

## **DOMESTIC VIOLENCE - INTRODUCTION**

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Battered women and the legal system. This portion of the presentation begins with focusing on the context of the problem. The first section specifically addresses domestic violence, legislative issues. A lot of material draws from one of the article readings, specifically Miller's article "Domestic Violence: a review of state legislation defining police and prosecution duties and powers. A working paper prepared by the Institute for Law and Justice."

Between 1997 and 2003 there were over 700 new domestic violence related enactments, including both amendments of old laws and enactments of new laws. However, there has not that much effort, with a few exceptions, to incorporate research findings on what works and to legislation for a number of reasons that we will discuss. Some of these significant advances in criminal law related to domestic violence include the adoption of anti-stalking laws in 50 states, where there previously were none in 1989-- the repeal or limitation of state spousal exemption laws and rape cases, and passage of new domestic violence battery laws that provide unique penalties in family-related assault and battery cases.

States vary in their domestic violence laws. They also vary in the extent to how protective their laws are. The wide variation in statutory models across states shows that in some instances they reflect a strong legislative intent to protect domestic violence victims.

Whereas in other instances, the laws might reflect more of a compromise. Just as some states have adopted spousal sexual assault laws as supplements to traditional rape laws, nearly all states have adopted laws specifically directed at domestic violence. States have typically used two approaches in order to do this.

The first approach is through the enactment of a new criminal code provisions that are directed at domestic violence assault and battery. And the second approach is by sentencing enactment provisions that increase the penalties for domestic violence, involving the commission of any crime. In nine states, a single violation of the domestic violence criminal law is considered a felony. In seven states, a second domestic violence offense is treated as a felony.

In 18 other states, a third domestic violence misdemeanor conviction calls for a felony sentencing. In 13 states, even where domestic assault is treated as a misdemeanor, the criminal code requires a mandatory minimum jail sentence. Comparatively, 13 states now provide enhanced penalties when domestic violence is committed in the presence of a minor.

In addition, three states provide enhanced penalties for domestic violence assaults on pregnant women. In particular, an interesting example of state variations in statutes is provided in Wisconsin. Wisconsin has a law that provides for a two-year enhancement for a repeat domestic violence assault occurring within 72 hours of released after arrest from a first domestic violence assault.

Criminal justice proceedings represent one remedy for victims of domestic violence-- no-contact orders. An alternative to civil commitment is also criminal court. That is for a criminal court to require an order of protection. Every state provides for a simple court order of protection against domestic violence, but not every state provides for a criminal order of protection.

Typically, criminal court orders prohibit any further violence and further mandate that the abuser stay away from the victim. 44 states and the District of Columbia make violation of the court order of protection against domestic violence a separate criminal offense. In several states, a court finding of criminal contempt, which typically calls for misdemeanor level penalties, may punish violation of a court order of protection. In only seven states can a single violation of a court order of protection be treated as a felony. In the remaining states it is considered a misdemeanor. However, in eight states repeat violations of a court order may constitute a felony.

Another interesting example, in one state it's considered a felony to violate a criminal protection order issued as part of a sentence after a conviction for a domestic violence related crime. Four other states make an assault and violation of a protection order to be a felony. Violations not involving assaults are considered misdemeanors. Four states also have a mandatory minimum sentence for repeat protection order violations. 29 states allow for a civil protection order against stalking, regardless of whether there is any related domestic violence.

Violation of an anti-stalking order can be a criminal offense in 25 of these states, often at a higher level than that authorized for the violation of the domestic violence protection order. One of the most important innovations in domestic violence cases has been a change in the common law rule authorizing police to make warrant-less arrests. In response to considerable anecdotal evidence of police leniency in arrest for domestic violence as of 2000, all states authorized warrant-less arrests of domestic violence offenders based solely on a probable cause determination that an offense occurred.

In 21 states and the District of Columbia police arrest is required when the officer determines that probable cause exists, also known as the issue between mandatory arrest policy versus a pro-arrest policy. One problem in implementing mandatory arrest policies in domestic violence cases occurs when both parties allege that the other was the aggressor. This leaves the police to arrest both parties, and quite possibly an innocent victim who may have been acting out in self defense.

Most law enforcement agencies have a policy limiting the offender's duties under the mandatory arrest law in the dual arrest context. Dual arrests are often frowned upon because they are complicated. Hence, many states have adopted an amendment to the mandatory arrest law authorizing the officer to arrest only the primary aggressor.

Some state statutes have amendments that require officers to fully explain why a dual arrest was made. Because the problem of dual arrest can be exacerbated by the court's issuance of mutual orders of protection to both parties, many state laws contain provisions limiting the authority of the court to issue mutual orders of protection. The many changes in law that have occurred in the

creation of new crimes and in the enforcement of these laws underscore the need for training in domestic violence among police and prosecutors.

In 31 states and DC legislators have enacted laws that require police entry-level training to include domestic violence. Other related required training includes violent crime prevention and investigation, violent crimes, including stalking, victims' rights, victims needs, and crisis intervention. The minimum content of the required domestic violence entry training is specified by statute in 21 states.

Alaska law, for example, requires that domestic violence training include material on state laws, crime incidents and significance, and service providers. Other topics include techniques to minimize threats to officer and victim safety, the investigation and management of domestic violence cases, report writing, shelters, and written notice of victims' rights.

Much less attention, compared to police training, has been paid to the training and performance of prosecutors. In fact, only four states require that prosecutors be trained in the handling of domestic violence cases. Three other states' laws authorize the availability of such training to prosecutor offices. Another three states' laws provide for victim assistance training to be made available.