
The Criminalization of Domestic Violence: What Social Workers Need to Know

Fran S. Danis

Domestic violence is a crosscutting issue that affects clients seeking social work services. The criminalization of domestic violence refers to efforts to address domestic violence through the passage and enforcement of criminal and civil laws. This article reviews the social science, legal, and criminal justice literature regarding interventions used to stop domestic violence. The theoretical foundations and effectiveness of police interventions, the use of protective orders, prosecution and victim advocacy, court responses, batterers' intervention as a condition of probation, and coordinated community responses to domestic violence are examined. Implications for social work practice are given, along with basic information for assisting clients who are victims of violence in their own homes.

Key words: *batterers; criminal justice; domestic violence; intervention programs; social work practice; victim advocacy*

Domestic violence is a crosscutting issue that affects the daily lives of people seeking social work services. During the past 20 years, the social science and criminal justice fields developed interventions designed to deter abuse and rehabilitate abusers so they will not abuse again. Central to these interventions has been the increasing role of the criminal justice system to enforce laws that regard the use of violence against one's intimate partner as a criminal act. Thus, domestic violence is viewed as not only a social problem, but a criminal justice problem. The criminalization of domestic violence (Fagan, 1996) refers to efforts to address the issue of domestic violence through the passage and enforcement of criminal and civil laws.

Based on a literature review from social science, legal, and criminal justice fields, this article provides an overview of criminal justice interventions to deter male batterers from abusing their female partners and to rehabilitate batterers found guilty of abuse. It reviews the effectiveness of po-

lice arrest, protective orders, prosecution, victim advocacy, court responses, batterer's intervention programs as a condition of probation, and domestic violence coordinated community responses. It also provides practical suggestions for practice with victims of domestic violence. Although same-sex and female-to-male violence does occur, interventions reviewed in this article focus on male-to-female violence.

Overview of Domestic Violence

Definitions of domestic violence usually are worded broadly to encompass a pattern of behaviors used by people who abuse their intimate partners, including physical, sexual, and emotional abuse. However, from the criminal justice perspective, *domestic abuse* is more narrowly defined as "an act by a member of a family or household against another member that is intended to result in physical harm, bodily injury, assault, or a threat that reasonably places the member in fear of imminent physical harm" (Texas Department of

Public Safety, 1998, p. 47). People who commit domestic abuse may be arrested and charged with numerous offenses, including homicide, assault and battery, criminal trespass, terroristic threats, stalking, and sexual assault (Miller, 1998). Depending on the severity of injuries or the use of a weapon, charges can be at either misdemeanors or felonies. Research on the characteristics of batterers is focused on developing typologies so that interventions and resources can be matched appropriately to offenders (see Gondolf, 1988 and Jacobson & Gottman, 1998). Risk factors for men who batter their partners include prior domestic violence or assault and battery arrests, prior arrests involving the same victim, and drug involvement (Healey, Smith, & O'Sullivan, 1998).

Official estimates of the incidence and prevalence of domestic violence have yielded consistent and troubling results. The National Violence Against Women Survey (Tjaden & Thoennes, 1998) estimated 5.9 million incidents of physical assaults against women annually, with approximately 76 percent of those incidents perpetrated by current or former husbands, cohabiting partners, or dates. Women's lifetime prevalence rate of male-to-female partner abuse is estimated at 14 percent to 50 percent (Straus, Gelles, & Steinmetz, 1980). The National Crime Victimization Survey (Bachman & Saltzman, 1995) found that nearly 30 percent of all female homicide victims were killed by their husbands, former husbands, or boy-friends in contrast with just over 3 percent of male homicide victims killed by their wives, former wives, or girlfriends. Women of all races were equally vulnerable to attacks by intimates (Bachman & Saltzman). Domestic violence incidents needing emergency room treatment were four times higher than the estimates of domestic violence that come to the attention of law enforcement agencies (Rand, 1997).

