

Family violence and the pro-arrest policy: a literature review

Prepared for the Ministry of Justice by

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Foreword

This review brings together empirical international research findings about the impact of pro-arrest policies on family violence and places them in the context of the development and implementation of family violence policy in New Zealand.

The review adds to our understanding of the complexity of the issues surrounding the criminal justice response to family violence. While arrest appears to have some deterrent effect, the consensus now appears to be that no single intervention is sufficient to prevent reoffending and that the preferred approach is for arrest to be part of a coordinated community response to family violence.

It is an opportune time for the publication of this review given the high priority being placed by the Government upon reducing family violence. In June 2005 the Taskforce for Action on Violence Within Families was established to advise the Family Violence Ministerial Team on how to make improvements to the way family violence is addressed and how to eliminate family violence in New Zealand.

In July this year the Taskforce produced its first report. One of the areas highlighted in the Taskforce report was the need to ensure victims are kept safe and offenders are held accountable. In particular the report raises the important matter of ensuring the police deal with breaches of protection orders appropriately. This review is directly relevant to that issue and should be of assistance to the police in developing their approach for dealing with family violence incidents in a more effective way.

The Taskforce report also mentions the importance of the need to learn from what works. This literature review is directly relevant to that objective, as it gives a good outline of what has been learnt to date internationally in the area of arrest. The recognition of the importance of arrest being part of a coordinated response to family violence also supports the more holistic approach advocated in the Taskforce report.

This literature review, therefore, will inform the on-going work of the Taskforce and the issues based review of the Domestic Violence Act 1995 which is currently being undertaken by the Ministry of Justice. It will also be a useful resource for policy makers, academics and other interested parties.

Belinda Clark
Secretary for Justice

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Executive Summary

Introduction

This literature review examines concerns raised regarding the police pro-arrest response at domestic violence incidents. In New Zealand the pro-arrest provisions instruct officers to arrest offenders where there is sufficient evidence and that the victim does not have to make an official complaint. This was first introduced in 1987 under the Domestic Dispute Policy (Commissioner's Circular 1987/11). The current principles, policy and procedure for police response to family violence are outlined in the 1996 Family Violence Policy (FVP) (Police Commissioner Policy Circular 1996/2) which is based on three core principles: victim safety; offender accountability; and consistent practices across agencies and groups.

The two main concerns this review focuses on are, first, findings from several studies from the United States that claimed the pro-arrest response may actually increase violence among various subgroups in society such as unemployed and minority ethnic communities (Berk et al. 1992; Sherman 1992a, 1992b; Sherman et al. 1992c; Sherman et al. 1992d). The second area of concern is the directive nature of the pro-arrest response and the impact on victims of taking the choice of pressing charges away from them.

To examine the validity of these concerns the review outlines the key issues and research findings identified in studies on police pro-arrest policies from both the international and New Zealand literature.

Outline of literature review

Chapter Two of the review traces the historical development of the pro-arrest response and its intended purposes and Chapter Three outlines the principles and operational guidelines of the current New Zealand Police Family Violence Policy.

Chapter Four examines national and international studies on police practice and implementation of pro-arrest policies and highlights some innovative models that have been developed overseas. Chapter Five investigates the evidence on the differential effect of the pro-arrest policy on offenders. Chapter Six focuses on the research about victim preferences and the debates around victim choice and empowerment. The final chapter concludes with a summary discussion on the debates presented in the review.

Findings from the review

Differential impact on offenders

Findings from the Spouse Abuse Replication Project (SARP) studies in the United States suggested that arrest may actually cause increased violence among certain subgroups of offenders.

More recent analysis of the SARP studies on the effect of arrest has shown a significant, although modest reduction effect on reoffending across all five study sites and no increase in violence (Maxwell, Garner & Fagan 2001, 2002). This later analysis also highlighted that arrest may have a different impact on different types of offenders, but showed no increase in violence compared to the other types of police response such as mediation or separation. Variables such as age and prior offender history were stronger predictors of repeat offending.

The focus on offender demographic characteristics is ultimately not useful when considering the arrest response of police at domestic violence incidents. Rather, it is individual offender behaviour that should be focused on and the evidence of an offence being committed. Maxwell, Garner and Fagan's (2001, 2002) analysis of the SARP studies found that it is a minority of offenders who continue to offend regardless of whether they are counselled, temporarily separated or arrested. Victimization surveys and other research on family violence confirm this.

Maxwell, Garner and Fagan (2001) suggest future research should focus on identifying such offenders and how to prevent their partners (or ex-partners) from being revictimised further.

The methodological and theoretical basis of the SARP studies has been widely criticised for a variety of reasons, including that they were premised on the deterrent effect of the criminal justice system. This has been termed *the preventive conceit*, that is, that criminal justice intervention can act as a sole solution to prevent future offending. While the deterrent effect of arrest and criminal justice processes is recognised to impact on some offenders, it is seen by critics as too simplistic and naïve a solution for the complex dynamics of family violence. Most current authors on family violence conclude that any *single* intervention by government agencies is not sufficient to solve reoffending.

Victim Choice

Pro-arrest policies have been criticised for disempowering victims by not taking into account their preferences in regard to arresting the offender (Hoyle & Sanders 2000; Mills 1999). The main debate in this area is the capacity of victims to make a decision regarding the arrest (and prosecution) of the offender. Critics of the pro-arrest policy have argued that victims are essentially revictimised by a paternalistic criminal justice system that takes away their power to choose what is best for themselves.

Proponents of the pro-arrest policy counter that "free choice" by victims is a myth if the abusers are exercising coercive control over their lives (Stark 2000a). State intervention in the form of the pro-arrest policy is therefore supposed to assist in counteracting the control of

the batterer, assisting victims to a stage where they are more able to make decisions free from the coercion and control of the batterer.

What is apparent from the review of the literature is that there are diverse types of family violence and no consensus among victims about what their preferred police response would be. The majority of victims in the studies cited wanted the violence to stop and the offender removed. Only about half wanted the offender arrested. However, one major reason victims did not want the offender arrested was fear of retaliation, which is what the pro-arrest response is designed to overcome in order to promote victim safety and offender accountability. Others did not want the offender criminalised and wanted responses such as removal, warning, and facilitation of rehabilitation and help for the offender.

Qualitative studies that asked victims how they perceived police response demonstrated that the way police treat them can have a large impact on whether they were satisfied and whether they would use the police again. This has implications for a victim's feelings of control and empowerment.

While the pro-arrest stance implicitly does not take account of victim preferences this is not the case in practice. Studies demonstrated that police do use their discretion, as they inevitably must in assessing an incident, and that some do take into account victims' preferences. While there are several studies that examine police implementation of the Family Violence Policy in New Zealand, there is a need for updated research to be carried out in this area.

Police and a coordinated response

Both of the issues discussed in this literature review – differential effect and victim choice – are based on the concern that a blanket policy that promotes preferential intervention can not cater to the needs of a diverse population. It is evident that the pro-arrest response cannot be assessed without considering how it is actually implemented and the contextual factors that surround its implementation. The American SARP studies have been criticised for framing the pro-arrest question in terms of causation and the effect of a single intervention. This has set the debate along the path of analysing one aspect of the criminal justice response to family violence. This review highlights the shortcomings of this approach and the importance of taking into account the perspectives of victims and offenders.

The current New Zealand Family Violence Policy 1996 incorporates a coordinated interagency approach that addresses areas such as child victims, victim support and offender treatment programmes. The level of coordination and implementation of the inter-agency approach is extremely important to the effective implementation of the family violence strategy. The Family Safety Teams pilot project is a recent example of this type of approach.

In the brief examination of alternative models, it was found that the pro-arrest response is a central tenet in family violence approaches used by police internationally. What differentiates some models is a variety of strategies used in conjunction with the pro-arrest response.

1 Introduction

This literature review examines the debates surrounding police pro-arrest policies implemented in response to family violence¹ offences. The main purposes of this review are to examine the evidence about pro-arrest policies and to identify good practice by criminal justice agencies in response to family violence. The historical development and implementation of the family violence policy (which includes provisions relating to pro-arrest) in New Zealand is also described. The current policy in New Zealand derives from the recognition that violence is unacceptable no matter where it occurs or the relationship between perpetrator and victim.

This family violence policy was part of a major change nationally and internationally towards treating family violence as a crime and changing police response by instructing them to arrest offenders if there was evidence an offence had been committed at a domestic violence scene. Pro-arrest policies were also designed to take the responsibility of pressing charges away from the victim on the premise that victims might be too afraid.

Pro-arrest and mandatory arrest² policies have raised a number of concerns. First, several studies from the United States claimed the pro-arrest response may actually increase violence among various subgroups in society such as unemployed and minority ethnic communities (Berk et al. 1992; Sherman 1992a, 1992b; Sherman et al. 1992c; Sherman et al. 1992d). This has prompted policy advisers in New Zealand to consider whether the pro-arrest policy provides the most effective response for our diverse population, particularly Maori, Pacific peoples and lower socio-economic groups.

The second area of concern is the directive nature of the pro-arrest response and the impact on victim³ agency/choice. Does this practice only serve to disempower victims further by taking away their ability to choose whether they want offenders arrested?

Underlying these two areas of concern is the view that the needs of a diverse population cannot be met by a blanket policy that imposes a mandatory response. To examine the

¹ In regard to terminology 'family violence' and 'domestic violence' have been used interchangeably in the literature, while some authors use 'domestic violence' to refer specifically to partner violence. Other authors prefer the term 'intimate partner violence' (IPV) to differentiate between violence between partners or ex-partners and violence between people with other domestic relationships. This literature review predominantly uses the term 'family violence' to reflect the terminology used in the NZ Police Family Violence Policy.

² The terms 'mandatory arrest' and 'pro-arrest' policies are also used interchangeably in the literature but refer to different directives in police family violence policies. In less serious cases of domestic violence mandatory arrest specifies a requirement to arrest, while pro-arrest specifies a presumption to arrest.

³ The term 'victim' is used throughout the review primarily because of the criminal justice focus on pro-arrest that employs a victim/offender terminology. It should be noted, however, that there is debate around the term 'victim' with some preferring the term 'survivor'. Kirkwood makes a valid point in her discussion of these two terms arguing 'that it is more useful to use words which describe *processes* (*victimisation, survival*) rather than ones which label people (*victim, survivor*)' (cited in Robertson 1999:46).

validity of these concerns this review aims to outline the key issues and research findings identified in studies on police pro-arrest policies from both the international and New Zealand literature.

1.1 New Zealand's approach to family violence

For almost the last 30 years New Zealand has to varying degrees taken a coordinated approach towards family violence incorporating criminal justice, social welfare and community organisations. *Te Rito New Zealand Family Violence Prevention Strategy* was launched in 2002 by the Ministry of Social Development to coordinate the government's response to family violence (Family Violence Focus Group 2002). *Opportunity for All New Zealanders*, which summarises the government's social policy and strategies for sustainable social development, identifies family violence as one of the top five critical social issues for sustained interagency attention (Office of the Minister for Social Development and Employment 2004).

It is generally acknowledged that the complexities of family violence are best addressed by a combination of different interventions and processes rather than any single intervention (Dobash & Dobash 2000; Fagan 1996; Holder 2001). Therefore, an examination of the pro-arrest policy should take into account how this policy fits into the overall response of the criminal justice system and the various coordinated agencies (Hoyle and Sanders 2000; Robertson 1999; Stanko 1995a). It is also important to consider the effectiveness of this practice within the context of victims' and offenders' lives (Carbonatto 1997; Robertson 1999).

However, the parameters of this literature review necessarily limit the main discussion to the two areas of concern outlined above. The scope of this review is not intended to cover the multiple responses to family violence and for a recent stocktake and discussion of family violence initiatives in New Zealand see the Families Commission report *Beyond Zero Tolerance: Key issues and future directions for family violence work in New Zealand* (Fanslow 2005); and New Zealand Parliamentarians' Group on Population and Development (2005) report *Creating a Culture of Non-violence (NZPPD 2005)*. For a review of primary prevention programmes and media campaigns to prevent violence see the Ministry of Health and Ministry of Social Development report *How can the literature inform implementation of Action Area 13 of Te Rito: Public Education and Awareness* (Davies et al. 2003).

1.2 Chapter outline

The review begins by describing the historical development of the pro-arrest policy and its intended purposes. Chapter Three outlines the principles and operational guidelines of the current New Zealand Police Family Violence Policy.

Chapter Four examines national and international studies on police practice and implementation of pro-arrest policies, and highlights some innovative models that have been developed overseas. Chapter Five investigates the evidence on the differential effect of the pro-arrest policy on offenders. Chapter Six focuses on the research about victim preferences

and the debates around victim choice and empowerment. The final chapter concludes with a summary discussion on the debates presented in the review.

2 Historical development of the pro-arrest policy in New Zealand

Based on that research we felt justified in risking a major intervention that would affect the behaviour of those most directly involved in the dispute. As a result the arrest policy (where criminal offences could be established) became the major intervention plank of this. (Ford 1986:35)

2.1 Introduction

This chapter explores the history of the New Zealand Police response to family violence and in particular the development of the pro-arrest policy in New Zealand. The literature on police responses to family violence is generally in agreement over the historical development of approaches and the introduction of mandatory or pro-arrest policies. Three distinct chronological phases in the police approach to family violence have been identified in New Zealand and overseas (Buzawa & Buzawa 2003; Ford 1986:10):

- a) *The Traditional Approach.*
- b) *The Crisis Intervention Approach.*
- c) *The Arrest Method.*

2.2 Police approaches prior to pro-arrest

2.2.1 The Traditional Approach

The 'Traditional Approach' is described as 'non-involvement' or 'reluctant intervention' by police, and was the prevalent approach prior to 1970 in the majority of police departments both here and overseas (Buzawa & Buzawa 2003; Ford 1986). Many authors trace the origins of non-intervention to views about marriage and the family which are rooted in cultural and religious traditions.⁴

These traditions perpetuated ideas about family relationships; significantly the subordinate position of the wife to her husband and the private nature of the family (O'Donnell & Craney 1982, Pilott & Good 1991). Feminist and some non-feminist authors such as violence researchers described the disadvantages women faced within traditional marriages and the difficulties many women experienced in trying to get help to stop family violence. A

⁴ For discussions on the New Zealand context see Asiasiga & Gray 1998; Balzer et al. 1997; Carbonatto 1997; Glover 1993; Pilott & Good 1991; Robertson 1999. For discussions on the South Pacific context see for example Jolly 1998; Langmore 1989; Lukere 1997; Toren 1994.

perception of separation between public and private spheres was further supported by economic structures. Hence a domestic incident was not regarded as the responsibility of the state; rather it was a private matter to be resolved between a husband and wife.

The imposition of European cultural ideals and a Westminster-based criminal justice system has been criticised by indigenous colonised peoples. The report on Maori Family Violence in Aotearoa (Balzer et al. 1997) points out that the similarities in the 'colonial histories of Australia, America and Aotearoa could well explain the commonalities around problems being faced by indigenous people and the forms of resolutions or solutions which have been suggested' (Balzer et al. 1997:58). The report outlines a substantial change in gender relations and household structure within Maori society that promoted the husband to head of household and served to undervalue women's contribution and status within the family. The authors propose that the subordination of women promoted by early European colonialism coupled with assimilation policies that broke down traditional practices contributed towards family violence (Balzer et al. 1997). The imposition of a European criminal justice system that took redress and resolution away from the whanau and hapū has also been criticised.

In the wake of colonisation, Maori structures and mechanisms of social control have been damaged, interfering with the strength and ability of whanau, hapū and iwi to protect women. Gender relations and the status of Maori women have been negatively affected. (Crichton-Hill 2004:74)

2.2.2 The Crisis Intervention Approach

The second phase adopted by police departments is the 'Crisis Intervention Approach', which had an emphasis on counselling and mediation for the parties involved. This approach was also adopted in New Zealand and can be seen as a continuation of the 'private' nature of the family. Police were to act as mediators in a crisis situation and promote reconciliation, resorting to arresting the aggressor as a last resort (Buzawa & Buzawa 2003; Ford 1986; Scutt 1982; Sherman 1992b). It is interesting to note the reasons given by the Training Directorate of the New Zealand Police advising police to avoid making arrests if possible:

- a) *The likelihood that such action will contribute to family stress rather than relieve it.*
- b) *The fact that if the aggressor was arrested he may, on release, become even more violent.*
- c) *Arresting the aggressor may involve financial hardship for the family.*
- d) *Doubts by the police that the prosecution will proceed as complainants may want to withdraw charges.*
- e) *The police being "used" by the spouse as a means to remove the offender from the home. (Ford 1986:12)*

The crisis intervention approach has been criticised for not treating domestic violence as a crime and only encouraging arrest to be used as a last resort. The Training Directorate identified problems with the crisis intervention approach, such as police officers' limited knowledge of what assistance was available for victims; the limited time available for police when attending these incidents; age differences where young police officers may not be taken seriously by older people involved in disputes; and mediation advice being of little use with drunk people (Ford 1986).

