

Bellingham Police Department

40 case files were reviewed covering the calendar year 2004. This included four dual arrests. All case files involved females who were arrested for a domestic violence related offense with a male victim.

Documentation of risk factors within the police report proved to be very helpful in reviewing the case files as they provided a clearer sense of the history between the two parties. As the year progressed, documentation of risk factors became more consistent. However, because risk questions are only asked of the individual determined to be the victim, there were a few cases where responses to the risk questions from the person arrested might have provided some additional insight into the context and the defendant’s use of violence.

In many case files the officer did not document whether or not they had asked about a domestic violence history. It was not apparent if they had checked with dispatch, if they had asked the parties, or if they had established there was no history. Other professionals utilizing police reports will benefit from knowing whether or not there has been an inquiry about a domestic violence history, and if so, the response. Again, this information helps put the current situation into a larger context.

In some of the cases the person arrested had called 911, yet there did not appear to be a follow up questions as to why. Many of the women arrested admitted to starting the violence, however, generally they described their intent differently than the victim. A significant number of the cases involved young women (ages 18 – 25) who had recently separated from their male partner, stated they were jealous as he had started a new relationship, and “lost it”. A rough estimate was that 75% of the women arrested were 25 years and younger and about 50% of all incidents occurred in the context of a separation. Other than the dual arrests, in over half of the cases, the relationship did not appear to have a history of domestic violence based on the information in the police report.

The arrest decision tended to fall with the person who used violence first, however this was generally substantiated and consistent with documented injuries and witness information.

Whatcom County Sheriff's Office

The Sheriff's Office provided a list of domestic violence related arrests within the 12-month period from November 2003 through October 2004. The Commission Director reviewed the list and selected all cases where a female was arrested for assaulting a male and the age difference indicated it was most likely an intimate relationship and not a parent/child relationship. Of these cases, 15 case files were randomly reviewed.

Somewhat similar to the findings with the Bellingham Police, reports were missing detailed information on any domestic violence history. These reports more consistently indicated that there was a history, however, this was noted as a check on a supplemental form without elaboration. In some cases, both parties reported a history of domestic violence, leading the reader to wonder about the circumstances. Due to the fact that the new risk assessment protocol had not been implemented, the reports did not have any information in response to the risk questions. A few cases were identified where it did seem there was more to the story, and without information from the risk questions and domestic violence history, it was difficult to evaluate if the "right" person was arrested.

Again, similar to the Bellingham Police, it appeared the arrest decision leaned towards the person who "threw the first punch" or the person with the more serious injury. It was clear that the arrest decision is not always an easy decision and in talking with both Chief Parks and Sgt. Lintz, there are probably times when someone is arrested just to ensure that there is no further immediate violence.

Due to the fact that not as many case files were reviewed as with the Bellingham Police, fewer generalizations are available. Paralleling findings with the Bellingham Police, the women arrested were likely to admit to the violence, although with a slightly different version than the victim. At least 40% of the cases reviewed involved a couple that had been separated or was in the process of separation. The women generally seemed older than the sample from the Bellingham Police Department and more children were involved as witnesses. Many of the women had initiated the call to 911 and there were several inconsistencies between statements in the dispatch slip and statements in the case file, with no explanation regarding the inconsistencies.

Conclusions and Recommendations:

In general, it does not appear that arrests of women for domestic violence related incidents is a "problem" with the Bellingham Police Department and the Whatcom County Sheriff's Office. The majority of cases reviewed did appear to be consistent with the intent of the mandatory arrest and primary aggressor law. A handful of cases, coupled with phone interviews with 3 women who were arrested, pointed to the fact that

understanding context and history is essential and helpful in assessing for primary aggressor, and/or in providing the prosecutor and defense information for case processing. Many reports lacked information on domestic violence history, which is helpful information for assessing risk and future danger as well. Reading the police reports with information on the risk factors clearly showed the value of this information.

At the same time, many practitioners are anecdotally reporting an increase in arrests of women for domestic violence. In some cases, practitioners state that these women have a history of victimization and in other cases that they have substance abuse or mental health issues. From this review, questions are raised as to whether younger women are using violence in relationships in a different way and at a higher rate than “older” women. Regardless, law enforcement will be faced with the same decision – do I arrest, and if so, whom?

Women (and for that matter men) in intimate relationships use violence for many reasons. Some women are batterers and use violence to control and intimate their partner. Some women use violence in self-defense. Some women use violence as a reactive or retaliatory response to a history of abuse, either in anticipation of violence, or in reaction to it. Some women use violence in a one-time isolated incident in response to a particular situation in a relationship. Although these are all examples of violence, our criminal justice system is exploring ways to differentiate our response to the different uses of violence. *Who is fearful of whom? Who is seeking to stop the violence? Who is seeking to avoid punishment? Who is at risk of future harm?* Law enforcement is one important player in helping to uncover the answers to these questions.

Case files of women arrested for assaulting a male intimate partner were reviewed to evaluate how the Bellingham Police Department and Whatcom County Sheriff’s Office are responding to some of the complexities of violence noted above. As stated earlier, based on this limited analysis, there do not appear to be any overt problematic practices. However, there is room for fine-tuning and the following recommendations are made in that spirit:

- Asking risk questions of the victim once probable cause has been established limits the possibility of contextualizing the immediate incident. Although it is not recommended that risk questions be asked of both parties in all cases, asking risk questions of both parties in the following situations might help to assess which party is most at risk:
 - where both parties are claiming injury or victimization
 - where it is not clear based on evidence and witness information who is the primary aggressor;
 - where no criminal histories or civil orders are in place yet there appears to be underlying tension or fear;
 - where the responding law enforcement personnel has a “hunch” that there is “more to the story”.

- Even if the individual who may define themselves as the victim is arrested, documenting the responses to the risk questions will provide the prosecutor and defense information for case processing. (For a full discussion on how one community has dealt with individuals who are arrested for domestic violence, but who are identified primarily as the ongoing victim in the relationship, please refer to *At a Crossroads: Developing a Prosecution Response to Battered Women Who Fight Back*, by Mary Asmus, Chief Prosecutor, City Attorney's Office, Duluth, MN.)
- Ask who called 911 and why. What were the concerns?
- Ask what led to the incident. What were the circumstances? Who is afraid of whom?
- Provide ongoing training updates to law enforcement on establishing primary aggressor and on the amount of discretion that is available to officers under the mandatory arrest law and the primary aggressor law.
- Domestic violence advocates should talk with victims, especially those who have no documented history of physical violence, about the risks of responding physically to their partner and about alternative ways to cope with the feelings of living in an emotionally abusive relationship. (This is not meant to apply to situations of self-defense as defined by the law.)
- The prosecutor and the defense play a critical role in responding to cases where the individual arrested claims to be the primary victim and used violence either in reaction to a threat or statement by the other party or in response to a history of abuse. This is not to say that criminal sanctions should not be employed, but rather, that the case be evaluated with the history and context in mind. (See reference to report from City of Duluth, City Attorney's Office noted above.)
- Domestic violence service agencies should continue to work with the Jail and the defense bar in ensuring that those women who are arrested for domestic violence but who are historically the victim, are offered services and resources immediately.

The author recognizes that law enforcement has limited time and resources in responding to domestic calls. It is not always possible to explore the questions and issues noted above to the fullest degree possible.