Links between domestic violence and public assistance (Brandwein, 1998) and child welfare (Bennett, 1999; Edleson, 1999) have been established. As battered women come into contact with health, education, legal, and social institutions (Peled & Edleson, 1994), they are more likely to contact social workers for help (Hamilton &

Coates, 1993). It is important for all social workers to understand the array of interventions that exist to deter and change violent behavior and the strategies that maximize victim safety.

From the first law of marriage proclaimed by Romulus in 75 BC through the early 20th century, legal and institutional support for wife beating can be found (Dobash & Dobash, 1979). The feminist movement starting in the 1960s (Schechter, 1982), the victim witness movement of the 1970s, and the availability of empirical evidence (Straus et al., 1980) accelerated public attention to the legal and procedural barriers that existed between safety for women and the de facto right to beat one's wife (Fagan, 1996). These barriers included informal and formal police and prosecution policies of

nonintervention, misinformation and myths about domestic violence, inability of police to arrest on misdemeanor offenses, and limitations of restraining orders only to people filing for divorce (Fagan; Zorza, 1992).

Beginning in the late 1970s, advocates for battered women established partnerships with feminist, liberal, and conservative lawmakers

for a "get tough" approach to domestic violence that yielded criminal justice reforms (Fagan, 1996; Zorza, 1992). By 1980, 47 states had passed legislation that allowed police to make misdemeanor arrests without warrants and to enforce civil restraining orders, called protective orders in many jurisdictions (Fagan; Zorza). Court challenges helped to change nonintervention police policies. In a 1984 landmark case, *Thurman v. City of Torrington*, the courts found the lack of action by police negligent and awarded the plaintiff \$2.3 million (Wallace, 1996). Other legal challenges resulted in changes in policies, mandatory training in the dynamics of domestic violence, and requirements for police to provide information and referrals for victim services (Zorza).

Theoretical Frameworks

Because there is no single recognized causal theory for domestic violence, criminal justice interventions are based on four theories: social exchange/deterrence, social learning, feminist theory, and the ecological framework.

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A key assumption of social exchange theory (Blau, 1964) is that human interaction is guided by the pursuit of rewards and the avoidance of costs and punishments. Gelles and Cornell (1985, 1990) posited that people use violence against family members when the costs of being violent do not outweigh the rewards. They define the costs of being violent as the potential that someone would hit back, the potential for arrest and imprisonment, the loss of status, and the dissolution of the family. One way to reduce domestic violence is to increase societal sanctions, thereby increasing the costs of violent behavior. This is the basic concept underlying the enforcement of laws against domestic violence, as deterrent against future abuse. *Deterrence* is defined as the "state's ability to diminish the incidence of a prohibited action through legal threats which clearly indicate that the cost of the action would be greater than would any benefits that might derive from it" (Dutton, 1995, p. 242). Thus "a man who batters his partner and is punished by harsh criminal sanctions or even by arrest only will be less likely to batter again than if he experienced milder sanctions or no arrest" (Ford, 1991, p. 192).

According to social learning theory (Bandura, 1973), people learn to be violent through being directly rewarded or punished immediately after aggressive behavior takes place (reinforcement) and vicariously through watching other people's experiences (modeling). This approach is also referred to as the intergenerational transmission of violence (Mihalic & Elliott, 1997; Widom, 1989). A correlation exists between being an abusive partner and having witnessed abusive behavior by fathers toward mothers (O'Leary, 1987). Many batterers' programs are founded on the basic premise of social learning theory: What is learned can be unlearned.

Feminist theory views domestic violence as an expression and consequence of a patriarchal social system that gives men responsibility for control and management of their female partners (Dobash & Dobash, 1979; Yllo, 1993). Domestic violence is considered a problem rooted in the structure of society rather than the pathologies of individual men. A feminist orientation is used in curricula for psychoeducational groups for batterers (Healey et al. 1998). Feminist theory also underlies advocacy interventions that use an empowerment approach with battered women (Gutierrez, Parsons, & Cox, 1998).