Ford (1986:13) noted that many young officers in New Zealand did not get any real training in how to deal with domestic disputes until they were working out in the field under the tuition of a more experienced officer 'who may, or may not, set a good role model'. While the crisis intervention model was introduced here and promoted through police training, Ford (1986:13) states that 'most New Zealand Police officers still saw the traditional non-involvement role as being their method of handling domestic disputes'.

2.3 The arrest policy

The third and current phase of police response has been called the 'Arrest Policy' and began in the late 1970s (Ford 1986; Buzawa & Buzawa 2003). This reflects the development of pro-arrest and mandatory arrest policies in police responses and a move away from the previous two approaches by criminalising domestic violence and limiting police discretion.

Internationally and in New Zealand the impetus for changing responses to domestic violence came from two general directions, the feminist movement and the criminal justice system, particularly from within the police.

2.3.1 Feminist influences

Internationally members of the feminist movement were concerned that police discretion on whether to arrest a male offender was compromised by systemic and personal bias in favour of the assailant. At the very least police inaction or leniency could be interpreted as condoning the violent behaviour (Felson, Ackerman & Gallagher 2005; Ford 1986). At worst, misogynist attitudes of some police left women victims feeling doubly violated. Reasons for the promotion of the pro-arrest policy included lessening of discriminatory responses by police by limiting their discretion, and encouraging the criminal justice system as a whole to treat domestic violence more seriously (Buzawa & Buzawa 2003).

Furthermore, theories about the dynamics of domestic violence provided justifications for promoting mandatory or pro-arrest policies. Particularly influential was Lenore Walker's study⁵ on the psychological impact of battering on women victims, which she called 'Battered Woman Syndrome'. The central tenet of this syndrome is 'learned helplessness', which is a theory that 'predicts that the ability to perceive your effectiveness in being able to control what happens to you can be damaged by some aversive experiences that occur with trauma' (Walker 2000:10).

Those who have developed learned helplessness have a reduced ability to predict that their actions will produce a result that can protect them from adversity. As the learned helplessness is developing, the person (a woman in the case of battered women) chooses responses to the perceived danger that are most likely to work to reduce the pain from trauma...It is important to recognize that their perceptions of danger are accurate; however, the more pessimistic they are, the less likely they will choose an effective response, should such a response be available (Walker 2000:10-11).

⁵ The Battered Women Research Center at Colorado Women's College in Denver, Colorado undertook a study of 435 battered women in the Rocky Mountain region from July 1978 to June 1981.

Thus state intervention in the form of mandatory or pro-arrest policies was promoted as a way of helping and protecting battered women who were psychologically traumatised. Walker's learned helplessness theory does not mean that victims are passive and helpless; rather the strategies they choose to respond to their abuse narrow to those that have the highest predictability of a successful outcome (Law Commission 2000). This may involve submitting to the batterer so that the violence will be minimised or stop.

2.3.2 Criminal Justice system influences

Some police authorities also began to question the effectiveness of the mediation approach and instigated more legal sanctions to deal with family violence. This process has been dubbed the 'criminalisation' of domestic violence. Jeffery Fagan (1996) discusses the criminalisation process and states that it was assumed that the promotion of more legal interventions, including pro-arrest and other mandatory policies, would act as a deterrent. Legal sanctions would therefore reduce domestic violence. This process was also influenced by external pressures, such as women's advocacy groups, and in the United States the 1976 New York class action litigation against criminal justice agencies for failing to assist victims and arrest batterers (Scutt 1982).

Within the framework of legal sanctions, Fagan identifies the convergence of several approaches to family violence:

These interventions to control violence against adult intimate partners reflect several different policy goals and separate but parallel tracks: criminal punishment and deterrence of batterers, batterer treatment, and protective interventions designed to ensure victims' safety and empowerment (Fagan 1996:8).

2.4 New Zealand influences for change

The New Zealand development of the pro-arrest policy was primarily influenced by the following bodies and reports:

- National Collective of Independent Women's Refuges (NCIWR);
- the *Domestic Dispute Research Project* 1986 conducted by Sergeant Greg Ford;
- the interagency committee, Family Violence Prevention Coordinating Committee (FVPCC) chaired and serviced by the then Department of Social Welfare 1986-1992;
- the *Hamilton Abuse Intervention Pilot Project* (HAIPP) 1991-1994; and
- the *Report of the Ministerial Committee of Inquiry into Violence*⁶ March 1987 (Taylor, 1997:2).

⁶ The *Report of the Ministerial Committee of Inquiry into Violence* will henceforth be referred to as the 'Roper Report', as the late Sir Clinton Roper, a High Court Judge, headed the Ministerial Committee.

2.4.1 Pro-arrest Policy development⁷

This section outlines major influences on the policy development of the pro-arrest policy in New Zealand.

Mapping the context – the NCIWR 1983 Synergy Report

To strengthen the case for government funding, the National Collective of Independent Women's Refuges (NCIWR) commissioned research on the status of family violence in New Zealand and service provision provided by refuges and other services. This resulted in *A Socio-Economic Assessment of NZ Women's Refuges* by Synergy Applied Research (1983). The Synergy Report provided an important contribution to knowledge about family violence at that time and provided a basis for developing future initiatives and making budget bids to government.

The 1985 Family Violence Conference

In 1985 a family violence conference was held at the Royal New Zealand Police College, which was jointly organised by Police and NCIWR. This conference aimed to address ways of coordinating an approach to domestic violence.

7

At that conference Greg Ford (a police officer) presented a paper outlining his study trip to the United States and an examination of their recently introduced pro-arrest policy. The evidence was pointing towards a change of 'philosophy and approach'.

There was reportedly much debate over the merits of the pro-arrest policy at the conference. A resolution was passed for a national level coordinating committee, resulting in the establishment of the Family Violence Prevention Coordinating Committee (FVPCC) in mid-1985. One of the reasons for the establishment of the FVPCC was so that the pro-arrest response could be looked at in more depth.

Family Violence Prevention Coordinating Committee

The FVPCC was a high level committee comprising government agencies and community organisations and was convened and operated from the then Department of Social Welfare.⁸

FVPCC terms of reference were:

- To facilitate coordination and liaison between the various agencies and departments involved with aspects of family violence;

⁷ I would like to thank Raewyn Good, who was FVPCC Executive Officer during that time, for informing me about much of the policy development in this section.

⁸ Membership included the Chief Executives of Social Welfare, Education, Health, Manatu Maori, Women's Affairs, Justice, Youth Affairs, Pacific Island Affairs; Commissioner of Police; General Manager ACC; NCIWR; Rape Crisis and Related Groups of Aotearoa; Principal Family Court Judge; Te Kakano o te Whanau; National Men for Non-Violence Network; Runanga Tane; Pacific Women's Project. The Maori Women's Welfare League attended as an observer/advisory capacity.

- To coordinate and oversee the development of an interagency approach to family violence;
- To ensure that programmes, materials and methods used in such activities include culturally appropriate education, prevention, and treatment options in order to recognise and reflect the multicultural nature of New Zealand.

The FVPCC was disestablished in 1992 and replaced by the Family Violence Advisory Committee and the Family Violence Unit.

2.4.2 The influence of research findings

This section outlines the international and national research findings that had significant influence on the development of the pro-arrest policy in New Zealand.

The Minneapolis Study

During 1981 and 1982 Laurence Sherman and Richard Berk (1984) carried out the most influential research on pro-arrest policies, in the Minneapolis Domestic Violence Experiment. This study was commissioned by the United States Police Foundation and the Minneapolis Police Department. The study was premised on the theory that legal sanctions would deter further violence.⁹ On the basis of the findings of this research, which reported that mandatory arrest had a deterrent effect on future violence, many police departments throughout the United States implemented a pro-arrest policy. The Minneapolis experiment and the subsequent replication studies will be discussed in Chapter Five.

The Minneapolis experiment also influenced police in New Zealand, as Greg Ford (1986:35) wrote:

[b]ased on that research we felt justified in risking a major intervention that would affect the behaviour of those most directly involved in the dispute. As a result the arrest policy (where criminal offences could be established) became the major intervention plank of this.

Ford's New Zealand Research

Ford's research, *Research Project on Domestic Disputes* (1986), was conducted in the Hamilton district to 'see whether the police should change their policies in regard to the way in which they perceive and handle complaints known as domestic disputes' (Ford 1986:vii). Ford's research was undertaken to see if the theory¹⁰ of change would work in practice, and in particular, benefit victims.

⁹ Fagan (1996:35) observes that the Minneapolis experiment 'was noteworthy not because it was an evaluation of arrest policy for domestic violence. In fact, it was a test of deterrence theory, and domestic violence was not its primary concern'.

¹⁰ The theory that underlies Ford's (1986:ix) study developed out of psychology and involves behavioural interventions that were perceived to 'assist all people with the same types of problems rather than just concentrating on the individual unit. The approach believes that solutions to problems will only come about by recognising the wider context and being able to provide an all round service which co-ordinates and uses all the participants.' Therefore it is not just up to police to control, but also other organisations and individuals who are involved.

During March/April 1986, front line police officers were instructed to implement four changes in their response to domestic violence call outs. These changes were then evaluated during August/September 1986.

The changes included:

- All domestic dispute complaints were officially recorded.
- Re-conceptualising the coding of domestic disputes according to the applicable offences rather than coding domestic disputes under a minor 'incident code'.
- Attempts were made to put complainants in touch with social service agencies so they could be provided with ongoing support.
- More arrests were made in cases where a prima facie offence was established without the need for an official complaint from the victim.

The short-term evaluation that Ford conducted found that both victims and police favoured the pro-arrest policy. Victim accounts showed that there was less violence in the follow-up period. However, this has to be treated with caution, as the maximum period was only six months after police intervention.

The Roper Report

The Roper Report (March 1987) was also influential in changing attitudes towards domestic violence and endorsed Ford's recommendations (Roper Report 1987:103).

1. *That the Police adopt the methods applied and evaluated by Sergeant G. W. Ford, M.Soc.Sci. in Hamilton and his recommendations that in cases of domestic violence,*
 - (a) *Police called to a domestic dispute arrest the offender, whether or not a complaint has been made by the victim, where there is clear evidence of an offence.*
 - (b) *Referral to treatment agencies be automatically initiated in all such cases.*

Particular impetus came from the finding that possibly as much as 80% of all violence occurred in the home, which led the authors of the Roper Report to conclude 'family violence is the cradle for the perpetuation of violence and crime in the community' (cited in Taylor 1997:2). The Roper Report supported an approach towards family violence that addressed this complex issue on different levels and through different agencies. The legal sanctioning of the offender, and victim protection were both to be undertaken. Furthermore the approach towards the offender was twofold: treatment and punishment.

Overseas studies have shown for example, that neither treatment alone nor punishment alone, is very effective in reducing family violence. A combination is. The offender needs to know that his apprehension will be sure and swift. Victims have to be similarly assured. Under the current legislation, the practices of the Police, the ignorance of the public, and the unwillingness of helpers to invade the sanctity of the family, these results are by no means certain. Our recommendations, therefore, attempt to address the issue by urging that existing legislation is utilised to its fullest extent and that new legislation, public education and practices are introduced to make families safer (Roper Report 1987:101).

2.5 Establishment of the pro-arrest policy in New Zealand

The influences described above combined with lobbying by the FVPCC for the pro-arrest policy resulted in it first being introduced in 1987 under the Domestic Dispute Policy (Commissioner's Circular 1987/11). The policy instructed that an offender be arrested where there was sufficient evidence and that the victim did not have to make an official complaint. However it was found that the policy was not being evenly implemented by police (Smith 1991).

2.5.1 Duluth to Hamilton

The FVPCC realised that a change in arrest policy alone would not dramatically reduce reoffending. Overseas experience had shown that until 'formal, compulsory education programmes were introduced and the system of dealing with offenders is structured to ensure that the community response is always consistent, a significant reduction in the reoffending rate does not occur'. (Smith 1991:51).

The FVPCC had been investigating overseas models of reducing family violence and in 1991 established a pilot intervention project, the Hamilton Abuse Intervention Pilot Project¹¹ (HAIPP) modelled on the Duluth Abuse Intervention Project (DAIP). The DAIP approach (established in 1981) was predominantly focused on battered women (Dominick 1995) and viewed the mechanisms of family violence through the 'Power and Control' model (Robertson 1999). In this model different forms of violence are used to control people's behaviour. The aim of intervention is to stop the violence and this is achieved through protecting, supporting and informing victims and changing the offender's behaviour through accountability and rehabilitation.¹²

DAIP was a coordinated intervention programme that used a monitoring group to coordinate various community and government agencies. FVPCC adapted the DAIP model to 'the different legal, socio-economic context and cultural structures of New Zealand' (Smith 1991:54). A key aspect of the model was that the monitoring group would ensure that all offenders and victims were treated the same (Smith 1991:54). It was therefore hoped that the HAIPP model would facilitate a more even implementation of the pro-arrest policy in New Zealand.

The key elements of the integrated approach were:

- an active police policy of arresting abusers;
- the sentencing of convicted abusers to a structured education programme;
- an advocacy and support programme for victims of abuse;
- close cooperation between community groups and statutory agencies;

¹¹ HAIPP is now an established programme and is currently referred to as the Hamilton Abuse Intervention Project (HAIP).

¹² See Holder (2001) for a discussion on DAIP's development of their approach.

- monitoring of agency performance and compliance with project policies. (Dominick 1995:vii)¹³

The pro-arrest policy in this model is recognised as only part of a more comprehensive response. Thus in the evaluations of HAIPP it was found that:

The arrest and removal of the assailant provided most victims with short-term relief and safety from violence. However other interventions were clearly needed in conjunction with the arrest to produce changes and provide safety for victims over time (Dominick 1995:xv).

The evaluations of HAIPP did not show any reduction in offending in the short-term; however limitations in the available data mean that this cannot be ruled out (Dominick 1995:xxxiv).

Influenced by HAIPP the 1987 policy was 're-stated and re-enforced' in 1992 (Police Commissioner Policy Circular 1992/07). In 1993 the NZ Police Family Violence Policy replaced the Domestic Dispute Policy and expanded the definition of domestic relationships to include other family and close relationships (Police Commissioner Policy Circular 1993/19). This was updated in 1996 to become the 1996 Family Violence Policy (Police Commissioner Policy Circular 1996/2) which is discussed in the following chapter.

¹³ See Clare Dominick's report *Overview of the Hamilton Abuse Intervention Pilot Project (HAIPP) Evaluation*, 1995, for an overview of evaluation reports commissioned by central government agencies on HAIPP.

3 The New Zealand Police Family Violence Policy

Given sufficient evidence, offenders who are responsible for family violence offences shall, except in exceptional circumstances, be arrested. (Police Commissioner Policy Circular 1996/2).

3.1 Introduction

Police in New Zealand employ a response to family violence initially developed internationally and locally through research, review and pilot projects. The pro-arrest policy instructing that an offender be arrested where there was sufficient evidence and that the victim did not have to make an official complaint, was first introduced in 1987 under the Domestic Dispute Policy (Commissioner's Circular 1987/11). The policy was later 're-stated and re-enforced' in 1992 (Police Commissioner Policy Circular 1992/07). In 1993 the Family Violence Policy replaced the Domestic Dispute Policy and expanded the definition of domestic relationships to include other family and close relationships (Police Commissioner Policy Circular 1993/19).

The current principles, policy and procedure for police response to family violence are outlined in the 1996 Family Violence Policy (Police Commissioner Policy Circular 1996/2). This policy is closely aligned to the Domestic Violence Act 1995, *The New Zealand Government Statement of Policy on Family Violence* (DPMC & DSW 1996) and the associated *Good Practice Guidelines on Coordination of Family Violence Services* (Family Violence Unit 1996). The Family Violence Policy (FVP) 1996 is based on three core principles¹⁴:

- i Protection of victims (which includes children who witness family violence);*
- ii Holding assailants accountable; and*
- iii Consistent practices across agencies and groups.*

(Police Commissioner Policy Circular 1996/2 para 4)

This chapter outlines the FVP and looks at the processes police are expected to follow when they attend a domestic violence scene including pro-arrest guidelines and follow-up procedures such as bail and victim referrals.

