DOMESTIC VIOLENCE AND PRO-ARREST POLICY

Greg Newbold[1]
Associate Professor, University of Canterbury

Jenny Cross
Research Advisor, New Zealand Police

Abstract

Prior to the 1980s police in New Zealand, as in other Western jurisdictions, tended to adopt a minimalist stance to the treatment of domestic violence, with separation and mediation favoured over arrest. By the late 1960s, however, the "second wave" of the feminist movement had begun to have an impact on social attitudes, and from the early 1980s presumptive arrest strategies gained international popularity. Although research into the effectiveness of presumptive arrest has been inconclusive, New Zealand moved increasingly toward such a policy from 1987 onward. This paper discusses the progress and effects of various police initiatives in New Zealand's fight against domestic violence over the past 20 years, and argues that although a policy of presumptive arrest sounds attractive, there are good legal and practical reasons why the police have continued to exercise discretion in the way the policy is interpreted.

INTRODUCTION

Although violence is a long-established component of family dynamics, serious discussion about the appropriate police response is relatively recent. The breaking of the women's movement's so-called "second wave" in the 1960s laid bare a number of issues, one of which was partner violence towards women. As a result of the movement's activities and a corresponding awareness of the problem of marital violence, by the 1970s pressure had come to bear upon police organisations, which had traditionally taken a hands-off approach to dealing with family affairs, to adopt a more interventionist stance. At the beginning of the 1980s a number of studies in the United States and Britain assessed the effectiveness of different response techniques. Publicised worldwide, these studies had a significant effect on the way police handled domestic violence in a number of Western jurisdictions.

1 Correspondence
Greg Newbold, Associate Professor, School of Sociology and Anthropology, University of Canterbury, Christchurch.

Zero tolerance responses became the most popular from about 1980 onwards, actively encouraging police to make arrests in domestic assault cases. Rather than the uncompromising mandatory (automatic) arrest that has been tried in some parts of the United States, however, New Zealand favoured a more flexible "pro-arrest" strategy, where it is assumed that police will apprehend when there is evidence of a domestic assault, but room is left for discretion. The purpose of this paper is to discuss the recent evolution of domestic violence response strategies in the New Zealand Police and the emergence of the policy of pro-arrest. The implications of presumptive arrest will be discussed briefly.

DOMESTIC VIOLENCE POLICING BEFORE 1980

Before 1980 police in Western nations tended to adopt a minimalist stance in family disputes. In the United States, for example, there was a well-known historical reluctance to arrest in domestic cases (LaGrange 1993:146–8), as there was in Britain, where police did not consider domestic disturbances as "proper" police work (Dobash and Dobash 1979, Edwards 1989, Smith and Gray 1983). In Australia, a number of studies found an unwillingness of police to intervene in domestic disputes, and at times a belief that male violence towards women was mostly triggered by the women themselves (Mugford and Mugford 1992:328–331). In New Zealand, before 1970 policing of domestic violence reflected similar attitudes. As with rape complaints (Coney 1974:22, Lee 1983:71, Williams 1978:196–7), there was a general suspicion about the reliability of domestic violence reports. Police tended to arrest only when the circumstances were clear, the assault was serious, and a victim could be relied upon to testify. Otherwise, the preferred response was to calm a situation down before leaving (Ford 1993, Marsh 1989:9). The 1964 General Instructions to police, for example, stated:

> Be wary of the wife who at 10pm wants her husband locked up, hanged, drawn and quartered for belting her in the eye and at 10am the next morning in Court she says she has a kind, wonderful husband and she is in Court only because the Police interfered! This often applies if the wife has been drinking before the assault. (cited in Butterworth 2005:163)

The Instructions continued by noting that domestic assaults are usually minor, thus reflecting a broad feeling that family aggression was of low significance. Although the 1961 Crimes Act created a specific offence of "assault by a male on a female" (s.194) with a penalty of two years in prison, which was double that for common assault, in 1968 a 400-page Department of Justice survey on crime in New Zealand carried no discussion on domestic violence *per se*, and neither did a 62-page government booklet on violent offending published three years later (Schumacher 1971). As late as 1986 a 200-page book published by the nation's Institute of Criminology, which purported to "focus on a number of major issues facing both the New Zealand Police and the wider

New Zealand community" (Cameron and Young 1986:1), ignored the issue of domestic violence altogether. In short, prior to 1970, family violence was not treated as a serious social problem, particularly by the police.