The National Research Council's panels on violence against women (Crowell & Burgess, 1996) and on violence in the family (Chalk & King, 1998) proposed adopting an ecological framework in recognition that no one theory can explain or predict domestic violence. The ecological model is familiar to social workers as the basis for generalist practice (Germain, 1991) and has been proposed as an approach to understand domestic violence since the mid-1980s (Carlson, 1984; Edleson & Tolman, 1992; Heise, 1998). The ecological framework includes risk factors and interventions at the micro, meso, and macro system levels. The coordinated community approach is a macro system intervention; batterer programs fit into both the micro and meso levels, whereas police, prosecution, and court interventions are considered part of the meso system.

Each of these theories contributes to interventions designed for abusers. Social exchange/deterrence theory provides the framework for interventions such as arrest, conviction, and punishment. Social learning theory contributes the belief that if violence is learned, it can be unlearned, to provide the basis for batterer's intervention programs. Feminist theory influences the curricula for batterers' intervention as well as victim advocacy programs, and the macro level of the ecological framework provides the foundation for coordinated community approaches.

Criminal Justice Interventions for Domestic Violence

During the past 20 years, the effectiveness of criminal justice system components to deter abusive behavior has been examined. A typical domestic violence case moves through the system starting with intervention by police, the granting of a protective order, prosecution either on initial criminal charges or on violation of the protective order, court response, and if the perpetrator is found guilty, sentencing the offender to a batterers' intervention program as a condition of probation. Although victims may apply for a protective order before police intervention, many victims first learn about protective orders as a result of police intervention. The violation of a protective order is a criminal act that moves the case to the criminal prosecution phase. Many communities have adopted a comprehensive strategy referred to as coordinated community responses, which combine criminal justice interventions,

batterer's intervention, and victim advocacy (Hart, 1995).

Police Interventions

Police are the gatekeepers to the criminal justice system. Subsequent interventions hinge on the attitudes of police toward domestic violence (Buzawa, 1988; Buzawa & Austin, 1998) and options of police to make arrests (Schmidt & Sherman, 1996). Sherman and Berk's (1984) Minneapolis Domestic Violence Experiment is the first study testing the effectiveness of police intervention strategies on domestic violence misdemeanor cases (Fagan, 1996). In this study, police were randomly assigned to arrest the suspect, order the suspect out of the house, or provide advice to the couple. Arrest was found to be the most effective strategy in reducing subsequent police involvement. Replication studies conducted in five communities had mixed results, leading to the conclusion that arrest per se would not stop subsequent assaults (Sherman, 1992). Arrest by itself may also be considered a "weak dose" of punishment as few offenders were prosecuted (Sherman). Although there is currently no consensus among researchers and advocates regarding the effectiveness of arrest as a deterrent (Bowman, 1992; Stark, 1996), many state and local communities have adopted mandatory arrest policies requiring police to arrest if there is probable cause to believe an assault has taken place (Miller, 1998).

Serious unintended consequences can occur as a result of police interventions, including retaliation against victims by their abusers, dual arrests, and the potential lack of cultural sensitivity to victims and perpetrators. Ford (1991) found that on-the-scene arrests resulted in higher risks of retaliation compared with warrants for arrest based on victim complaints. Partners of enraged batterers may be less safe after an arrest than before the arrest. Another unintended consequence has been a rise in dual arrests. Police trained to respond to crime as single discrete incidents and not as a pattern of behavior may arrest both batterers and victims, even though the victims may have used violence as an attempt to defend themselves (Mar-

tin, 1997). Racist attitudes by some police officers may result in slow response to 911 calls in communities of color or overly aggressive response to offenders, including police brutality (Wright, 1998). The historic conflict and mistrust between the police and communities of color has its roots in U.S. slavery and is evidenced by the disproportionate number of people of color arrested and convicted of crime in this country. Therefore, women of color may be reluctant to request police intervention because it may be viewed as disloyalty to their race, and they often feel obligated to protect their batterers from police and the criminal justice system (Richie, 1996; Williams, 1998). Latino and immigrant women also face language barriers to seeking help from the criminal justice

system. Police often use family members or neighbors as interpreters, thus further embarrassing the victim and potentially angering the abuser. Women without official immigrant status may fear deportation for themselves and their families if the police are called. (For the relationship among domestic violence, race, and the criminal justice system see Richie and Williams).