¹⁴ These principles were originally outlined in the 1993 Family Violence Policy as the key objectives around which the Hamilton Abuse Intervention Pilot Project was having a measure of success.

3.2 Purpose of the Police Family Violence Policy

The policy aims to provide victims with safety, support and information. The primary focus of the policy is victim safety both at the time of police intervention and in the future. Immediate safety of the victim(s) is assessed at the scene and if police ascertain an offence has been committed the assailant is arrested and removed. Furthermore, the FVP outlines specific bail and detention conditions to enhance the safety of victims. It must be noted that police, when considering the pro-arrest provision must also take into account the provisions of the Bill of Rights Act 1990 as these relate to arrest and bail.

The FVP also aims to deter future violence by holding individual offenders accountable for their actions and the pro-arrest provisions are the first step in the criminal justice response intended to achieve this aim. Arrest and detention restrain the offender from immediate violence and are a gateway into the criminal justice system which focuses on both punitive and rehabilitative measures.

This type of police response also provides victims with a gateway to other services through police referrals to refuges and other social support agencies. These organisations provide a suite of services including safety planning and safe houses, information, advocacy and support accessing legal, social and financial services, approved domestic violence programmes¹⁵, counselling and help with children. Through such processes victims may come to reassess violent relationships, thus also helping to prevent future violence.

These FVP pro-arrest provisions aim to act as a general deterrent at the societal level by sending out a strong message of censure to the community. Thus it has symbolic value and is part of a process of criminalisation of family violence, where violence in the home has become recognised as a crime and is treated as such.

3.3 Defining 'violence'

The psychological and emotional aspects of family violence were first recognised in New Zealand by the Family Violence Prevention Coordinating Committee (FVPCC) kaupapa in 1986. All member agencies agreed to include emotional, mental and social harm in their definition. The Police Family Violence Policy 1993 included a definition that also recognised other forms of violence. The FVP 1996 uses the Domestic Violence Act 1995 (DVA) definition of violence which recognises 'physical, emotional, psychological and sexual abuse, and includes intimidation or threats of violence' (Police Commissioner Policy Circular 1996/2).

Defining what is a 'domestic violence' situation or offence highlights the variety and scope of this abuse and has important implications in the decision-making processes of police officers (Holder 2001). The FVP 1996 directs officers to use 'sound response and investigation techniques' to determine whether an offence has been committed. These include consulting

¹⁵ For example see *Women living without violence – an evaluation of programmes for adult protected persons under the Domestic Violence Act 1995* (Maxwell, Anderson and Olsen 2001).

the family violence database¹⁶ to ascertain information on previous complaints, offending history, the existence of protection orders, and access to firearms. This serves the purposes of determining whether a Protection Order has been breached and knowledge of weapons which officers may encounter.

As stated, the DVA definition of violence includes psychological and emotional violence, however in the implementation of the FVP these types of violence translate into charges only if police can determine an offence has been committed. The nuances of psychological and emotional violence can be difficult for the police to assess. In the case of protection orders, behaviour which may be interpreted as psychological and emotional abuse can result in the perpetrator being charged.

3.4 A coordinated approach

To effect a comprehensive response to family violence there is a strong emphasis on interagency cooperation. Police District Family Violence Coordinators were first introduced in the 1993 FVP, whereby District Commanders appointed a person to the position of District or Area Liaison Officer with agencies. Under the 1996 FVP protocols and networking arrangements are developed locally between the police and available agencies in the area.

The principles of 'consistent messages' and 'no gaps in services' should underpin local responses. Protocols must include reference for appropriate support and protection for victims, suitable programmes to rehabilitate offenders, and procedures for local monitoring and evaluation of services (Police Commissioner Policy Circular 1996/2, para 5).

Police refer victims to local advocacy and support groups such as Women's Refuge, and agencies such as Department of Child, Youth and Family, Ministry of Justice (local Courts), New Zealand Community Probation Service and Ministry of Justice approved programme providers may all become involved. Other agencies and types of organisations recommended by the 1996 Family Violence Policy are: Victim Support; perpetrator 'stopping violence' programmes; District Court; Maori/iwi family violence service providers; Safer Community Councils and groups to provide child advocacy services. The policy states that this list is not exclusive and that the 'compositions of any inter-agency network must also recognise the demographics, cultural and ethnic populations within different communities' (Police Commissioner Policy Circular 1996/2, para 7).

The coordinated approach was further developed in 2005 with the implementation of the Family Safety Team pilot, a joint initiative between NZ Police, the Ministry of Justice, Child, Youth and Family, and the community sector. Family Safety Teams consist of police investigators and child and victim advocates, and team members are expected to promote a holistic approach to family violence from the justice and social services sector, by ensuring

¹⁶ The New Zealand Police introduced the Family Violence Database in 1994 (see Police Commissioner Policy Circular 1994/01). Officers are to record information about domestic violence incidents that they have attended, using the Family Violence Reporting form (POL400). The two main functions of this database are to provide officers with information to be utilised when attending family violence incidents, and to provide statistical information on family violence.

that the full range of needs and issues being faced by families experiencing family violence are addressed.

3.5 Family Violence Policy interpretation of 'domestic relationships'

The Police Family Violence Policy 1996 interprets domestic relationships in accordance with the Domestic Violence Act 1995.

The term 'family' includes 'such people as parents, children, extended family members and whanau' or any other people involved in relationships. Examples of such relationships include partners, caregivers, boarders, flatmates, and people in same-sex relationships (Police Commissioner Policy Circular 1996/2, para 1).

It is important to note that the application of the pro-arrest policy in regard to family violence has a wider focus than just intimate partner violence in line with the meaning of 'domestic relationship'. However, most of the literature that examines pro-arrest policies focuses on heterosexual intimate partner violence, concentrating on male offenders and female 'victims', which reflects the prevalence of this type of offending. Therefore much of this review necessarily concentrates on debates surrounding pro-arrest policies as they relate to this type of relationship. Further research and analyses of how other types of domestic relationships are being responded to by the police are needed.

3.6 Children and family violence

There is a growing body of literature on the effect of family violence on children including the impact of abuse, care and protection and custody issues, and implications of intergenerational violence. Children's role in women's decision-making processes in regard to seeking help has also been highlighted in studies of family violence victims (Carbonatto 1997; McGillivray & Comaskey 1999; Balzer et al. 1997).

The Police Family Violence Policy 1996 recognises that children can be affected by witnessing domestic violence, as well as being directly subjected to violence (Police Commissioner Policy Circular 1996/2, para 9–15). This policy (para 12) outlines protocols for police to follow when dealing with children, recognising that '[i]n most instances, the interests of the children are best met by a child advocacy service or agency'. The police are guided by the legislation and protocols in regard to child abuse and care and protection of children, flowing from the Children, Young Persons, and Their Families Act 1989. If the police find evidence that children are either being harmed by witnessing violence or suffering from psychological, physical or sexual abuse they are to contact a Child, Youth and Family (CYF) social worker, who is to action the appropriate procedures as outlined in the aforementioned Act.¹⁷

¹⁷ See the New Zealand report by Taylor and Henare 1998. This report researches 'the interface between New Zealand Police involvement in family violence incidents, and the care and protection responsibilities of the Children, Young Persons & Their Families Service'. The report examines critical cases of child abuse and death involving a history of family violence and relevant databases held by each of these agencies. This data is analysed to ascertain the coordination, information sharing and cooperation between both agencies to

An area that has been identified as needing improvement was the interface between the Police and CYF. As part of a strategy to improve police assessment and referral of children and young persons a new form was piloted and evaluated at seven sites throughout the country. The Safety Assessment and Referral Form for Children and Young Persons (POL400A) was trialled in 2000 as a complement to the Family Violence Report (POL400) which is used by police to gather information when attending a domestic violence incident. The POL400 only records the ages of any children present at the incident. Therefore the goal of the POL400A 'is to ensure attending officers collect relevant information about any children present or usually resident at the home as well as any risk factors relevant to them' (Watson, Cunningham & Fitzmaurice 2000:5).

The report *Evaluation of the Police Safety Assessment and Referral Form for Children and Young Persons (POL400A)* (Watson et al. 2000) identified some key issues for police when assessing the referral and support needs of children and young persons. The areas that presented the most difficulty were the questions relating to abuse (physical, sexual, emotional and/or neglect) where there were no obvious signs. Sixty per cent of the officers who participated in the study stated they could not complete this section accurately. Two other main issues for police were the limited time they had – for example, in response to the question about 'child/young person shows self destructive behaviours' a respondent said, 'Only get a glimpse of the situation when it is at its worst – can't judge' (Watson et al. 2000:58) – and officers' ability to accurately assess psychological or sexual abuse.

This evaluation found that apart from the information collected on the POL400A, 'over 60 per cent of respondents stated that they always or mostly ask the non-offending caregiver about the safety of their children when they attend a family violence incident' (Watson et al. 2000:60). Most of the officers did not have any difficulty making a referral decision and while some found the Safety Assessment Form useful, most made the referral decision 'independently, and prior to completion, of the Safety Assessment Form.' The report recommended that the child and youth safety questions used in the POL400A be further developed and merged into the POL400.

A revised POL400 (POL400(b)) for assessment of children has been developed and is currently being piloted in Hamilton by the Hamilton Abuse Intervention Project (HAIP).

Since 2005 police have piloted a new Family Violence Investigation Report. This expanded reporting document focuses the attention of officers attending family violence calls on four key areas including initial investigations, risk assessment and safety planning, child safety, and support for adult victims. At this stage, the pilots in Wanganui and North Shore Police Areas have been evaluated and the findings will be forwarded to the Board of Commissioners with recommendations about further implementation.

identify where improvements need to be implemented for the best interests of child victims of family violence. The investigation report into the death of James Whakaruru (Office of the Commissioner for Children 2000) examined the performance of agencies, including Police and CYF, working with James and his family and found a series of incompetent practice decisions coupled with poor interagency communication.

3.7 Police investigative techniques

The Family Violence Policy 1996 outlines the investigative techniques that police are to use. The gathering of evidence by the police is important to the functioning of the pro-arrest policy and future prosecution, as this evidence may negate the need for the victim to make an official complaint. Subsequently, the victim may not need to be called on to give evidence in court and would be called on to do so only in cases where the police evidence is insufficient¹⁸. Procedures for investigation outlined in the FVP 1996 include the following:

- The officer asks about the availability of firearms.
- The victim is to identify the offender and the nature of their relationship.
- The victim has to outline the complaint in front of the offender during which the officer is to note the offender's responses.
- Any injuries to the victim are to be noted and photographed.
- Injuries to the victim may necessitate them being asked to undertake a medical examination.
- Damage to property is also noted.
- All those present during the offence or incident should be identified and interviewed.

The FVP then goes on to state that,

Given sufficient evidence, offenders who are responsible for family violence offences shall, except in exceptional circumstances, be arrested. In the rare case where action other than arrest is contemplated, the member's supervisor must be consulted (Police Commissioner Policy Circular 1996/2).

3.8 Arrest, police bail and custody

If officers determine an offence has been committed, the alleged offender can be arrested without the necessity of an official complaint by the victim. The pro-arrest stance theoretically means that it is the accumulated evidence, rather than the wishes of the victim, that determines whether an arrest is made. In the case of breach of a protection order, police must take into account a variety of factors as stated in section 50 of the Domestic Violence Act 1995 when making their decision on arrest.

After alleged offenders are arrested they are taken into custody and should be kept until the next available court hearing. In regard to release on police bail, the FVP 1996 advises that police bail conditions should be practical and where possible should not interfere with the offender's ability to remain in employment, however the conditions of the Bail Act 2000

¹⁸ While they can be called to give evidence they cannot be compelled to do so. See the Evidence Amendment Act (No 2) 1980, Part III Privilege of Witnesses, regarding privileges of spouses when giving evidence. A wife or husband cannot be compelled by the Court to disclose any communication made to them by their spouse during marriage (section 29). The Act also gives the Court discretion to excuse a witness from giving particular evidence if this would breach a 'special relationship' between witness and confidant (section 35).

supersede this. The Bail Act 2000 (s.23) specifies that a person arrested under section 50 of the Domestic Violence Act 1995 and charged with an offence against section 49 of that Act, must not be released on bail during the 24 hours immediately following arrest. If it is deemed appropriate to give the offender police bail, then certain procedures that give consideration to victim safety and the provisions of the Bill of Rights Act 1990 must be followed. Victims should be consulted about bail conditions such as non-association clauses and curfews, and be kept informed of the intention to release the offender. Police should ensure appropriate protection and/or support is available to victims.

The FVP 1996 regards breaches of bail as serious and advises that offenders be arrested and kept in custody until the next court hearing (Police Commissioner Policy Circular 1996/2).

4 Implementation of pro-arrest policies and police practice

However, within the boundaries set by the law, police departments retain a certain amount of discretion over policy, and police officers have to determine whether the facts they face fall within the policy guidelines. (Hirschel and Dawson 2003)

4.1 Introduction

This chapter examines New Zealand and international research to see how pro-arrest policies are implemented by police and the operational issues they face. The chapter concludes with some examples of innovative international models of police response to family violence to see how other jurisdictions are implementing and integrating their pro-arrest policies with coordinated initiatives.

4.2 New Zealand research

New Zealand has a well developed police response which is part of a coordinated approach to family violence between police, social service agencies and community organisations serving victims and offenders. The pro-arrest policy has received little attention in New Zealand from agencies or researchers since it was implemented compared to the volume of studies devoted to this topic overseas. The few studies that were done were conducted by Carbonatto 1997¹⁹, Robertson 1999, and Schollum 1996. Much of the fieldwork for these research projects was undertaken during the early introduction of the pro-arrest policy and there is a need for updated research that focuses on police views and practice in this area.

Schollum's study examined police attitudes towards the New Zealand Family Violence Policy during 1995. It is beyond the scope of this literature review to summarise all her results, however it is well worth noting that she found the police surveyed were very supportive of the pro-arrest policy and multiagency approach. These officers also 'demonstrated a sound understanding of family violence and the context in which it exists, and provided evidence of considerable sympathy for victims and commitment to the importance of police taking positive action on their behalf' (Schollum 1997:8).

¹⁹ Carbonatto's (1997:79) analysis of police files could not ascertain whether 'police were adhering to arrest protocols in all cases . . . as there was no available information on the number of incidents attended by police in which no arrest occurred.'

The results related directly to arrest were that 91 per cent supported the general requirement to arrest family violence offenders and 94 per cent supported arresting those who breached protection orders (Schollum 1997:8).²⁰

4.3 Police implementation of the pro-arrest policy

4.3.1 Does a pro-arrest policy increase the number of arrests?

Research in the 1970s and 1980s in the United States found that the probability of arrest in family violence cases ranged from 3% to 14%, while research in the 2000s has found the probability has increased to 30–34% (Eitle 2005). Eitle (2005:575) states, ‘despite the presence of mandatory and pro-arrest policies nationally, police officers still fail to affect *[sic]* an arrest in a majority of such cases’. There is a lack of studies comparing the rates of arrest in family violence cases between jurisdictions that have pro-arrest policies and those that do not. Eitle (2005:575) points out that this is an important gap in the literature because in the States there have been other changes to policing that may influence the arrest rate for family violence. For example changes in training, more diversity in ethnicity and gender composition of police forces and increased demand for college-educated members. These changes also apply to New Zealand.

Eitle’s study investigated what impact having a mandatory arrest policy had on police practice while taking into account other situational variables and police organisational characteristics that may influence the decision to arrest in family violence cases. This author examined data on arrest information for 57,000 domestic violence cases across 115 police departments in the United States during 2000. Eitle (2005:590) found that jurisdictions that have a mandatory arrest policy do slightly increase the arrest risk for domestic violence cases, even after controlling for salient situational factors and other police organisation characteristics. However the average arrest risk in jurisdictions with a mandatory arrest policy was still only 50%, thus ‘there remains considerable discretion regarding the decision to arrest in these cases’ (Eitle 2005:590). Jurisdictions that did not have a mandatory arrest law had an average arrest risk of 45%.