THE WOMEN'S MOVEMENT

It was largely the activities of the women's movement which eventually changed this. The second wave of feminism commenced in the United States in the mid-1960s, largely as an offshoot of the civil rights movement. In 1964 the term "Women's Liberation" was coined and consciousness about women's issues began to escalate from that point, with the National Organization of Women (NOW) forming in 1966 and the first national Women's Rights Convention in Illinois in 1968 (Bunkle 1979–80, Davis 1973, Johnston 1973). In New Zealand, publicity about international developments, boosted by books such as Friedan's *The Feminine Mystique* (1963/1972), Millet's *Sexual Politics* (1972), Firestone's *The Dialectic of Sex* (1970) and Greer's *The Female Eunuch* (1970) led to the formation of the Women's Liberation Front in 1970. By 1972, when feminist author Germaine Greer visited New Zealand on a speaking tour, a proliferation of women's organisations had appeared, including a New Zealand branch of NOW. In July 1972 the first edition of a highly influential feminist monthly magazine called *Broadsheet* was published.

Broadsheet soon became the central voice of feminist politics in New Zealand. It initially focused on issues such as sexual stereotyping, prejudice, exploitation and discrimination, but before long specific matters such as rape and woman-beating began to appear as common themes. In 1973, reflecting rising awareness about violence towards women, the first of what became a network of women's refuges was established, which was consolidated under the National Collective of Independent Women's Refuges in 1981.

During the 1970s, traditional police approaches to domestic violence remained largely unchanged, with police typically playing a mediating role when called to a domestic dispute and avoiding arrest where possible. In 1979, based on an American model, crisis intervention training began within the New Zealand Police, continuing the policy of conciliation, with arrest as a last resort. But two sensational domestic murders in the 1980s put a spotlight on domestic violence and the need for a higher level of intervention. In 1980, the shooting of feminist Leigh Minnitt by her jealous doctor husband David emphasised the fact that family violence is not always minor and not necessarily a working class phenomenon, as was commonly believed. Moreover, the subsequent jury verdict of manslaughter due to provocation, followed by a four-year prison sentence, led to public protest and accusations of sexual and class bias (Else 1980). Two years later the murder of Julia Martin by her husband demonstrated the inadequacy of existing

protection for women and the need for police to be more pro-active in preventing it. In this case, despite the police having been notified several weeks before that Martin's husband had a gun and was dangerous, no preventive action had been taken. Writing about the case in *Broadsheet*, Crossley (1983:15) argued that neither the courts nor the police treated domestic violence seriously and that they failed (or at least had little power) to take the actions necessary to protect potential victims before a crime was committed.

By this time, however, the first preventive steps had been taken. The Domestic Protection Act 1982, which became law in March 1983, contained provision for non-molestation and non-violence orders, the latter empowering police to detain for 24 hours without charge any person who had breached a non-violence order, thus providing a "cooling down" period between disputants. However, unless charges were laid, an offender had to be released after 24 hours, and section 10 of the Act gave police considerable discretion about whether or not to arrest in the first place, urging them to use their powers with caution.

THE MINNEAPOLIS EXPERIMENT

In 1981, after a series of successful lawsuits against various police departments in the US on the basis that they had denied women protection by failing to arrest assaultive partners (LaGrange 1993:146–7, Melton 1999:4), an experiment in domestic violence policing took place in Minneapolis, Minnesota. Funded by the National Institute of Justice, the Minneapolis Experiment was designed to test the effectiveness of police responses in stopping domestic offenders from reoffending. Colour-coded pads were distributed to officers in the Minneapolis Police Department, and officers attending incidents had to arrest, separate or mediate, depending on the colour of the form on the pad. The effect of the response was subsequently determined through analysis of official reports and victim interviews. Running from March 1981 to August 1982, the experiment involved a maximum of 51 officers and a total of 314 case reports (Sherman and Berk 1984).