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Protective Orders

Protective orders are civil court orders that prohibit the offender from contacting the victim or their children, using physical abuse and the threat of physical abuse, or damaging personal property of the victim (Wallace, 1996). The order may provide for custody, visitation, support of minor children, and living arrangements (Wilson, 1997). The violation of a protective order is now a criminal offense in 43 states and the District of Columbia (Miller, 1998). As a tool to keep women and children safe, the use of protective orders has had mixed results. Protective orders are successful in deterring repeated incidents of physical and psychological abuse among offenders who do not have a history of violent crime (Keilitz, Hannaford, & Efken, 1998). However, Harrell and Smith (1996) found that 60 percent of women with protective orders reported violations during the year after they were issued. [For a discussion of the lack of legal protections for battered lesbians and gay men see Fray-Witner (1999)].

Prosecution and Victim Advocacy

Serious obstacles to victim participation in prosecution of domestic violence are strong emotional, familial, and financial ties between the victim and offender. Ongoing, unsupervised contacts between victim and perpetrator are common, especially when the presence of children requires arrangements for visitation. Furthermore, there are differences in desired outcomes between the victim and criminal justice system, such as wanting partners to get counseling instead of incarceration (Hart, 1993). Prosecutors use varied strategies to overcome the reluctance of victims to participate, including taking the onus of filing charges away from the woman by having police file charges against the abuser, adopting no-drop policies, pursuing victimless prosecution, and using victim advocates to help women through the process (Mills, 1998).

Ford and Regoli (1993) tested the effectiveness of prosecutorial policies that allowed a victim to stop prosecution by dropping charges against her abuser versus no-drop policies that threatened victims with subpoenas if they failed to testify against their abusers. Regardless of the policies used, considerable reabuse occurred in the six months following case settlement. However, victims who were allowed to drop complaints but elected to go forth with prosecution were significantly less likely to be reassaulted (13 percent) than those who did not drop their complaints. Some jurisdictions now use victimless prosecution without victim testimony (Rebovich, 1996). This strategy requires extensive evidence gathering at the crime scene by police. It is uncertain whether victimless prosecution is a more effective deterrence than prosecution with victim participation.

Many prosecutors also employ victim advocates to provide services to victims. Advocates help apply for protective orders; gather information regarding the nature, severity, and prior violence by the offender; provide information about the criminal justice system; notify victims of key events; accompany victims to courtroom events; link victims with community resources; and help

file claims for crime victim compensation (Wallace, 1996). The presence of advocates can help victims feel empowered to pursue prosecution (Weisz, 1999). However, prosecution policies that force women to testify against their abuser can be disempowering and may lead to feelings of being revictimized by the criminal justice system (Mills, 1998; Hanna, 1996).

Court Responses

Judges have significant influence, and a judge without appropriate training in domestic violence can undermine all earlier efforts at deterrence (Ford, Rompf, Faragher, & Weisenfluh, 1995). Specialized courts have been created to centralize dockets, expertise, and the accessibility of court-

based victim services (Fagan, 1996; Healey et al., 1998). Specialized courts reduce processing time by half, increase convictions, and show a slight reduction in subsequent felony arrests (Davis, Smith, & Nickles, 1997). Judges prefer mandating batterer's intervention as a condition of probation, with little interest in incarceration as a possible deterrent (Hanna, 1998).