4.3.2 Do pro-arrest policies have an effect on racial discrimination in arrest practices?

Eitle (2005:588) found that in jurisdictions with no mandatory arrest policies black victims of family violence are significantly less likely to have their cases result in the arrest of the suspect than they are in jurisdictions with a mandatory arrest policy. It should be noted that this is exacerbated by crime rates, as in areas with a relatively high crime rate black victims are significantly less likely than white victims to have their cases result in arrest than they are in jurisdictions with relatively lower overall crime rates.

While other studies such as Robinson and Chandek’s (2000) and Avakame and Fyfe’s (2001) found discriminatory arrest practices in jurisdictions with mandatory arrest laws, the importance of Eitle’s findings is that his study compares jurisdictions with and without these

²⁰ See Richard Wortley (2003) for developments on measuring police discretion and the implications for arrest decisions generally.

arrest policies and includes other situational variables. Eitle (2005:591) concludes 'it appears to be the case that such policies produce a more equitable arrest risk for black (vs. white) victims'.

4.3.3 Police characteristics

Hirschel and Dawson's (2003) review of best practice for police response found the following factors associated with a positive police attitude toward pro-arrest policies. An individual officer's attitudes about women and domestic violence; female police officers tended to be supportive of pro-arrest policies; and officers' perceptions of the utility of police involvement in domestic violence cases. Domestic violence training was associated with a positive response from police compared to insufficient training, and the authors suggest that training focus on attitudes towards domestic violence as well as law and procedures (Hirschel & Dawson 2003).

Eitle's (2005) study found that the gender composition of a police department made no difference to the arrest rates for domestic violence offences.

4.3.4 'Dual' Arrests

An issue that has been identified as a by-product of mandatory and pro-arrest policies, particularly in the United States, is dual arrest where police are arresting both the man and the woman at domestic violence incidents (Feder & Henning 2005; Hirschel & Buzawa 2002). Some research indicates that if the victim is demanding or both offender and victim are under the influence of drugs or alcohol then it is more likely both parties will be arrested (Hirschel & Dawson 2003). Police identify offences committed by both parties and therefore arrest both parties. However research has shown that often men and women experience domestic violence differently and women are quite often acting in self defence (Feder & Henning 2005; Henning & Feder 2004; Kernsmith 2005).

Some jurisdictions have increased training of police and better evidence gathering techniques to identify offensive and defensive wounds to determine the primary aggressor to limit arrests of victims who have acted in self defence (Hirschel & Dawson 2003, Henning & Feder 2004). This is not to say that women do not act violently, and that men can not legitimately be victims of domestic violence. Rather police should consider whether a woman's violence is within the context of self defence and history of battering by her current or former partner, or whether she is the perpetrator of violence.

4.4 Charging codes and the patterned nature of domestic violence

The New Zealand Family Violence Policy advocates charging male offenders with 'Male Assaults Female' (MAF).

Charges must accurately reflect the seriousness of the offence. Such charges may include sexual offences, assaults, threatening behaviour, wilful damage, trespass, or burglary. The

specific offence 'Male Assaults Female' will be used in most circumstances (Police commissioner Policy Circular 1996/2 para 47).

This has met with some criticism, for example Carbonatto's (1997) analysis of charges revealed cases of both under and over charging with MAF and Common Assault charges. 'Police should be charging offenders according to the offence committed, rather than according to the relationship between the victim and the offender' (Carbonatto, 1997:128).²¹

Schollum (1996:57) found that there was some concern about 'the (almost) compulsory use of the serious assault charge 'Male Assaults Female'. One respondent questioned whether the frequency with which this charge was laid would 'backfire', resulting in minimal sentences.

Robertson (1999:134) raises another important issue in relation to charging and investigative techniques and that is the difficulty of assessing psychological abuse. The examples Robertson uses relates to threats: 'These incidents tend to confirm what one police prosecutor told me: it is very rare for police to take action in respect of threats, yet it is clear that these threats are the very currency of battering'.

The authors of the *Domestic Violence Act 1995 – Process Evaluation* (2000) found that in regard to enforcing protection orders several participants:

(n)ote that it is difficult to get police enforcement for psychological abuse, with some police only willing to act where there is threat of serious physical violence. Most of the front line police interviewed agreed that enforcement issues are much less clear cut where the threat is not a physical one (Barwick, Gray & Macky 2000:13).

In discussing the psychological and emotional abuse that is a feature of domestic violence Kelly (2005:91) observes that few:

legal codes are able to reflect this reality in offences, since the elements that comprise domestic violence are often located within a wide range of other more general crime categories: sexual offences; physical assault; threats; criminal damage; stalking and harassment; breach of the peace and other public order offences.

Kelly (2005) reviews charging codes and existing law in Europe to see how different countries deal with domestic violence. She notes that of the European countries only Cyprus has implemented charges specifically for domestic violence including defining child witnessing domestic violence as a form of psychological child abuse (Kelly 2005). Many countries in Latin America have criminal offences specifically for domestic violence that cover different acts, some including psychological abuse.

To address the imbalance between acts that happen in the public sphere and acts that happen in the private sphere of the home many European countries have enacted reforms, such as recognising rape can happen in marriage and specifying 'that criminal assaults between partners should be considered an aggravating factor in sentencing' (Kelly 2005:92). Kelly observes that these reforms still fail to recognise that many acts that make up the pattern of

²¹ See Carbonatto (1997) for an analysis of charges and sentences for family violence offenders in New Zealand.

domestic violence are either not criminal offences or are regarded as low level offences that result in a reprimand rather than a sanction. For some European countries low level offences are not considered for arrest and this limits the protective function of the police (Kelly 2005).

Sweden introduced a law in 1999 that permits prosecution for a series of acts or 'course of conduct' that recognises a combination of low level acts in a domestic situation can add up to a pattern of coercive control. The offence for this is called 'gross violation of a woman's integrity' and this charge can be made separately along with charges for individual assaults (Kelly 2005:93).

4.5 Criminal justice system response to family violence

While the police have a vital role in the response to family violence and are gatekeepers into the criminal justice system, they are also dependent on other players in the system. Smeenk and Malsch (2005) note that if police came in for criticism about their reluctance to deal with family violence in the past, now the prosecution and judiciary are meeting similar criticism. Many police departments around the world have put some effort into training members; however this cannot be said of prosecutors and judges (Smeenk & Malsch 2005).

There have been a number of studies analysing the role of prosecution and the relationship between arrest and prosecution that highlight the importance of considering the wider criminal justice response rather than one element such as arrest.

4.6 International models of police response to family violence

Evaluations of international police responses to family violence were consulted for this review to identify if there were any successful alternatives to the pro-arrest policy. A more thorough examination of overseas strategies would have to be undertaken to reach any conclusive results. However, of the studies consulted most still retained the pro-arrest response by police. What differentiated them from our own Family Violence Policy were different strategies that provided for a more targeted response for both offenders and victims. Of particular interest were several projects conducted in the United Kingdom which have focused on the issue of repeat victimisation.²²

4.6.1 Killingbeck, West Yorkshire

The Killingbeck model 'aimed to reduce repeat victimisation through a three-tiered programme of incremental interventions of increasing intensity based on repeat attendance' (Hanmer and Griffiths 2000). The model differentiated between common law and criminal offences in the type of responses used, however, the police still practised the pro-arrest response and made an arrest where there was sufficient evidence. While not all aspects of this project have been evaluated the results are encouraging in terms of:

²² For a review of the evaluations conducted on these projects and future policy and research recommendations see the Home Office document *Reducing Domestic Violence ... What Works? Policing Domestic Violence* (Hanmer and Griffiths 2000).

- identifying chronic offenders and reducing their numbers in the course of the year-long evaluation;
- a reduction in the number of repeat victimisations;
- an increase in the number of single (rather than multiple) attendances;
- an increase in the time interval between attendances; and
- encouraged victims and their supporters to ask for police support and the numbers doing so increased over the project duration.

A specific intervention designed to help protect victims was the *cocoon watch*. This strategy incorporated a network of family, friends and neighbours, with the victim's permission, who would alert police to future abuse. This takes the onus away from the victim to report the crime and could be critiqued for subsequently taking control away from the victim. However, one of the most important strategies a victim can use for protection is telling other people about the domestic violence (Hanmer, Griffiths & Jerwood 1999).

4.6.2 NDV Project, South Australia

The Killingbeck model has been adapted and trialled by the South Australia Police as the NDV Project. This project included a component directed at children. The Child Abuse Report Line was exclusively for police officers to report if children were present in the house or in any way affected by an incident. If the children concerned were Aboriginal, the operator would transfer the officer to a different group who would be able to appropriately respond. Preliminary indications were:

- community stakeholders, service providers, and a number of women assisted by the police, support and value the changed police practice;
- the project acted as an impetus for increased focus on collaboration and prevention among community service providers;
- confidence in referring women to the police had increased;
- Patrol Officers are enthusiastic; and
- accuracy of police reporting of callouts to domestic violence had increased. (Golding 2002).

4.6.3 Family Violence Intervention Project (FVIP) Canberra

This is an example of an integrated criminal justice response that includes strong prosecutorial policy and improved evidence gathering. The use of digital cameras that allow police to send pictures to the court overnight has contributed towards increased prosecutions and early guilty pleas (61 per cent of cases). An evaluation by Holder and Mayo (2003 cited in Kelly 2005:99) showed that over a year the 'pro-active prosecution policy resulted in a 152 per cent increase in charges and 126 per cent increase in convictions'. They also found that rather than deterring women from reporting domestic violence to police there was an increase of 23 per cent in the number of calls during the twelve month period (Kelly 2005).

4.6.4 New South Wales Police Association submission for increased police powers in regards to serving final Apprehend Violence Order (AVO)

An interesting model to observe if implemented will be the NSW Police Association proposal to expand police powers so that they can issue a final enforceable AVO. Their submission builds on the Ministerial inquiry into current police practices which recommended that police be given powers to arrest and detain for the purpose of serving an interim AVO (Del Vecchio 2005).²³ The model was formulated to address a number of problems identified by the NSW Law Reform Commission and the NSW Police. An example of how the model would operate is:

- Police attend the scene of a domestic violence situation. The matter is investigated and relevant evidence obtained. If an order is required Police contact the Duty Officer.
- The Duty Officer is apprised of all the evidence. If the Duty Officer determines that an order is required, discussion around conditions and duration takes place.
- The conditions and duration of order are determined and order completed on a “Field Domestic Violence Notice Book” which is endorsed by the officer who sought the order and Inspector who granted the order. A copy of the order is served upon defendant and victim, which is immediately enforceable.
- Should the defendant wish to contest, revoke or amend the order a mechanism is invoked to allow the matter to be determined by a court. (Del Vecchico 2005)

The Association lists the following advantages of their proposal:

- *Victims have immediate protection upon service of the order on the defendant.*
- *Victim is more likely to report domestic violence if they know that the matter can be dealt with immediately and without the requirement of court attendance.*
- *Courts are not required to deal with Interim ADVO (Apprehend Domestic Violence Order) applications and uncontested ADVO applications.*
- *Information is readily available to police to make decisions assisted by access to information on COPS (NSW Police database).*
- *Police powers to detain or arrest for the purposes of issuing ADVOs.*
- *Orders are enforceable immediately after service on the defendant reducing the number of unserved orders.*
- *Significant police and court resources are no longer required. (Del Vecchio 2005).*

Del Vecchio (2005) outlines some of the potential issues with this proposal. A full copy of the submission and Del Vecchio’s article can be found at www.pansw.org.au.

²³ As at February 2005 this was yet to be acted upon.

4.6.5 The Austrian Protection from Violence Act (Austrian Law)

The Austrian Law enacted in 1997 gives police powers to remove perpetrators of domestic violence from the household for ten days. The police are also required to refer both parties to an 'Intervention Project'. Intervention Centres use a proactive model contacting all those referred by police to invite them to various kinds of structured support. The removal of the perpetrator is a civil order and the police are required to check compliance with the order at least once during the ten day period. A breach is an offence but not a criminal offence, which has been critiqued as a weakness of this law (Kelly 2005). This law responds to what many women want when they call the police, for the perpetrator to leave the home and to send a message of deterrence. However Kelly (2005:96) states that 'it still represents a move to treat IPV (intimate partner violence) differently from violence outside the home'.

5 The effect of arrest on domestic violence offenders

5.1 Introduction

The extent to which arrest has influenced the behaviour of offenders has been the subject of considerable research. The Minneapolis study and Spousal Abuse Replication Project (SARP) are the most influential and contentious studies on the effect of the pro-arrest policy and have fuelled debates surrounding the use of these policies. This chapter begins by examining the Minneapolis study and SARP, the latest analysis of the SARP findings, and the main criticisms of these studies.

The literature search for this review yielded no other experimental studies on the effect of arrest. This would seem to reflect a move away from studies of single interventions in the family violence area, as many critics have noted family violence is a much more complex phenomena to address than can be expect from a one-off single intervention such as arrest.

Two other recent studies that include a focus on arrest are reviewed. A longitudinal study using correlational data from the United States National Crime Victimization Survey to analyse the effect of reporting and arrest on future offending by Felson, Ackerman & Gallagher (2005) (see section 5.3.2), and a recent evaluation (Archer, DuPree, Miller, Spence & Uekert 2003) of a major programme funded by the United States National Institute of Justice and the Violence Against Women Office to encourage arrest policies and innovative practices as part of a coordinated approach.

5.2 The Minneapolis study and the Spousal Replication Project

The Minneapolis study (1981–1982) found a deterrent effect from arrest and this was greatly influential in promoting the rapid uptake of pro-arrest and mandatory arrest policies throughout the United States and in New Zealand. The National Institute of Justice (NIJ) subsequently funded five further studies (1985–1990) known as the Spousal Abuse Replication Project (SARP) in order to validate the Minneapolis results. The SARP studies had mixed results with some sites suggesting that arrest may actually cause increased violence among certain subgroups of offenders. With pro-arrest policies already in place this has caused some concern about what effect this may be having on some groups of offenders.

More recent analysis of the SARP studies on the effect of arrest has shown a significant although modest reduction effect on reoffending across all five study sites and no increase in violence (Maxwell, Garner, Fagan 2001, 2002). This later analysis also highlighted that arrest may have a different impact on different types of offenders but showed no increase in

violence compared to the other types of police response such as mediation or separation. Variables such as age and prior offender history were stronger predictors of repeat offending.

It is important to note when considering results from the Minneapolis and SARP studies that they were only examining the effect of arrest in the response to family violence (Dunford, Huizinga & Elliot 1990; Sherman & Berk 1984). They did not investigate what happened after arrest to offenders or victims in terms of the criminal justice system response or the response of community organisations such as Women's Refuges. The research was designed as randomised controlled trials (RCT):

which attempts to isolate a cause and effect relationship between two variables; in this case, police decisions to arrest or not to arrest and subsequent domestic violence by the suspects. The essential logic of a controlled experiment is to make two or more groups virtually identical in all respects except one: the treatment to be evaluated (in this case, arrest) (Sherman et al. 1992d:144).

These experiments became a test of deterrence theory and what effect arrest may have on deterring future violence.

Sherman (1992b:15) states:

*Two competing hypotheses about the effects of arrest, at least in specific cases, could be set against each other on the criterion measure of repeat domestic violence. While a controlled experiment in arrest would not be able to address the **general** deterrent effects of arrest, it could examine the **specific** deterrent effects in which individual victims would have the greatest personal stake.*

It is also important to recognise that the Minneapolis and SARP studies only included misdemeanour²⁴ offences in their samples due to ethical issues. Felson, Ackerman and Gallagher (2005:566) observe that because there is little debate over police arresting suspects for more serious offences, examining arrest for 'misdemeanour assaults may be the most important cases from a policy standpoint'. However they state that it is also important to examine the deterrence effect for more serious offenders as they are the most dangerous (Felson, Ackerman & Gallagher 2005:565).