In 1984, when the initial findings of the Minneapolis experiment were released, it appeared that the arrest of offenders led to significantly lower recidivist rates than either of the two alternatives. However, the results were not entirely clear. Although police records showed that only 10% of arrested offenders behaved violently within the six-month follow-up period, victim interviews revealed recidivism that was almost double this. Nonetheless, separation and mediation responses showed higher recidivism on both of the above measures. The study concluded that arrest was the most effective response to domestic violence (Sherman and Berk 1984).

IMPACT OF THE MINNEAPOLIS EXPERIMENT

Although, as we shall see, there were problems with the Minneapolis results, it had a revolutionary impact on policing policy, not only in the United States but in other parts of the world as well. In America, by mid-1983 33 states had introduced statutes that encouraged arrest, six had a mandatory arrest policy (Zorza 1994:936) and after the Minneapolis findings many more followed (Buzawa and Buzawa 1990, Gelles 1993). Influenced by these American developments, in the United Kingdom in 1984 a working party to address the problem of domestic violence was set up by the London Metropolitan Police, which in 1987 developed new guidelines for officers, including preferential arrest irrespective of the victim's wishes (Edwards 1989:198). Similar steps were taken in Australia – albeit with varying degrees of success (Mugford and Mugford 1992:331–336).

In New Zealand, following the release of the Minneapolis data, the police also began considering a pro-arrest policy. A study by Ford (1985) supported this approach, and the next year he conducted a pilot project, largely modelled on the Minneapolis example, testing the effects of a pro-arrest policy. Here, officers were instructed to arrest in all cases of evidential domestic assault unless there was good reason not to (Ford 1986:37).

The study resulted in a sharp increase in arrest rates and general support for pro-arrest among participating officers. As a result, in 1987 *Commissioner's Circular 1987/11* required arrests to be made in all domestic cases where evidence of assault or breach of a protection order existed, unless the assault was extremely minor or there were strong extenuating circumstances. Two principles were enshrined in the new policy: protection of victims and holding offenders accountable via arrest (Schollum 1996). The policy in 1987 thus signalled a major change in the way domestic violence was handled in New Zealand: domestic assault was henceforth to be seen as a criminal act, no different from any other assault.

Nonetheless, problems remained. The training package that accompanied the new policy was not employed by all police departments. Where it was used it was often applied haphazardly, and many officers, irrespective of whether they had been exposed to the package or not, continued to treat domestic assault cases as non-criminal events. Moreover, a requirement that victims be referred to appropriate social service agencies was often ignored as well (Ford 1993, Marsh 1989). Old policing traditions thus proved harder to break than anticipated.

THE HAMILTON ABUSE INTERVENTION PILOT PROJECT

Following these less-than-satisfactory outcomes, another project was launched in 1991 in an attempt to establish a coordinated approach, involving police, courts and victim-support agencies. Known as the Hamilton Abuse Intervention Pilot Project (HAIPP), the experiment replicated the Duluth Domestic Abuse Intervention Project (DAIP), which had taken place in Duluth, Minnesota, in 1981. The focus of DAIP was on protecting victims from future violence through a combination of legal and non-legal sanctions. Pro-arrest was incorporated as a part of the strategy.

The first report of HAIPP, released in 1992, indicated a favourable response from police, with arrests occurring with significantly greater frequency. However, it was subsequently determined that a number of cases where arrests had not been made had escaped the attention of project organisers and were thus absent from their results. Moreover, arrest rates in different sections of the Hamilton police showed that the policy was being unevenly implemented. In fact, in a large majority of incidents, offences were not identified and details were not formally recorded. This was particularly the case with addresses to which the police were regularly called (Busch et al. 1992, Robertson and Busch 1993). It appeared that basic police attitudes had not changed, or at least the changes had been haphazard.

SUBSEQUENT POLICY DIRECTIVES

Responding to the disappointing findings of the HAIPP survey, a policy directive in 1992 attempted to refine the pro-arrest policy even further. The basics of the 1992 directive were that arrests should be made whenever an assault had been disclosed or evidence of an assault existed, irrespective of whether there was an official complaint. If a victim refused to testify, other evidence could be collected to support a prosecution (*Ten-One*, 22 May 1992:11).