Batterer's Intervention Programs as a Condition of Probation

Despite court reliance and the victims' hope (Hanna, 1998), the short- and long-term effectiveness of counseling for batterers remains unclear, with reabuse rates ranging from 3 percent to 33 percent (Chalk & King, 1998; Fagan, 1996; Tolman & Edleson, 1995). Most intervention programs are either pro-feminist, family systems, or psychotherapeutic (Healey et al., 1998) and use social learning or cognitive behavioral approaches (Tolman & Edleson). Regardless of the approach, programs need to reduce dropout and no-show rates of 25 percent to 50 percent (Chalk & King, 1998), tailor interventions for cultural differences (Williams & Becker, 1994), develop consistent outcome measures (Tolman & Edleson), match interventions for different batterer profiles (Fagan, 1996), develop program standards (Healey et al., 1998), and improve outcomes. Required periodic court appearances can reduce the dropout rates from 50

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percent to 35 percent and no-shows from 36 percent to 6 percent (Gondolf, 2000). First-time offenders mandated into counseling for longer periods were significantly less likely to reassault their partners than those who were not arrested the first time or who were mandated into shorter counseling programs (Syers & Edleson, 1992). It is unclear what linkages exist among the overall deterrent effect, the length of the counseling program, subsequent abuse, and the function of surveillance. Research is being conducted to track the behavior of completers batterer's intervention program four years after the intervention (Gondolf).

Coordinated Community Responses

The coordinated community response strategy involves coordination to protect battered women, hold abusers accountable, deter future abuse, and coordinate the flow of information so that neither party gets lost in the cracks of a multifaceted system (Hart, 1995; Pence, 1983). This approach brings together criminal justice, health, and human services providers to adopt common policies, procedures, and tracking systems and delivers a communitywide message that domestic violence is taken seriously. Coordinated responses can lead to increases in arrest, prosecution, and mandated counseling (Gamache, Edleson, & Schock, 1988). Men arrested and court ordered to treatment were least likely to repeat their violence, followed by those who were not arrested, and then by those who were arrested but not ordered to treatment (Syers & Edleson, 1992). Lower recidivism rates are associated with the degree of sanctions levied by the court and the compliance with those sanctions (Murphy, Musser, & Maton, 1998). Higher numbers of program sessions are associated with fewer subsequent arrests (Babcock & Steiner, 1999). These findings also support earlier studies, which found that batterers who completed intervention programs were likely to be first-time offenders, reported a higher income, and were more educated than batterers who dropped out of treatment.

Summary of Criminal Justice Interventions

Research addressing the effectiveness of the criminalization of domestic violence has yielded inconsistent and inconclusive results (Fagan, 1996). Police interventions may be the first step in establishing a safe environment, but they may also

result in unintended consequences of more violence to both victims and offenders. Although the majority of protective orders may be violated, protective orders taken as a proactive step by the victim may be more effective. Successful prosecution will not necessarily stop abusive behavior, and various prosecution strategies may empower or disempower victims. The role of the victim in taking proactive steps to involve the criminal justice system is an important issue, although the linkage between a stronger deterrent effect, victim empowerment, and specific legal intervention is not known. When a guilty verdict is obtained, judges prefer mandating batterers to intervention programs as a condition of probation, the success of which has been for the most part unproven. The coordinated community response strategy has had preliminary success in showing that a combination of legal interventions has better outcomes than the use of one strategy alone.

Implications for Social Work Practice

Because domestic violence affects many clients, all social workers need some fundamental knowledge about criminal justice interventions and options available for clients. Because no one intervention has been proven effective, social workers need to be realistic. There are no simple answers to getting the batterer to stop his abusive behavior or to ensuring client safety.

For clients whose lives may be in danger, safety issues must take precedence over all considerations. A thorough risk assessment should consider severity and frequency of abuse, access to firearms, and use of alcohol. Social workers should document past and current client injuries, the nature of threats, current level of fear, and criminal justice interventions previously tried. Discussions about the limits of confidentiality and state statutes regarding privileged communication should occur. If working with batterers, social workers should pay attention to duty-to-warn issues. It may also be appropriate to establish relationships with local police, prosecutor, and probation offices to exchange appropriate information about the criminal record of the batterer. Although social workers are obligated to report suspected child abuse, few states have mandatory reporting laws regarding domestic abuse.