5.2.1 The Minneapolis arrest experiment

The Minneapolis experiment (1981–1982) was commissioned by the Minneapolis Police Department because there was uncertainty about implementing expanded arrest powers in regard to domestic violence misdemeanours. Women's advocates had pushed for a change in

²⁴ In the United States whether a crime is a felony or a misdemeanour is determined by the seriousness of the case and relevant state laws. In many states acts that result in serious injuries are charged as felonies and no injury or slight injury cases are charged as misdemeanours. In general misdemeanours are crimes with a maximum punishment of less than one year imprisonment. Across the five SARP studies only 0.9% of the experimental incidents (i.e. where police first attended a domestic violence incident as part of the study) did not involve an assault or victim injury (Maxwell et al. 2001:10). A comparative list of charges would have to be drawn up to evaluate how this term relates to the New Zealand context.

the legislation regarding the 'in-presence requirement for warrantless misdemeanour arrests'.²⁵ They wanted an exemption from this requirement in the case of domestic violence misdemeanours. In the late 1970s several states complied with this call for legislative change, effectively expanding the arrest powers of police in regard to domestic violence. Minnesota was one of these States; however the police still used the crisis intervention model that favoured arrest as a last resort and made little use of these expanded arrest powers. (Sherman 1992b:15)

This provided the impetus for Minneapolis police to carry out research into the effectiveness of arrests in order to ascertain the validity of making such a major change to the way police responded to domestic violence. Lawrence Sherman and Richard Berk conducted a random assignment experiment of police responses to domestic violence incidents to discover 'which police approach was most effective in deterring future domestic violence by the same offender against the same victim' (Sherman 1992b:16).

Officers were randomly assigned three approaches to implement with domestic violence suspects who were legally eligible for arrest under the 1978 Minnesota warrantless arrest statute: arrest; sending the suspect away from the scene for eight hours; or advice and mediation. (Sherman 1992b:16)

The criteria for respondent selection for the experiment was that only misdemeanour domestic assaults where both the suspect and the victim were present when police arrived were included. Analysis of reoffending was done through police records and interviews with victims over a six-month follow-up period. The primary purpose of the interviews was 'to measure the frequency and seriousness of victimizations caused by a suspect after police intervention' (Sherman 1992b:17). Because family violence incidents largely go unreported, victim interviews give a truer indication of the amount of violence going on than official records (Dobash & Dobash 2000; Morris 1997; Walker 2000).

5.2.2 Results and limitations of Minneapolis experiment

From the three response options randomly assigned to police, arrest produced the lowest rate of repeat violence based on both the official records and victim interviews. The results were analysed in terms of prevalence (how many reoffended), rather than frequency (how often they reoffended) of violence. Fourteen per cent of the arrested suspects reoffended compared to 21 per cent of offenders who were not arrested according to official records. Similar reoffending results were obtained from victim interviews (Maxwell et al. 2002:53) although the victims' reports of repeat violence were higher than that of official records.

Sherman (1992b:20) summarises the limitations of the study and identifies the most important being the inability of the study to 'say *why* arrest had the lowest rate of repeat violence'. Sherman (1992b:21-22) outlined the three main recommendations that he and Berk made in their 1984 report. They recommended that:

²⁵ In the United States at that time there was a 'common law in-presence requirement for misdemeanour arrests generally, which technically barred officers in many states from making warrantless arrests unless they had witnessed the offence' (Sherman 1992b:11-12).

1. The twenty-two states still practising 'in-presence warrantless arrests' for domestic violence misdemeanours change their laws so that the officer no longer had to witness the violence in these circumstances.
2. The authors cautioned against a 100 per cent mandatory arrest based on such a small sample size. The small numbers of suspects in each subcategory (age, ethnicity, employment status, criminal history, etc.), meant that there were no conclusive findings on how arrest impacted on certain groups of people. However, they did take a 'pro-arrest' stance stating that police probably should arrest in most cases of minor domestic violence. If they did not arrest then police should file a written report explaining why they did not, when it was legally possible to do so.
3. Sherman and Berk recommended the experiment be replicated in other cities, thus resulting in the NJI funded Spousal Assault Replication Program (SARP).

It should also be noted that the final victim sample size was considerably reduced, as many victims refused to be interviewed or were unable to be found.

5.2.3 The Spousal Assault Replication Programme

The National Institute of Justice (NIJ) funded six replication arrest studies in Omaha, Charlotte, Milwaukee, Metro-Dade Florida, Colorado Springs and Atlanta²⁶ to determine whether the Minneapolis study's results could be reproduced. As Maxwell et al. (2003:54) observe that 'replication' studies are a misnomer as the new experiments were different in several crucial aspects to the Minneapolis study. The studies set out to improve upon the Minneapolis design 'increasing the number of sites and experimental incidents, enhancing the rigor of the random assignment, archiving the research data, and promoting commonality among the new experiments at the expense of commonality with the original Minneapolis experiment.' (Maxwell et al. 2002:54).

The NIJ stipulated that each study involve '(1) experimental comparisons of arrest and alternative police responses to misdemeanor spouse assault incidents and (2) measurements of victim safety using both official police records and victim interviews'. (Maxwell et al. 2001:5). The studies involved various combinations of options police could implement when called to domestic violent incidents, including mediation, warning, removal of offender, and arrest.

5.2.4 Results of the SARP studies

The SARP studies produced mixed results about the deterrent effect of arrest that are summarised in Appendix A. Sherman (1992b) conducted an overview of the Minneapolis and SARP studies including an analysis of offender characteristics and found that arrest for misdemeanor domestic assault had different effects in different cities. In three cities, including Minneapolis, arrest was found to deter repeat violence and in three other cities where the replication studies were conducted, arrest was associated with evidence of relative increased violence among unemployed African Americans (Sherman 1992b:25).

²⁶ The Atlanta study was not completed and the meta-analysis studies are based on the five other sites.

As previously stated the studies do not tell us why arrest would *cause* an increase in violence. The way this finding is interpreted is important because the experiments were not comparing an abuser's history of offending prior to the studies.²⁷ Whether individual offenders were increasing or decreasing their violence over their whole offending history, including unreported offending, is unknown. The term 'increasing violence' can therefore be misleading. What the researchers claim is that offending increased for certain subgroups when *compared* to other subgroups over the studies duration.

However, Hirschel and Hutchison (1996:77-79), the authors of the Charlotte study, strongly disputed Sherman's interpretation of their data in regards to the 'escalation effect' of increased violence for those offenders who were arrested and state that this conclusion 'ignores accepted scientific convention of statistical significance'.

Furthermore, Hirschel and Hutchison (1996) highlight an extremely important point when assessing the results of the replication studies, that the responses used by the police in the studies were only measured against each other and not in comparison to **no** response at all:

In the sometimes contradictory and often confusing claims made about the results of these experiments, it is easy to lose sight of the fact that all treatment effects are relative to the other treatments. It would be easy, but totally erroneous, to conclude that one treatment produces an escalation effect relative to no police response at all. None of the projects are in a position to demonstrate this because all used misdemeanour calls for service as the entry into the experiment. Other research (e.g. Langan & Innes 1986:1) has shown that women who do not call the police are more likely than those who do call to be abused again (Hirschel & Hutchison 1996:78-79).

5.3 Recent evidence on the effect of arrest on offenders

5.3.1 Standardised statistical meta-analysis of SARP tells a different story

Many authors have noted the difficulties in comparing the replication studies because of the different research designs and sample sizes.²⁸ The work of Maxwell, Garner and Fagan (2001, 2002) goes some way towards addressing the difficulties of analysing the five studies. They state the following reasons why their statistical analysis should be preferred over previous individual and multi-site analyses of SARP:

- The consistent use of eligibility criteria across sites – we include only male offenders and female victims of intimate violence.
- The use of a consistent measure of repeat offending across all sites.
- The use of additional statistical controls for site and suspect differences between arrest and nonarrest groups.

²⁷ This statement should be qualified as the Milwaukee study did include a category of prior offences (officially recorded) in the second stage analysis, however this was found to have no impact on the effect of arrest on subsequent domestic violence (Sherman et al. 1992c:680).

²⁸ See for example Fagan 1996; Robertson 1999; Symposium on Domestic Violence in *The Journal of Criminal Law and Criminology*, L. Sherman ed, vol. 83:1 1992; Weisz 1996, for discussions on the replication studies.

- The use of longer followup periods and statistical controls for variability in followup periods.
- Increased statistical power from pooling cases from five sites (sample size of suspects used was 4,032).
- The consistent comparison of arrest with all other treatments combined. (Maxwell, Garner & Fagan 2001:9, 13).

Maxwell, Garner and Fagan (2001, 2002) measured reoffending by analysing prevalence, frequency and time-to-first-failure²⁹ rate for all five sites using data from official police records and victim interviews. Data from the victim interviews included information on threats, which is not often captured in police records but recognised as playing a crucial role in maintaining power and control over victims (Robertson 1999).

Maxwell, Garner & Fagan's (2001:2) key findings are:

- Arrest is associated with less repeat offending in all five measures of repeat offending.
- Reductions in repeat offending are larger and statistically significant in the two measures that are derived from interviews with victims.³⁰
- Reductions in repeat offending are smaller and not statistically significant in the three measures that are derived from official police records.³¹
- The effectiveness of arrest does not vary by jurisdiction. (In other words, the benefit of arrest was about equal in regard to reducing aggression in all five sites.)
- The size of the reduction in repeat offending associated with arrest is modest compared with the effect of other factors (such as the batterer's age and prior criminal record) on the likelihood of repeat offending.
- Regardless of whether or not the batterer was arrested, more than half of the suspects committed no subsequent criminal offence against their original victim within the followup period (and most interviewed victims did not report any subsequent victimization by their batterer).
- A minority of suspects continue to commit intimate partner violence regardless of whether they were arrested, counselled, or temporarily separated from their partner.
- This research found no association between arresting the offender and an increased risk of subsequent aggression against women.

²⁹ Time-to-failure is time to first offense after the experimental incident.

³⁰ 'A dichotomous (yes or no) measure that captured aggression occurring between the experimental incident and the last victim interview (which typically covered at least a 6-month window) and (2) the frequency of aggression between the experimental incident and the last interview...In addition to physical assaults, the two aggression measures captured incidents involving damage of property owned by the victim or the common household. The aggression measure from the victim interviews also captured verbal threats of physical or property damage made by the batterer against the victim'. (Maxwell et al. 2001:3).

³¹ 'A dichotomous recidivism measure (yes or no) that captured any incident within the first 6 months after the experimental incident, a count of the number of days that elapsed between the experimental incident (i.e. the one that included the suspect in the study) and the first subsequent police-recorded incident, and a measure of the annualized frequency of reported incidents of aggression (i.e. the number of incidents, adjusted to represent a per-year rate' (Maxwell et al. 2001:3).

Maxwell, Garner & Fagan (2001:13) state 'Thus, our research finds no empirical support for the argument that arrest may eventually increase the risk for violence against women'. This finding still applied beyond one year of the experimental incident.

Maxwell, Garner & Fagan (2001:13) note that the policy implications of their findings are:

First, our findings provide systematic evidence supporting the argument that arresting male batterers may, independent of other criminal justice sanctions and individual processes, reduce subsequent intimate partner violence. The size and statistical significance of the effect of arrest varied depending on whether the subsequent aggression was measured by victim interviews or police records; even so, in all measures (prevalence, frequency, and time-to-failure rate), arrest was associated with fewer incidents of subsequent intimate partner aggression.

5.3.2 Victimization survey analysis of the effect of arrest and reporting to police

Felson, Ackerman and Gallagher's (2005) longitudinal analysis of the United States National Victimization Survey from 1992–2002 investigated whether domestic violence is less likely to be repeated if it is reported to the police and if the offender is arrested. They took a subsample of their study to compare with Maxwell, Garner & Fagan's (2001, 2002) sample, that is misdemeanours committed by male offenders on female victims and reported to the police (N=895) (Felson, Ackerman & Gallagher 2005:577). While the result was in the direction of decreased offending it did not quite reach statistical significance. Felson, Ackerman & Gallagher (2005:583) conclude, based on their research and prior literature, that research has not demonstrated a deterrent effect of arrest and if there is an effect it is likely to be modest. In their analysis reporting the incident to the police had a larger effect. Their results do not show that arrest increased violence.

5.4 The effect of arrest on different types of offenders

Maxwell, Garner & Fagan's (2001, 2001) analysis of SARP provides modest support for the pro-arrest policy in terms of experimental evidence and goes some way to allaying fears that arrest might increase violence. However, their results agreed with some of the previous findings from the SARP studies in so far as some types of offenders reoffended more than other types of offenders.

Sherman and his colleagues were interested in the interaction between legal controls such as the pro-arrest policy and informal social controls, which is a person's connection to 'conventional' society, in deterring crime. Sherman et al. (1992c:681) hypothesised 'that individuals subjected to social control in jobs and marriages are more likely to be deterred by legal sanctions than are those without such *stakes in conformity*' (emphasis added).

The SARP study collected information on suspects' characteristics such as: age; ethnicity; employment status; relationship with victim including marital status; use of intoxicant; and prior arrest, to see if arrest deterred different types of people from further offending (Maxwell, Garner & Fagan 2002:58).

5.4.1 Employment Status

Sherman (1992b) found the most consistent variable across the five completed studies was the employment status of the suspect where employed suspects tend to be deterred by arrest, and unemployed suspects did not.³² Later statistical analysis of the SARP studies by Maxwell, Garner and Fagan (2002) agrees with these findings, as in four out of the five models employed suspects were less likely to commit additional incidents. They state, '[t]wo of the four negative relationships were statistically significant and ranged from 15% to 21% decreases in the odds of new incidents' (Maxwell, Garner and Fagan 2002:68).

The results of the Milwaukee SARP experiment seemed to support Sherman's hypothesis on social conformity. Those who had a 'low stake in conformity' – the unemployed, high school drop outs and not married – did not show much difference between the arrest and non-arrest groups in terms of prevalence of repeat violence (Sherman et al. 1992d). When the frequency of repeat violence over an unrestricted follow-up period was analysed, those who Sherman et al. (1992d) characterised as having a lower stake in conformity were shown to become more violent in comparison with those with a higher stake in conformity. The worst escalation effect was found among unemployed suspects who received the short arrest treatment. Conversely, employed suspects had one of the largest deterrent effects from short arrest which 'may suggest that the employed react to getting a break, or to getting out early enough to go to work, by avoiding a second chance to lose their job' (Sherman et al. 1992d:162).

5.4.2 Ethnicity

Sherman (1992d) emphasised that the results regarding ethnic differences in recidivism should be interpreted with other variables; namely unemployment, and the cultural context. For example in regard to the frequency rates in the Milwaukee experiment³³ Sherman et al. (1992d:160) stated that there were significant differences between European and African-American reactions to the full arrest response, with African-American offenders increasing violence during the study period in comparison to Europeans. A possible explanation for this differential could be due to ethnic differences in employment rates, with African-American suspects having higher unemployment.

In his book *Policing Domestic Violence*, Sherman (1992a:3-4) writes,

This may suggest that white suspects more often see arrest as a legitimate response to their conduct, rather than as part of a long-standing pattern of discriminatory police harassment. Or the racial difference may simply reflect a different reaction to punishment among people of any race who suffer problems of economic and cultural exclusion.

Maxwell, Garner and Fagan (2001; 2002) in their meta-analysis of the five sites found contradictory results in regard to ethnicity. They state the 'suspect's age and race were consistently and significantly related to the frequency of subsequent aggression as reported by the victims. These victims reported significantly less aggression when the suspect was older

³² It should be noted that these results are comparing reoffending differences between groups within the specified timeframe of the experiment and there is no way of knowing if individual offenders had increased or decreased their abuse relative to the period before the study.

³³ See Appendix B for more detail about the Milwaukee experiment.

and non-white' (Maxwell, Garner & Fagan 2001:7). This is in contrast to data from police records which found white and employed suspects had lower levels of repeat offending. 'The sizes of these relationships was substantial, from a 35 per cent increase in the odds of victimization to a 30 per cent decrease in the odds of recidivism' (Maxwell et al. 2002:68).

In the New Zealand context there is differentiation between ethnic groups in regard to family violence victimisation and offending. The New Zealand National Survey of Crime Victims (NZSCV) 2001 (Morris et al. 2003) showed that 49.3% of Maori women had experienced violence³⁴ by heterosexual partners during their life time compared to 24.2% of European/Pakeha women and 23.3% of Pacific women. The NZSCV 2001 also showed a high percentage of Maori men (27.5%) had experienced violence from heterosexual partners compared to 18.4% of European/Pakeha men and 10.3% of Pacific men.

The disproportionately high representation of Maori women and men in family violence statistics³⁵ emphasises the need for coordinated service provision that is also able to cater specifically to Maori as recognised in Te Rito New Zealand Family Violence Prevention Plan. Maori have experienced considerable upheaval to family structures and traditional forms of redress for family violence. The alienation that some Maori have experienced has contributed to poor social outcomes such as health, education and employment.