Analysing the 1992 directive 12 months later, Ford (1993) found noticeable increases in the number of offenders arrested, although it appeared that the policy was still being applied inconsistently. The second HAIPP report published the same year produced similar findings, with a 67% increase in arrests compared with 1992. Monitoring problems identified in the initial report had also improved, but a number of incidents involving identifiable assaults were still being coded as domestic incidents with no offence disclosed (Robertson and Busch 1993).

In direct response to the 1993 HAIPP findings, that year policy was updated once more, emphasising for the first time a multi-agency approach to domestic violence alongside the existing policy of pro-arrest. This was an important strategic development, because it acknowledged for the first time that social service agencies are better equipped than the police to address the issues behind family tensions. The emphasis was to refer not only victims to other agencies, but also the perpetrators, with victim support coordinators appointed within the police to assist in this process (*Ten-One*, 27 Aug. 1993:11). Consistent with the Arms Amendment Act 1992, which allowed confiscation of firearms belonging to offenders subject to non-molestation or non-violence orders, considerable emphasis was also placed on identification of firearms ownership (see Newbold 1997). In what was now being recognised as an area of major political significance, a sincere effort was made to train officers properly for their new role and to monitor their performance properly on a new computerised database.

To assist with the monitoring process, in 1994 a series of codes was created on a set of new forms known as POL 400s, which had to be filled in whenever a violent domestic incident was reported. This is still in use today. Terms such as K1 (domestic incident, no violence), K6 (domestic violence, no arrest due to minor offence/insufficient evidence) and K9 (crime identified, arrest made) assist in the recording process. Excluding K1 incidents, which do not go on the POL 400s, details of all incidents involving violence (such as victim/offender details, who reported the incident, presence of any court orders, physical injury, etc) are entered into the family violence database. Thus a case file is compiled which can inform police attending future incidents and assist their response strategy.

THE DOMESTIC VIOLENCE ACT 1995

In 1995, partially influenced by a Justice Department survey into domestic violence in New Zealand (Leibrich et al. 1995), the Domestic Protection Act 1982 was repealed and replaced by the Domestic Violence Act. Notwithstanding the flawed methodology of the background report (see Newbold 1995), the Act has been considered a significant step towards combating the realities of domestic violence in New Zealand. Central to the new law is the protection order. Since the law came into effect on 1 July 1996, any person claiming to be the victim of domestic abuse (known as the "applicant") has been able to apply to the Family Court for immediate invocation of a temporary protection order. A temporary protection order prevents an alleged offender (the "respondent") from entering an applicant's property or neighbourhood, from contacting the applicant, from physically or psychologically abusing the applicant, from impeding the applicant's freedom of movement, and from possessing any firearm. A temporary protection order can be made without notice, and unless legally challenged it becomes permanent after three months.

Other features of the Act are:

- the definition of "domestic violence" is expanded to include psychological abuse, intimidation and threats, as well as sexual and physical violence
- protection orders can be made against flatmates and people in close relationships not living together, as well as those living together in homosexual, heterosexual *de facto* and married relationships
- protection orders can be made in relation to the associates of an alleged offender
- applications for protection orders can be made on behalf of another person or of a child
- any person breaching a protection order can be arrested without warrant
- the provision in the Domestic Protection Act allowing offenders to be detained for 24 hours without being charged is repealed – all arrested offenders must now be charged (see Newbold 2000:128–9).

The Domestic Violence Act thus provides a powerful weapon to combat the problem of domestic violence. The same year the Act became law, in an analysis of previous policy Schollum (1996) was critical of police compliance, arguing that cautioning was still used inappropriately on some occasions of evident violence, particularly when a victim was conciliatory. She also noted that supervision of officer compliance in many districts was poor, while in others it appeared that a "mandatory arrest" policy was being enforced. It was clear that the purpose and meaning of domestic violence policy were understood variously in different parts of the country and that high levels of inconsistency remained in practice. It was hoped that the new law would change this.