Despite the debate about the effectiveness and risks of police interventions, particularly for communities of color, social workers should not

hesitate to tell clients to contact police if they believe their lives are in danger. They should develop culturally appropriate safety plans with clients that identify safe places to go to for protection. The National Domestic Violence Hotline at 1-800-799-SAFE provides referrals to local specialized services, maintains Spanish-speaking advocates on all shifts, and has access to interpreters for a wide variety of languages. It is important to respect a client's decision to pursue other options, even if that means staying with an abusive partner until she believes she is safe enough to leave (Peled, Eiskovits, Enosh, & Winstok, 2000). She knows her abuser best. Risk is greater if her abuser has been previously arrested, but if the abuser holds a steady job and has never been arrested before, he may be a viable candidate for successful criminal justice deterrents and batterer's intervention programs.

Protective orders can be used as proactive options for women. Social workers should know where clients can apply for a protective order, what information they need to present, and what options exist regarding the waiving of filing fees. Many states allow for pro se protective orders that allow applications without an attorney. Clients should be advised to give a copy of their protective order to a friend for safekeeping and to keep a copy with them all times. Some police still want to see the protective order before arresting an abuser for violating the order. Social workers must caution their clients that a protective order does not guarantee their safety. It is only a mechanism that potentially holds a batterer accountable if he violates the order.

During prosecution, accompaniment through the court system is a tool that helps battered women feel more empowered. If a client has to appear in court, it is important to find out if the prosecutor's office has its own victim advocates or if the local domestic violence program provides this service. It is important to know the prosecution policies in your local jurisdiction. Does the office use victimless prosecution or have a no-drop policy? No-drop policies create challenges for social workers in reconciling social work values regarding client self-determination and the criminal justice system's value on gaining convictions. A no-drop policy may trigger revictimization issues for clients and may influence the level of support that clients may need. Social workers should caution their clients that

participation in prosecution is no guarantee of their safety or behavior change of the batterer.

If the court finds the batterer guilty and sentences him to an intervention program, there is no guarantee that the violence will stop. It is important to learn how individual programs measure success, what contact the program has with the victim, how often the program communicates with the referring court or probation office, criteria for program completion, program length, and the ability of the program and its staff to provide culturally sensitive services. The lengthier the program, the more effective it may be. Again, social workers should not raise false hopes regarding the effectiveness of batterer's intervention programs.

Agencies or practitioners that provide services to significant percentages of battered women should participate in their community's domestic violence coordinating council or task force. As case managers, social workers can identify gaps in services, advocate for individual cases, and propose policy and procedural changes to increase victim safety. Social workers should also advocate for linguistically and culturally appropriate services for both victims and batterers. If a community does not have a coordinating council, social workers should encourage the appropriate agencies and personnel to work together to promote collaboration.

Social workers can support changes in laws to increase victim safety and hold batterers accountable for their behavior. State domestic violence coalitions are important sources of information about current laws and potential changes. Feedback to these organizations about local practices can be useful. Although it is important to advocate for individual women, participation in institutional advocacy efforts also is important.

Conclusion

During the past 20 years, there has been an explosion of knowledge about domestic violence, its prevalence, and its linkage with other social problems. Although a number of criminal and civil justice tools exist to stop abuse and hold batterers accountable for their behavior, no one tool has been proven effective in all situations. Social workers need an understanding of both the tools that work best in specific situations and the potentially dangerous consequences resulting from the use of these tools. ■

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Fran S. Danis, PhD, ACSW, is assistant professor, School of Social Work, University of Missouri-Columbia, 720 Clark, Columbia, MO 65211; e-mail: danisf@missouri.edu.

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