There is also the issue of different access to the criminal justice system and differences in police practices. Low socio-economic and ethnic minority groups are known to access the police more than higher socio-economic groups for family violence call-outs. This may reflect their comparative lack of resources to deal with the abuse (Carbonatto 1997; Ursel 2001). Wealthier victims may have more alternatives before they resort to calling the police (Carbonatto 1997). Reasons why victims do and do not access police services will be discussed in Chapter Five.

5.5 Critiques of the Minneapolis and SARP studies

This section summarises some of the main critiques of the Minneapolis and SARP studies. For more detailed analysis please see for example Garner, Fagan, and Maxwell 1995; Grant-Bowman 1992; Gelles 1996; Lerman 1992; Maxwell, Garner and Fagan 2001, 2002; Robertson 1999; Stanko 1995a; Zorza 1994.

5.5.1 Decontextualised nature of the experiments

A major criticism of these studies is that they do not take into account the wider context of criminal justice responses to family violence, let alone the responses of social welfare and community agencies and the strategies of victims themselves (Robertson 1999; Stanko 1995a; Zorza 1994). Frisch (2003:168) argues 'because deterrence alone was an unreasonably high

³⁴ Participants were asked if they had ever experienced physical violence; threats of violence; property damage; and use or threat of weapons by a heterosexual partner during their life time.

³⁵ For an analysis of the extent of violence against Pakeha and Maori women by their partners, see Morris 1997; Cram, Pihama, Jenkins, Karehana 2002; and Morris, Reilly, Berry, Ransom 2003. The report by Barwick, Gray and Macky (2000) statistically analyses the use of protection orders by ethnicity. The report shows that just over a quarter of applicants are Maori and this is also the same for respondents of protection orders (Barwick et al. 2000:133-134).

standard for “success” and little focus was placed on how the rest of the criminal justice system did or did not support ongoing offender accountability, these studies were conducted in a systemic vacuum.’

Dobash and Dobash (2000:255) also criticise the SARP study design for not collecting more contextual data:

Without investigating the phenomenon (violence) and the nature of the intervention (arrest), the NIJ-funded researchers relied on post hoc inferences to try to explain the apparent cessation of violence, yet the social and psychological data that might establish a connection between arrest and specific deterrence were not collected.

Downstream measures such as bail conditions, protection orders, prosecution and sentencing, counselling and rehabilitation programmes all play a part in outcomes for victims and offenders. For example an evaluation of a pro-arrest policy in London, Ontario (Jaffe, Hastings, Reitzel & Austin 1993) demonstrated that a high prosecution rate of offenders who were subsequently convicted and sentenced did deter further violence in comparison to the group who had no police intervention (Robertson 1999:117-118).

Sherman and his colleagues noted that only five per cent of the arrested men in their study were charged and only one per cent were convicted (Sherman et al., 1991). What is the message when a man who has been arrested is later contacted by the district attorney and told that he is not being prosecuted? Anecdotal evidence from some victims suggests that some abusers, initially chastened by arrest resumed their violence after being told they were not to be prosecuted (Ellen Pence, personal communication in Robertson 1996:90).

There is also the possibility victims whose abusers received the warning option in the experiments may give up using the police, thus contributing to the low recidivism rates in official records (Lerman 1992 cited in Robertson 1999:116).

5.5.2 Victims’ strategies ignored

Stanko (1995a:38) is critical of Sherman’s approach for not taking into account victims’ views and responses to violence in the arrest experiments.

Sherman’s work provides us with no evidence of what support women sought or received from others (all the other evidence from the research on women and violence suggests that friends, family and front-line feminist advice networks still provide the greatest assistance). We are still left without knowing why the men might have stopped their violence (Williams & Hawkins 1989; Williams & Hawkins 1992). What we are left with is a presumed connection between men’s wish to stop battering women and the sanctions of the criminal law. If we have learned anything about men’s violence over these twenty years, we have learned that policing men’s entitlement to abuse is just much more complicated than that (Stanko 1995a:38).

Chapter Six examines the literature on victim preferences including victim strategies.

5.5.3 Methodological issues and measuring “success”

Frisch (2003) raises an important issue for policymakers when considering the success of pro-arrest policies for family violence. What is success and how to measure it? She asserts that in the United States the notion of “success” in the field was unclear and therefore difficult to evaluate. Police departments having a pro-arrest policy does not equate to success if it is poorly implemented. Frisch (2003:166–167) states ‘appropriately evaluating this change (to pro-arrest) requires the development of assessment criteria to judge the effectiveness of policy outcomes as well as the overall community response’.

Frisch (2003:166) recommends a mixed methods approach using qualitative and quantitative data rather than a purely quantitative evaluation design that tend to be narrow in focus³⁶ (cf. Dobash & Dobash 2000:257). Qualitative data tends to be more holistic and take into account the impact and perceptions of key stakeholders including victims, offenders, criminal justice agencies and community organisations.

The suitability of using random controlled experiments to investigate a single intervention in response to family violence has been severely criticised on ethical and theoretical grounds. Ethical concerns have been raised over the random allocation of police response in the experiments that may have left victims who did not receive the arrest response, where it would have been appropriate, even more vulnerable to further violence (Dobash & Dobash 2000:255).

5.5.4 ‘Stake in conformity’ thesis

The ‘stake in conformity’ thesis is only one of a number of explanations for the variation in findings about offender characteristics. The theoretical basis of this idea is also highly debateable and its usefulness to policy planning troublesome on ethical and practical grounds (Hirschel & Dawson 2003). The concept of ‘stake in conformity’ is based on the theory of *social control*, which in this interpretation presumes that people are naturally inclined to commit crime and only stopped from committing crimes by ‘strong bonds to conventional society that restrain people from committing criminal acts’ (Sherman 1992a:160-161).

A similar, but more flexible, way of expressing how offenders perceive involvement in the criminal justice system is in terms of social costs³⁷:

[T]he deterrent effects of arrest and/or sanctions will be greater for those offenders who perceive higher social costs associated with the act of violence and with the criminal justice consequences. These costs can include the loss of employment, social status, relationships with family and friends, and the consequences of sanctions. If offenders come from a milieu where these ‘costs’ are relatively small (for instance if they have no job, their family and friends take part in the same kinds of behaviour, or if prison is not perceived to be a

³⁶ ‘Quantitative assessments of domestic violence may include the number of reports to police, the percentage of arrests made in domestic cases, the number of referrals made by police for victim services, and the increase in the number of training hours devoted to the problem.’ (Frisch 2003:166)

³⁷ See Felson, Messner, Hoskin, Deane (2002:643-644) for support of a social costs and incentives approach that takes into account individual decision-making processes.

particularly bad place), then they are not likely to find criminal justice interventions a deterrent (Carbonatto, 1997:279).

5.5.5 More than an ‘individual deterrent’

As Fagan (1996:35) has noted the replication experiments were more about testing deterrence theory, not the effectiveness of the pro-arrest policy. Stanko (1995a:31) used Peter Manning’s concept of the ‘preventive conceit’, that is, law enforcement can prevent crime, to characterise the debates around policing domestic violence. ‘The question is asked: Does arrest act as a deterrent to men’s violence against women, and in particular, as a mechanism for preventing men’s violence against women in the home?’ (Stanko 1995a:31) The problem of couching the debate in these terms according to Stanko (1995a:38) is the ‘connecting of the cessation of violence to the ‘fact’ of arrest’. To suggest that any one single intervention could stop domestic abuse underestimates the complexities of family violence.

There is a presumption here of offenders weighing ‘the costs of crime rationally’ (Carbonatto 1997:279). Family violence is varied and complex with some acts committed impulsively and involving alcohol and drugs which reduces rational decision making (Carbonatto 1997:279). Other offences are premeditated and part of a systematic pattern of control through abuse. Any deterrent effect of arrest is therefore dependent on how the offender perceives criminal justice intervention and the downstream effects of being arrested. Consequently many authors have promoted multiple solutions to family violence rather than advocating criminal justice sanction as a sole solution through deterrence (see Buzawa & Buzawa 1996; Carbonatto 1997; Hoyle & Sanders 2000; Maxwell et al. 2002; Mills 1998; Robertson 1999; Stanko 1995a&b; Stark 2000a&b).

Authors have pointed out benefits other than individual deterrence of pro-arrest and mandatory arrest policies, such as providing immediate safety for the victim; offender accountability; and access to services. In broader terms, the pro-arrest policy is supposed to act as a general deterrent by sending out an important societal message: that family violence is a crime and will be dealt with seriously by the criminal justice system.

5.6 Arrest as part of a coordinated community response

Arrest as part of a coordinated community response has been well recognised in the United States with national programmes as the *Grants to Encourage Arrest Policies and Enforcement of Protection Orders Programme*, funded by the National Institute of Justice and the Violence Against Women Office. Grants are allocated to law enforcement agencies; prosecutors’ offices; probation departments; state-wide agencies; and tribal organisations for establishing or enforcing policies favouring arrest and prosecution of persons committing domestic violence (Archer et al. 2003) Archer et al. (2003:43) state the overriding purpose of this programme ‘is to encourage local criminal justice systems to assign greater priority to domestic violence by developing new ways of responding to domestic violence cases, and improving offender accountability and victim safety’.

The grantees were allowed flexibility in the way they enacted changes and they sought to effect change through the following approaches:

- Increases in staffing/specialized units;
- New court structures;
- Staff training;
- Improved case handling procedures;
- Increased capacity to provide victim services; and
- Increased coordination among agencies (Archer et al. 2003:43).

A comprehensive evaluation of this programme by the Institute for Law and Justice used qualitative and quantitative methods to conduct process and impact evaluations. Key findings in regard to the use of arrest as part of a coordinated community response were:

- Interventions supported by the programme resulted in an initial increase in arrests with the arrests peaking during the grant period then levelling off. The increases were likely due to the new or urgent management emphasis on domestic violence.
- The proportion of warrant arrests of domestic violence suspects (e.g. individuals who fled the scene) increased from 4.1 per cent of all arrests prior to the Arrest Policies Programme grants, to 15.5 per cent during the grant period. It appeared that unless law enforcement agencies had specialised domestic violence resources (detectives or patrol officers), little effort was made to apprehend suspects who had fled the scene.
- Victims and victim service providers reported that Protection Orders were not consistently enforced by police agencies and they were also concerned that protection orders were not an effective safety measure. Police officers expressed frustration related to enforcing Protection Orders, including a perceived lack of support from prosecutors or judges. (Archer et al. 2003:135)

6 Victim choice and empowerment

These women are, therefore, situationally coerced by their circumstances. The task . . . is to help women to change their circumstances, in order to alleviate this coercion and make different choices... (Hoyle & Sanders 2000:21).

6.1 Introduction

This chapter examines the debates and the evidence regarding victims' perspectives on the pro-arrest policy. Pro-arrest policies have been criticised for disempowering victims by not taking into account their preferences in regard to arresting the offender (Hoyle & Sanders 2000; Mills 1999). The main debate in this area is the capacity of victims to make a decision regarding the arrest (and prosecution) of their offender. Critics of the pro-arrest policy have argued that victims are essentially revictimised by a paternalistic criminal justice system that takes away their power to choose what is best for them, their relationships and often their families.

Proponents of the pro-arrest policy counter that "free choice" by victims is a myth if their abusers are exercising coercive control over their lives (Stark 2000a:76). 'To argue the case for making victim preference paramount in arrest decisions is to argue for a "right" many battered women may not be able to exercise' (Robertson 1999:119-120). State intervention in the form of the pro-arrest policy is therefore supposed to assist in counteracting the control of the batterer, assisting victims to a stage where they are more able to make decisions free from the coercion and control of the batterer.

6.2 Women's expectations of the criminal justice system

Kelly (2005) states that at the time women call the police they are undoubtedly looking for immediate protection and some may want to take matters further with prosecution. A woman's perspective on how far she wants to involve the criminal justice system can vary depending on the circumstances:

[t]here is not one story here – of women not wishing to take cases against current/ex partners – but a more complex set of needs and aspirations, which can change over time and where the desire for justice is supported (Kelly 2005:90).

A consultation process with survivors and the domestic violence sector conducted by the Women's National Commission (WNC 2003) in the UK revealed that overall women strongly support pro-active interventions including those taken by the police (Kelly 2005:87). These women felt that the criminal justice system ought to be able to deliver protection and safety. However, many of them reported being let down by the police and/or legal system.

6.3 How women victims viewed the pro-arrest policy

There are a number of studies that investigate how victims perceive the pro-arrest policy along with their experience of police response, prosecution and recidivist violence. This review focuses on victims' views of arrest. What is evident is that there is no consensus among victims on the pro-arrest policy, although slightly more seem to be in favour of it than against it. This lack of consensus reflects the diverse experiences of victims of family violence.

6.3.1 Studies of Victim Preferences³⁸

Carbonatto (1997:29) interviewed 24 female victims of domestic violence selected from New Zealand Police files.³⁹ She found that just over half of the women wanted their partners arrested at the time of the incident (Carbonatto 1997:234). The other half were not sure 'about the benefits of arrest or simply did not want their partners arrested at all'. Eight women definitely did not want their partners arrested and wanted police to remove him until he 'sobered up' or to 'diffuse' the situation with a warning. Carbonatto (1997:234-235) states that '[t]hese women felt they should have more control in their future encounters with the police' in terms of the arrest decision and the withdrawal of charges at any time.

Hoyle and Sanders (2000) interviewed 65 women in three of the Thames Valley (London) Police areas.⁴⁰ They found that 31 women wanted the offender arrested, but that most of these women did not want him prosecuted. Of those who did not want the offender arrested, 22 specified that they did not want their abuser arrested; seven of the women wanted the police to calm the offender but did not want him to be removed. While a further four wanted him to be warned to deter him from further violence, but did not necessarily want it to go further.

Smith (2000) surveyed 241 domestic violence victims in three different areas in the United States of America. The proportion of the sample that was supportive of mandatory arrest laws was 75.7 per cent. Fifteen per cent were unsure and five per cent did not support the implementation of mandatory arrest laws (Smith 2000:1395).

McGillivray and Comaskey (1999) conducted a qualitative study with 26 First Nations female victims in Manitoba, Canada. They found that the majority of these women were in favour of the police charging the offender and the most common response was that they hoped the police would take him away.

³⁸ It should be noted that these studies framed the question of arrest in different ways. Therefore some victims were responding to whether they wanted their abuser to be arrested after a particular incident, while others were asked to comment on the appropriateness of the pro-arrest policy in general.

³⁹ Carbonatto (1997:36) examined 90 files from three districts during varying time frames within the period from November 1993 to July 1994.

⁴⁰ 'Thirty-two victims were drawn from a sample of all of the cases reported during a six-week period in 1996. Another 21 victims were comprised of women who had reported four or more domestic disputes during the previous 12 months but who had not reported a further dispute within the four months prior to the commencement of the fieldwork. The remaining 12 victims, who had been issued with emergency panic alarms, were interviewed primarily to assess the impact of these alarms on their feelings of safety, but were also asked questions about their experience of, and the police response to, previous victimization' (Hoyle & Sanders 2000:16).

Hotelling and Buzawa's (2001; cited in Buzawa & Buzawa 2003) research in western Massachusetts found that 83 per cent of domestic violence assault victims wanted a police response, however only 33 per cent wanted an arrest made compared to 52 per cent who wanted the offender controlled but not arrested. This contrasts to a sample in the same area of non-domestic violent assaults where 76 per cent wanted the offender arrested and only 12 per cent wanted the offender controlled. In the domestic violence cases victims disagreed with 60 per cent of the arrests made showing that the police determined the need for arrest independently of victim preferences.

Pisano-Robertiello's (2003) qualitative study of 30 women who had recently been victims of domestic violence and were living in refuges in New Jersey found that 23 out of the 27 who called the police thought the police did what they should have done. Of the 27, 18 wanted the offender arrested. However they were divided on the question of how helpful mandatory arrest was with 18 saying mandatory arrest does not keep batterers away and 11 saying that it did.⁴¹

6.3.2 Reasons why victims did want the offender arrested

Safety

In Carbonatto's (1997:234) study, safety was the main reason victims were positive about arrest as 'they felt secure in the knowledge that their partner was behind bars while he was still drunk or abusive'. McGillivray and Comaskey (1999:144) also found that safety was a major concern for most of their respondents and that is why they favoured their abusers going to jail 'because it offered *safety* for them and *punishment* for the offender. Respondents want both stiffer sentences and effective treatment programmes.'