The requirements of the new Act, coupled with Schollum's findings, generated a further policy update in 1996, which remains active to this day. The three important components of this most recent initiative are that:

- children witnessing domestic violence can be vicariously damaged by it and thus may need protection themselves
- district family violence co-ordinators have been appointed with responsibility for seeing that POL 400 forms are filled in correctly, and for multi-agency liaison in family violence matters
- officers contemplating action other than arrest in a domestic violence situation are required to consult with a supervisor before acting (*Ten-One* 121/11), which means the discretionary powers of officers have become limited.

EFFECTIVENESS OF THE 1996 POLICY

In spite of this, subsequent research by Carbonatto (1998) at Wellington, Porirua and Waitakere found clear indications that officers are still not always complying with policy. Like Schollum, Carbonatto found that officers' awareness of the policy was often incomplete, and whether they were aware of it or not they did not always

comply with it. POL 400 forms were only filled out in just over half of the cases surveyed, and about 20% of offenders, contrary to instructions, were immediately released following their arrest. Moreover, as Schollum found, there continued to be significant inconsistency in the application of policy between the three districts surveyed. Commitment to the policy varied between senior officers, with some expressing no particular faith in it at all.

A later, unpublished, study by Cross (2006) on police in Christchurch produced similar results. In this research, approximately one-third of all POL 400s could not be located, and when violent domestic incidents recorded with the more reliable Communications Centre system were analysed (known as the CARD system), only 20% of the violent incidents that were attended resulted in an arrest. Although the study found that managers and officers both expressed high levels of confidence in the pro-arrest policy, front-line police apparently chose to exercise their discretion not to arrest in the great majority of situations.

POLICY IMPLICATIONS

Thus it appears that, in spite of more than a decade of adherence to a presumptive arrest strategy followed by multi-agency involvement, police understanding of and compliance with established policy is still inconsistent. It is of interest, however, that New Zealand is not alone in this problem – in fact our experience is typical. Even the Minneapolis study, on which the strategy was originally based, was flawed in this way. Inquiry subsequent to the initial report found that, despite instructions to respond according to the assigned colour codes, numerous officers exercised their own discretion in the handling of offenders (Binder and Meeker 1988, Sherman and Berk 1984, Zorza 1994). Moreover, although establishment of pro-arrest policies in various American locations following the release of the Minneapolis results was generally followed by higher arrests (Buzawa and Buzawa 1990, Lawrenz et al 1988, Sherman and Berk 1984), rates soon dropped back to something closer to what they had been beforehand, partially as a result of judicial criticism of a wave of "ridiculous arrests" (Buzawa and Buzawa 1990:101, 1993, Ferraro 1989). Where presumptive arrest had been in place for some time compliance was higher, but considerable discretion was still exercised (Feder 1998, Jones and Belknap 1999).

In Britain the story has been the same. Since 1987 a series of force orders and Home Office circulars have recommended pro-arrest strategies. But as happened in the United States, implementation has been sporadic, and policy has been frequently ignored or proven difficult to implement (see Edwards 1989, Hamner and Griffiths 2000, Grace 1995, Hoyle and Sanders 2000, Kelley et al 1999, Morley and Mullender 1994, Plotnikoff and Woolfston 1998). Similar problems have also been found in Australia (Mugford and Mugford 1992).

It appears that the problem with pro-arrest strategies is that irrespective of what policy documents declare, officers at the front line have the final say and still choose to exercise broad discretion when it comes to dealing with domestic violence situations in real life. This is because domestic violence incidents are often the result of a highly complex series of emotive interactions and the evidence necessary to justify an arrest and subsequent prosecution is frequently absent or unclear. Although it is beyond the scope of the current paper to discuss these in detail, Cross and Newbold (2007) have identified a number of factors that militate against a pro-arrest response. Prominent among these are:

- absence of evidence of assault
- evidence of only minor assault
- ambiguous evidence relating to who assaulted whom
- refusal of witnesses and victims to talk to the police
- in cases of mutual assault, the numerous logistical problems (such as organising the care of any children) that arise if both parties are arrested
- the possibility that an assault was in self-defence
- a history of previous complaints followed by a victim's refusal to testify.