Some of the victims Hoyle and Sanders (2000:22) interviewed wanted 'the police to protect them and their children from further immediate violence by taking them somewhere safe'.

Respite and 'space to think'

Carbonatto (1997) found that some of the women felt arresting the perpetrator gave them space to think about trying temporary or permanent separation. This agrees with Hoyle and Sanders's (2000) finding that victims wanted the offender arrested in order to have a respite from the violence. Some saw 'the police removal of the perpetrator as a necessary precursor to their taking action to end the relationship' (Hoyle & Sanders 2000:22). For many of these women separation and finishing the relationship was their main goal.

Victims seeking censure and retribution

Hoyle and Sanders (2000) cited another reason victims gave for wanting the offender arrested as being for retribution, to 'teach him a lesson'. Carbonatto (1997:234) said some of the women in her study saw arrest as a censure on their abuser's behaviour believing that it had 'shocked him'. Retribution and censure can give victims back a feeling of power in the

⁴¹ This study also examined women's views of temporary restraining orders (TOR) and found that of the 27 victims who obtained a TOR only 8 thought it stopped their abuser from coming around (Pisano-Robertiello 2003:182).

relationship and for some this involves using the threat of prosecution as a deterrent as McGillivray and Comaskey (1999:104) found:

If women dangle the threat of criminal charges even if they are not in direct danger, then the policies are working as everyday prevention – the ideal use of such law. The essence of policing and prosecution, and of reforms to law, policy, and practice, is to equalize power where violence has created inequality and denied power and autonomy. Where women are prevented from leaving an abusive relationship, or have chosen for the time not to leave, police protection and the threat of prosecution and exposure offer some protection.

Arrest as a way of accessing services

Some of the women in Hoyle and Sanders's (2000) study thought arrest would facilitate support for their partners' addictive or mental health problems. In Carbonatto's (1997) study, many of the women who favoured arrest perceived this as a way of getting help for their partner and for the relationship. However, of the women who did not want their partner arrested, three 'did not believe their partner was a criminal, but rather that he needed help from more appropriate agencies – such as alcohol counselling, anger management counselling, or psychiatric care' (Carbonatto 1997:235).

Victims who favoured police control

While Hoyle and Sanders (2000) proposed that women do make rational decisions within the context of their coerced living environment, some victims are too distraught to feel they can make any decisions. For example, Carbonatto (1997) found six women who favoured the police going ahead with arrest as they felt too distressed at the time to make any rational decision about the future of their partner.

Carbonatto (1997:234) states that these women who favoured arrest felt:

. . . the police were in a better position to make decisions concerning the arrest of their partner. One woman said if the police had not made it clear to her partner at the time of arrest that the decision to arrest was not hers, then she would have buckled to his demands to stop them from arresting him.

Variables associated with victims being more likely to want their offenders arrested

Hirschel and Hutchison (2003) found in their study with 419 women conducted in Charlotte, USA, that five variables significantly contributed to victims being more likely to want their offenders arrested.

Victims who were (a) Black, (b) from the lower socioeconomic classes, (c) had been hit more frequently during the previous 6 months, and (d) whose offenders had employed more severe tactics to resolve the current dispute and (e) had prior arrest records... (Hirschel & Hutchison 2003:326).

While the New Zealand National Survey of Crime Victims (NZNSCV) 2001 (Morris et al. 2003) did not ask victims of domestic violence about their views of police response and the

pro-arrest policy it is interesting to note that some of the characteristics of repeat victims are similar to those documented by Hirschel and Hutchison (2003) as preferring arrest. The NZNSCV 2001 found that repeat victims were statistically 'significantly more likely to be: women, young, Maori, solo parents, beneficiaries, of lower socio-economic status (with the exception of NZSEI 10-29) and living in rented accommodation.' (Morris et al. 2003)

6.3.3 Reasons why victims did not want the offender arrested

Offender Retaliation

Many victims report that fear of retaliation prevents them from accessing the police (Buzawa & Buzawa 2003) and if the incident is reported the reason many victims do not seek arrest is also because of the fear of retaliation which has been instilled in them by their violent partners or ex-partners (Hoyle & Sanders 2000).

One of the justifications for the pro-arrest policy is that it is supposed to take the onus off the victim regarding the decision to arrest so that the offender can not blame the victim. However, do victims and offenders generally know about the pro-arrest policy? Do offenders blame the victim anyway, whether or not it was them that involved the police or wanted the offender arrested? Do police officers make it clear to offenders that it is not the victim's decision whether or not to arrest? When offenders are under the influence of drugs or alcohol this is probably not even feasible. In New Zealand, the Hamilton Abuse Intervention Programme (HAIP), for example, do inform offenders of this afterwards.

In Carbonatto's (1997) study seven of the women reported retaliation from their partners for getting the police involved. Just over half the sample reported that the abuse towards them continued as before. On the positive side the majority of offenders did not retaliate specifically because of police involvement and four offenders came home and apologised. A further three victims said that 'the police intervention had been good because the offenders themselves had feared what they were capable of' (Carbonatto 1997:237).

Hirschel and Hutchison's (2003) study highlighted that, as opposed to fears of retaliation, some victims want the perpetrator arrested because they know they are at risk of further violence. They found that victims who expressed a preference for arrest were more likely to be both threatened and hit in the six months following the incident that brought them into the study than those who did not want their offender arrested.⁴² From their findings they conclude that a victims 'desire for arrest of the offender would appear to be a factor that police should take into account in determining subsequent action' (Hirschel and Hutchinson 2003:331).

6.4 Victims' diverse responses and experiences

Those who critique mandatory intervention point to the diverse experiences of victims and the differences in severity and type of family violence incidents police are called to. This

⁴² Note there was no association between victims wanting offenders arrested and offenders actually being arrested (28.5 per cent) as this was a randomised controlled trial study with randomly allocated police responses.

raises the question of which victims are in a position to make a decision that is in their own best interests and which victims are coerced?

The pro-arrest approach assumes a position opposite to that of the victim choice approach; that victims have little agency and that the police and policy makers know what is best for them. It seems presumptuous that policy makers or the feminist advocates who have influenced them can easily determine what is best for, or in the interest of, a diverse group of battered women. It is as much a conceit as the theory of deterrence in this area, which assumes that violent men are a homogeneous group (Hoyle & Sanders 2000:19).

6.4.1 Can police differentiate ‘domestic conflicts’ from ‘coercive battering’?

In discussions on women’s diverse experiences the literature distinguishes domestic violence or intimate partner violence (IPV) as patterned behaviour involving repeated incidents undertaken to coercively control the victim (Kelly 2005). Stark (2000a:76) has pointed out a ‘need to close the gap between the law and the experience of battering’. He proposed that a first step towards this ‘involves differentiating domestic conflicts from battering situations involving coercive control’ (Stark 2000a:76). Stark supports greater police and prosecutor discretion, and a larger role for victims in the case of domestic conflicts that do not involve coercive battering.

Where there is a relationship of coercive battering Stark (2000a) proposes statutory and criminal justice intervention, including pro-arrest. In reality, though, how easy is it for police to distinguish between a one off ‘domestic incident’ and incidents that involve a pattern of coercive battering? Stark (2000a:76) does emphasise how difficult it is to distinguish between victims who have been intimidated and those who act voluntarily in relation to arrest and dropping charges.

Hirschel and Hutchison (2003:333) suggest that ‘when neither the past history of offending nor the current incident are severe enough in themselves to merit arrest, victim preference should be considered an important element in police handling of domestic violence cases, just as it is in other criminal cases’. Based on their research they conclude that when victims state a preference for arrest there is a likelihood of revictimisation. Considering that some of the variables associated with preference for arrest include prior arrests, hitting more frequently in the previous six months and using severe tactics, this is not surprising.

Research suggests that prior calls to police should not be entirely relied on to predict escalation or severity of abuse as a Milwaukee study⁴³ found that cases that resulted in homicide had one-sixth as many police contacts for battery as those that did not result in homicide (Hirschel & Dawson 2003).

⁴³ See L. Sherman, J. Schmidt, D. Rogan and C. DeRiso (1991) ‘Predicting Domestic Homicide: Prior Police Contact and Gun Threats.’ in Michael Steinman, ed., *Wife Battering: Police Responses*. Cincinnati: Anderson.

6.4.2 Victims' responses to battering

Glover's (1993) study found victims' responses to battering varied. They included suspended judgement, trying to ignore and block out the violence, self blame, and active forms of resistance.

Hoyle and Sanders (2000) argued women make rational decisions based on the context of their current lives. Victims of battering may make decisions in order to minimise future violence and consequently may not want the abuser arrested or prosecuted for fear of retaliation. This can lead to the apparent uncooperativeness of some victims with the criminal justice process.

[T]he pattern of victim preferences is neither inevitable nor natural – it is socially constructed by the structural and interpersonal features of these women's lives. This is not to say that we accept that victims suffer from 'learned helplessness' or 'battered women's syndrome' (see Dobash and Dobash 1992, for a critique of these theories). We are not arguing that these women have no control over their preferences. To the contrary, we argue that their decisions are rationally chosen in the context of their current lives. These women are, therefore, situationally coerced by their circumstances. The task . . . is to help women to change their circumstances, in order to alleviate this coercion and make different choices – which may be more helpful in the long term – equally rational for these women' (Hoyle & Sanders 2000:21).

Holder's (2001) review of studies that investigated women's 'help seeking' behaviours found there is much to learn about the way victims of abuse employ 'management strategies' 'to cope with and/or extricate themselves from violence' (Holder 2001:8). Within the array of strategies victims utilise, the criminal justice system is contextualised as a resource, not a solution to end violence.⁴⁴

6.5 Barriers to victims accessing the criminal justice system

6.5.1 Why victims do and do not report violence to police

Buzawa and Buzawa (2003:72) state that 'most studies have failed to cast much light on differences between those who report crimes and those that do not'. This lack of information about victims has important implications for understanding victim's decisions to report new offences (Buzawa & Buzawa 2003). They noted in the past many victims did not report domestic violence incidents because of lack of police response. Buzawa and Buzawa (2003) point out that some victims may not know of the police change towards pro-arrest and still think they will not get much help from police.

Felson et al. (2002) analysed the United States National Crime Victimization Surveys (1992–1998) and found that victims of family violence were not reluctant to call the police and were in fact just as likely as other victims of assault to call. Factors that were identified as inhibiting family violence victims from calling: the desire for privacy⁴⁵; the desire to protect

⁴⁴ Holder (2001:8) citing feminist criminologists Dr Elizabeth Stanko and Professor Jane Ursel.

⁴⁵ This study found that privacy was by far the most important factor stopping victims from calling police.

the offender; and, for partners, the fear of reprisal, were offset by the desire for protection (Felson et al. 2002). Most victims of domestic violence were women and women were more likely to view family violence as a serious matter and were more concerned about protection. '[S]elf-protection is much more likely to lead female victims of male partners to report an incident than fear of reprisal is to lead them not to report it' (Felson et al. 2002:642).

Morris (1997:61) found that the main reason that 156 women (64 Maori and 92 non-Maori) who said that they had been a victim of family violence did not call the police, was because they did not think it was serious enough (56 per cent Maori and 67 per cent non-Maori). This contrasted with the respondents' earlier report that the violence they had experienced was 'serious'. The second reason for not involving the police was because they 'thought I could handle it myself' (23 per cent Maori and 15 per cent non-Maori).

The NZNSCV 2001 (Morris et al. 2003) found that 48 per cent viewed the most recent incident of violence that had happened to them as just something that happened, while only 16 per cent viewed it as a crime. The authors suggest this supports the view that certain types of violence are largely tolerated and seen as a 'normal' part of everyday life (Morris et al. 2003). However there was a gender difference with 27 per cent of women viewing the most recent incident as a crime compared to 4 per cent of men. About a third of women (36 per cent) saw it as just something that happened compared with nearly two-thirds of men (61 per cent) (Morris et al. 2003). Morris et al. (2003) suggest that these differences have implications for campaigns that raise awareness that family violence is a crime.

The direct effect of the pro-arrest policy on a victim's decision to call the police in New Zealand is not known. Smith's (2000) survey of 241 victims in the United States found that 61 per cent said they were more likely to report future violence if there was a mandatory arrest law compared with 13 per cent who said they were less likely to report future violence. Of the remainder, 10 per cent said it would make no difference and 16 per cent were not sure. Dugan's (2003) analysis of the United States National Crime Victimization Survey found that while it makes no difference whether a state has a mandatory arrest law to whether or not victims call the police, third parties were less likely to report domestic violence in states where there are mandatory arrest laws. Dugan (2003) cautions that because there were no survey questions in the NCVS about knowledge of domestic violence legislation there is no way of knowing about participant's awareness of mandatory arrest laws.

6.5.2 Negative perceptions of police

Another reason given by victims for their reluctance to involve the police is a negative relationship with police, this is particularly evident for minority groups (Buzawa & Buzawa 2003). This can result from former negative experiences when the police were called to domestic violence disputes. A Home Office research paper reported that 'some black women, in particular, were hesitant to call the police as they feared that both they and their abusers could face discriminatory attitudes' (Mullender & Hague 2000).

In Glover's (1993) interviews with seven Maori women, she found the women had mixed experiences, and consequently attitudes, towards police response and involvement. Those who had previously had positive responses from police were likely to call them again, and the converse was also true. However, several of the women never called the police at all.

6.5.3 Child custody concerns

The report, *Maori Family Violence in Aotearoa* (Balzer et al. 1997:36) found that there was a general perception among their respondents⁴⁶ 'that Maori women were often treated differently to their non-Maori counterparts' by the key government agencies that provided family violence services. This included the perception that child protection teams were more likely to become involved, due to police notification, if the victim of violence was a Maori woman. There was a concern that if Maori women perceived that the state would remove their children, this would prevent them from seeking help from government agencies and possibly endangering the lives of themselves and their children (Balzer et al. 1997).

The Department of Child, Youth and Family also recognises that a public perception that they remove children from their families may be preventing people from accessing services, particularly because their agency is becoming more actively involved with children who are witnesses or victims of family violence (Taylor & Henare 1998).

While female victims may fear their children being removed, they may also be afraid the children will be hurt. McGillivray and Comaskey (1999) found that fear for their own and their children's safety was the major reason First Nations women in their study did call the police.

6.6 Victim choice

Critics of the pro-arrest policy, such as Linda Mills, point to the psychological effect mandatory policies have on victims who already feel disempowered. Mills (1999) proposes that state intervention that does not take into account victims' decision-making processes has an effect on their healing process as an integral component of healing is the victim gaining back some control over their lives and being able to make their own decisions.

However, proponents of the pro-arrest policy state that before a victim can embark on the healing process they need to be free of immediate danger. Stark is critical of Mills's over pathologising of victims, he states:

Some women suffer the traumatic syndromes Mills associates with abuse. But in most cases, the victim's dependence has less to do with psychological trauma than with a state of objective domination that makes expectations of "free choice" a cruel joke. Mills thinks mandates treat women as "fragile, uncooperative, mentally ill and/or indecisive." In fact, these policies are predicated on the belief that the capacity for independent decision-making is compromised by a victim's status as a virtual hostage, not by personality flaws (Stark 2000a:76).

⁴⁶ The respondents for this report included six key informants who were 'Maori service providers in the area of family violence, and writers and educators in Maori history and society' (Balzer et al. 1997:11).

Stark (2000b:15) distinguishes between the individual 'treatment' of victims and a social context that affirms and protects the victim.⁴⁷ 'The larger question resurfaces: are mandated medical reporting, no drop prosecution and mandatory arrest "appropriate" parts of this social context?' (Stark 2000b:15). In the current context, in the United States, Stark thinks no-drop and pro-arrest policies are justified. Contrary to Sherman's proposal that they can negatively affect minority groups especially the unemployed, Stark states that these policies provide access to 'a basket of public goods that can be employed flexibly . . . having the state's resources at your disposal – is a highly desirable and empowering outcome in the long run' (Stark 2000b:15).

Hirschel and Dawson (2003) propose that their findings that victims can accurately assess the likelihood of revictimisation supports police responses that take some account of victim preferences.

6.6.1 Police discretion and victim choice

The debate over victim choice presumes that police officers have limited discretion due to the pro-arrest policy and are therefore unable to take account of a victim's wishes.⁴⁸ However, it is impossible to completely take away an officer's discretion and studies show that indeed officers still practice discretion at the scene as to whether or not they will arrest.