In spite of clear evidence that Māori women experience considerably more serious and greater levels of domestic violence than non-Māori (Morris et al. 2003:142–144, Newbold 2000:123–4), there are no data to indicate whether ethnicity is a factor in the arrest decision. The bottom line, where police are concerned, is whether there is evidence to justify arresting and charging a suspect with a specific offence, and whether the evidence is liable to stand up in court. If the evidence is weak the case is likely to collapse, leading to criticism of the police, a loss of public confidence, and wastage of money and time.

Given these caveats it is probable that, irrespective of what policies are drafted, arrest rates will always remain relatively low. Whether this means that the fight against violence is being lost is debatable. Although the results have not been as dramatic as many hoped, the introduction of pro-arrest policies has usually produced higher arrest rates than before. This may be due to greater police consciousness about the problem of violence generally more than to any commitment to policy itself. But it looks as though pro-arrest may not be the magic bullet for domestic violence that the Minneapolis Experiment originally indicated. The many methodological problems identified in Minneapolis led to questions about its findings (Sherman and Berk 1984), and subsequent research has been unable to reproduce them. In a replication of Minneapolis in Omaha, Nebraska, Dunford et al. (1990), for example, found that arrest reduced recidivism in the first six months but made little significant difference after one year. Moreover, the Omaha project, like other American replications

conducted in Milwaukee (Wisconsin), Colorado Springs (Colorado), Metro-Dade (Florida) and Charlotte (North Carolina), found that although arrest sometimes appeared to reduce recidivism, in other cases it aggravated it. The studies identified a variety of other variables at work, such as unemployment, previous offences, follow-up period and offender's presence when police arrived, and the weight of the factors differed between studies (Zorza 1994). In other words, the results of arrest research are various and inconclusive.

Reliable statistics about domestic violence levels are difficult to get, and estimates of prevalence levels vary considerably according to research methodology (Morris et al. 2003:144–148). Nonetheless, New Zealand police data may give some clue as to the Domestic Violence Act's impact on family disturbances. Between 1995 and 2006, when reported violence overall fell by about 10%, domestic disputes reported to the police almost doubled and charges laid under the Act increased by about 80% (*Appendices to the Journals of the House of Representatives* G.6 1994–95, 2006–07). Given the similarity of the two rises and the fact that in both cases the increases have been steady year by year, the changes are probably real. Thus there is no reason for confidence that the provisions of the 1995 Act, or the policies that followed it, have had any positive impact on the incidence of serious domestic disputes in New Zealand.

SUMMARY AND CONCLUSIONS

The evolution of domestic violence policy in New Zealand and the problems encountered along the way mirror international changes and reflect wider social trends. Up to the 1980s the New Zealand Police adopted a minimalist stance in responding to domestic violence. However, similar to overseas developments, from 1970 onward the activities of the feminist movement heightened awareness about the problem, eventually leading to significant changes in policy. As was the case with many other Western jurisdictions, New Zealand was profoundly affected by the release of the results of the Minneapolis Experiment in 1984 and a variety of pro-arrest initiatives followed. The most recent, arriving on the heels of the Domestic Violence Act 1995, is still in effect today.

As has happened everywhere, putting pro-arrest policies into effect has proven more difficult than anticipated. While largely supportive of presumptive arrest in principle, New Zealand police nonetheless exercise considerable discretion in the way the policy is interpreted. The greatest inhibiting factors appear to be the legal requirement of not arresting without sufficient evidence to prosecute, and the practical difficulties that arise when parties have assaulted one another. Without seriously imposing on citizens' rights to freedom from arbitrary arrest, it is difficult to envisage any easy solution to this problem.

But perhaps it does not matter too much. If the value of pro-arrest is unclear, then the long-term worth of the current policy may lie primarily in its consciousness-raising potential, greater police competence and sensitivity in this area, and the relief that is available through the use of protection orders. Like crime generally, domestic violence is an institutionalised feature of our society which no amount of policing is likely to eradicate. The best that policy makers can aspire to, in our opinion, is to raise awareness about the problem of family violence in the hope that widespread condemnation of it will follow, leading to further change for an issue that was once regarded more as a matter of private business than one of serious public concern.

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