Mary Schollum (1996) surveyed 534 front line police in New Zealand to determine their response to the family violence policy. In regard to discretion, 60 per cent of the officers said that they were likely to use a warning 'when victims were adamant they did not want the offender arrested'. The two main reasons officers complied with victims' wishes were that they knew they were 'unlikely to secure a conviction without the victim's cooperation or that going against the victim's wishes may cause her to avoid calling the police in the future' (Schollum 1997:8). Seventy-five per cent said they were likely to warn when both parties seemed at fault. Furthermore, Schollum found that there was 'confusion over the appropriate use and extent of discretion':

Where there is clear evidence of an offence having been committed, particularly where there is physical violence and serious injuries, officers seem to have no problem in making the decision to arrest the offender. However, where there is some uncertainty surrounding the incident, officers are less sure of the most appropriate response. From comments made in the survey, it appears that many training officers and supervisors are strongly pushing the arrest line, with many officers feeling they are being forced into almost invariably arresting, even against their

⁴⁷ It is perhaps useful here to note that these debates are partially founded on different authors' perceptions of the dynamics of family violence. Healey, Smith and O'Sullivan (1998) name three theoretical approaches that are used to explain family violence in their discussion of batterer intervention strategies. They are often used in some form of combination in treatment programmes:

Each theory of domestic violence locates the cause of the violence differently. Social and cultural theories attribute domestic violence to social structures and cultural values that legitimate male control and dominance over their domestic partners. Family-based theories blame violence behaviours on the structure of the family and family interactions rather than on an individual within a family; and individual-based theories attribute domestic violence to psychological problems such as personality disorders, the batterer's childhood experiences, or biological disposition (Healey, Smith & O'Sullivan 1998).

⁴⁸ The pro-arrest policy was initiated to limit police discretion in the case of family violence and encourage officers and the public to treat this violence as a crime and take it more seriously.

better judgement, and into pressing a charge that may be too serious for the offence involved (Schollum 1997:8).

To some degree Carbonatto's (1997) discussions with New Zealand Police officers agreed with Schollum's findings. Some officers did respond in accordance with the victim's wishes. This was more due to an attitude that the 'victims were not to be trusted and relied upon to support police in arresting and prosecuting⁴⁹ offenders' so 'what's the point?' (Carbonatto, 1997:121).

International studies on arrest decisions in family violence incidents such as Hoyle and Sanders (2000) found that police officers practised a form of 'victim choice' where they took into account the victims' preferences regarding arrest.⁵⁰

⁴⁹ See Holder (2001) for a discussion on victims and the prosecution process.

⁵⁰ These researchers were somewhat critical of this approach in the context of their study as there were no support networks in place for victims, and the approach was in effect leaving some victims very vulnerable to further abuse.

7 Discussion and Conclusion

What years of scholarship have made clear is the futility of considering interventions in isolation. If we are serious about challenging men's violence, we must be realistic about the potential of a single, brief, transient contact with the police and the court system to address ingrained behaviour which is supported by an accumulation of complex attitudes and beliefs. Clearly, arrest or protection orders cannot, alone, stop violent men. (Lewis et al. 2000:202)

7.1 Introduction

This literature review examined the debates surrounding the police pro-arrest policy implemented in response to domestic violence and described the historical development and implementation of the pro-arrest policy in New Zealand.

Two main areas of concern about the pro-arrest policy were addressed. First, did the pro-arrest response have a differential impact on different groups in society and did it cause some offenders to escalate their abuse? The second area of concern is whether taking away victim choice in the pro-arrest response only serves to disempower the victim further.

7.2 The historical development of the Family Violence Policy in New Zealand

The review started by describing the historical development of the pro-arrest policy and outlining the current New Zealand Family Violence Policy 1996. Internationally the impetus for the policy came from several directions, namely the women's movement and the police themselves. The Minneapolis arrest experiment conducted by Sherman and Berk (1984) provided empirical justification and was influential in the rapid adoption of this policy.

The New Zealand Family Violence Policy was influenced by these factors along with local research and pilots such as Sergeant Greg Ford's *Domestic Dispute Research Project* 1986, HAIPP, the Roper Report and the work of NCIWR and the FVPCC.

The current Police Family Violence Policy 1996 is based on three core principles: victim safety; offender accountability; and consistent practices across agencies and groups. To this effect the pro-arrest policy has been adopted for victim safety and offender accountability.

7.2.1 The criminalisation of family violence

Adoption of the pro-arrest policy in New Zealand marked a major change in the way police responded to family violence. Society traditionally viewed family violence as a private matter, influenced by cultural and religious ideas concerning the roles of husbands and wives, parents

and children. Consequently police were reluctant to interfere, and at most were encouraged to mediate, reserving arrest as a last resort.

The pro-arrest stance marked the official criminalisation of family violence and challenged the privacy of the family home and the cultural norms that legitimated male privilege. At a societal level the pro-arrest policy serves a symbolic function signalling society's abhorrence of family violence, thus acting as a general deterrent (Hoyle & Sanders 2000). The policy was also intended to change police attitudes and practice, in part by limiting police discretion, and by requiring officers to more actively respond to family violence as a crime.

7.3 Studies on the deterrent effect of arrest

After the influential impact of the Minneapolis experiment, which reported that arrest compared to other types of police response deterred future recidivism, five further replication studies (SARP) were commissioned to validate these results. In discussions about the SARP studies it is worthwhile remembering that these experiments only tested the pro-arrest policy for misdemeanour domestic violence. More serious offences, where the victim's safety was considered at risk, and where victims wanted to press charges, were excluded from the study.

The arrest studies compared the deterrent effect of arrest with other types of responses police could implement. Initial meta-analysis of the studies was inconclusive in regard to the deterrent effect of arrest, with about half the studies demonstrating more positive results than the other half. The arrest response had some success with short-term deterrence but generally there were no long-term deterrent effects.

The SARP studies were all designed differently with the only two constants being the police were allocated 'arrest' against a set of other responses and the researchers were to measure reoffending using both official records and victim interviews. This made them very difficult to compare and is thought to account for the variability in results. Maxwell, Garner and Fagan (2001, 2002) applied consistent criteria and rigorous statistical analysis across the five SARP sites and found arrest had a significant although modest reduction effect on reoffending across all study sites and that arrest did not cause an increase in violence.

7.3.1 Impact on different subgroups

The review examined the evidence concerning the impact of the pro-arrest policy on different groups in society. Sherman and his colleagues analysed the Minneapolis and SARP results in terms of employment, education, marital status, and ethnicity to see how arrest affected different types of people. Sherman hypothesised those with more to lose would be more deterred by arrest. In a second stage 'post-hoc' analysis they found that the unemployed offenders had increased recidivist rates compared to employed offenders. In the Milwaukee arrest experiment, unemployed African American offenders were reported to have increased reoffending rates compared to offenders of European origin. Sherman says this could have been a function of the unemployment variable and/or a reflection of the alienation experienced by this minority ethnic group.

Maxwell, Garner and Fagan's (2001, 2002) analysis also found employed offenders were more likely to be deterred by arrest in four of the five sites than unemployed offenders, with two of the four negative relationships being statistically significant. There were mixed results in regard to ethnicity. However no subgroup showed an increase in violence compared to the other types of police response such as mediation or separation. Variables such as age and prior offender history were stronger predictors of repeat offending.

7.3.2 Critiques of Minneapolis and SARP studies

The methodological and theoretical basis of these studies has been widely critiqued. The arrest experiments were premised on the deterrent effect of the criminal justice system. This has been termed *the preventive conceit*, that is, that criminal justice intervention can act as a sole solution to prevent future offending. This is a critique of deterrence theory and, while the deterrent effect of arrest and criminal justice processes is recognised to impact on some offenders, it is seen by critics as too simplistic and naïve a solution for the complex dynamics of family violence. Most current authors on family violence conclude that any *single* intervention by government agencies is not sufficient to solve reoffending.

A major criticism of the methodology used by these studies is the decontextualised nature of the arrest experiments. Stanko (1995a), in her discussion on the validity of the SARP experiments, makes a significant point concerning how we discuss a single 'practice' as outlined in policy when this practice does not operate in a vacuum. A host of contextual factors contribute to whether or not family violence continues, such as criminal justice responses after arrest, community and personal support networks, and importantly, the perceptions of offenders and victims.

Furthermore, the studies cannot tell us *why* the arrest response by police would have a differential impact. Sherman's explanation for this apparent phenomenon is that those who have no 'stake in conformity', that is, in *conventional society* are less likely to be deterred by arrest. This is because they have less to lose in terms of factors such as social standing and employment.

It was suggested another way of looking at the *social conformity thesis* is that people are expected to conform to dominant cultural ideals that may discriminate against them in terms of factors such as ethnicity, class, gender and religion. Consequently the alienation some groups in society experience may exacerbate violence, rather than their supposed lack of bonding to conventional society. For example, Maori have experienced considerable upheaval to their family structures and methods of dispute resolution from the impact of colonisation. The continuing alienation some Maori experience may contribute towards an explanation of why they are disproportionately represented in the family violence statistics (Cram et al. 2002).

Furthermore, some studies have shown that low socio-economic and ethnic minority groups tend to access the police more because they have fewer resources than victims from wealthier groups. This factor can also contribute to their higher prevalence in the statistics. Certainly, in the Milwaukee study (the most quoted arrest experiment in regard to differential effect) the sample was taken from low socio-economic areas and 76 per cent of the offenders were African American.

However, it cannot be discounted that police involvement and being arrested may aggravate some offenders. Fear of retaliation is a major reason why victims report they are reluctant to call the police and request arrest. Offenders who have a disregard for the criminal justice system are not likely to change their behaviour by the act of arrest alone. This highlighted the importance of contextual factors, such as how front line police approach offenders and victims, and the downstream measures implemented.

The focus on offender demographic characteristics is ultimately not useful when considering the arrest response of police at domestic violence incidents and ends up with ridiculous and unethical conclusions, such as consideration of an offender's employment status, when making the arrest decision. Rather it is individual offender behaviour that should be focused on and the evidence of an offence being committed. Maxwell, Garner and Fagan's (2001, 2002) analysis of the SARP studies found that it is a minority of offenders who continue to offend regardless of whether they are counselled, temporarily separated or arrested. Victimization surveys and other research on family violence confirm this.

Maxwell, Garner and Fagan (2001) suggest future research should focus on identifying such offenders and how to prevent their partners (or ex-partners) from being revictimised further.

7.4 Victim choice

The second area of concern investigated by the review was the mandatory nature of the pro-arrest policy whereby victim choice was removed. The debate focused on the *capacity* of the victim to make a decision regarding the arrest of the offender and the impact of taking that choice away from the victim. Historically, the pro-arrest stance was supported by theories such as Lenore Walker's concept of *learned helplessness*, which is the central tenet of Battered Women's Syndrome. This theory has since been critiqued but the question still remains concerning a battered woman's ability to make a decision for her own best interests if she is psychologically traumatised and/or fearful of the consequences. This raises many issues regarding the severity and nature of the abuse and type of family violence incident.

Proponents of the pro-arrest policy state that a victim may not be in a situation to make a "free choice" and that state intervention can help the victim get to a position where they are able to make choices free of coercion. A further justification for the pro-arrest position is that it takes the onus off the victim in regard to the arrest decision, and is thereby supposed to minimise the likelihood of the offender blaming the victim for the arrest and enacting retribution.

Critics of the pro-arrest policy accuse government agencies of being paternalistic and further disempowering the victim by taking control. They argue that most victims of domestic violence are capable of making decisions, and that there are relatively few cases of severe battering (Carbonatto 1997). It is therefore important to examine the types of family violence incidents that come to the attention of the police.

The debate on the capacity of victims centres on the perceived dynamics of family violence and where various authors locate the causes of violence. Robertson (1999) states that understanding the response problem requires understanding the nature of battering. Studies

have shown that generally when the police are called out the first time, it is not the first incident of violence. One of the reasons the Family Violence Database has been set up by the New Zealand Police was in order to help attending officers place an incident within the context of officially recorded offending history. This is because what may appear to be a relatively minor incident may have serious implications within the context of that relationship. However, police in New Zealand cannot charge an alleged offender unless they have evidence that an offence has been committed. Sweden has introduced an innovative offence category called 'gross violation of a woman's integrity' that permits prosecution for a series of acts or 'course of conduct' that recognises a combination of low level acts in a domestic situation can add up to a pattern of coercive control.

What is apparent is that there are diverse types of family violence and no consensus among victims about what their preferred police response would be. The majority of victims in the studies cited wanted the violence to stop and the offender removed. Only about half wanted the offender arrested. However, as stated one major reason victims did not want the offender arrested was fear of retaliation. Others did not want the offender criminalised and wanted responses such as removal, warning, and facilitation of rehabilitation and help for the offender.

How then do police determine at the scene whether a victim's choice is compromised by coercion, fear, self-blame, family and community censure, or psychological trauma? Do we return to previous methods of police response where victims were left vulnerable and offenders had their behaviour implicitly condoned by inaction? The police are the only recourse some victims have for protection and access to resources.

Qualitative studies that asked victims how they perceived police response demonstrated that the way police treat them can have a large impact on whether they were satisfied and whether they would use the police again. This has implications for a victim's feelings of control. Hoyle and Sander's (2000) study found victims had a positive response to Domestic Violence Officers working in partnership with them to come to a decision about the best course of action. This may be more appropriate than the police taking on a counselling role when called out to an incident and being expected to make a 'clinical' assessment of a victim's needs. This harks back to the crisis intervention approach previously implemented by police.

While the pro-arrest stance implicitly does not take account of victim preferences this is not the case in practice. Studies demonstrated that police do use their discretion, as they inevitably must in assessing an incident, and that some do take into account victims' preferences. While there are several studies that examine police implementation of the Family Violence Policy in New Zealand, there is a need for updated research to be carried out in this area.

7.5 Police and a coordinated response

Both the issues discussed in this literature review – differential effect and victim choice – are based on the concern that a blanket policy that promotes preferential intervention can not cater to the needs of a diverse population. It is evident that the pro-arrest policy cannot be assessed without considering how it is actually implemented and the contextual factors that

surround its implementation. The American SARP studies have been criticised for framing the pro-arrest question in terms of causation and the effect of a single intervention. This has set the debate along the path of analysing one aspect of the criminal justice response to family violence. This review has highlighted the shortcomings of this approach and the importance of taking into account the perspectives of victims and offenders. Holder (2001:13) quotes Garner and Maxwell (2000:108) as stating that: 'The policy debate on alternative police responses to domestic violence is no longer about alternatives to arrest but alternatives to what the police and other agencies should do after an arrest'.

The current New Zealand Family Violence Policy 1996 incorporates a coordinated interagency approach that addresses areas such as child victims, victim support and offender treatment programmes. The level of coordination and implementation of the interagency approach is extremely important to the effective implementation of the family violence strategy. The Family Safety Teams pilot project is a recent example of this type of approach.

In the brief examination of alternative models, it was found that the pro-arrest policy is a central tenet in family violence approaches used by police internationally. What differentiates some models is a variety of strategies used in conjunction with the pro-arrest response.

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Appendix A: Summary of SARP Results

Table 1: Published Spouse Assault Replication Studies: Interventions and Findings (Reproduced from Weisz 2001)

Site	Scope	Police Options	Findings	Follow-Through & offender Characteristics
Omaha, NE	Covered whole city: only certain police shifts	1. Arrest; 2. Separation by forcing offender to leave or convincing victim to leave; 3. Mediation; random assignment to compare effects of warrant issuance if offender absent at police arrival.	Arrest related to fewer assaults w/in 6 months; within 1 yr arrest related to same level of recidivism as non-arrest; when offender absent at police arrival & received warrant, recidivism was lower according to official & victim interviews* ; unemployed suspects more likely to reoffend than employed.	Mean jail time following arrest was about 16 hours. 65% offenders previously arrest, 64% offenders sentenced to jail, probation or fines.
Charlotte, NC	All cases in city	Excluded cases where offender was absent or victim insisted on immediate arrest: 1. Advising & sometimes separating; 2. Issuing citation for offender to appear in court; 3. Arresting offender at incident.	Official reports and victim reports at 6 months show arrest not a deterrent.	Mean jail time following arrest was 9.4 hours, 69% of offenders had previous criminal histories; abuser's prior criminal history related to rate of recidivism; 3.5% offenders with citation or arrest were prosecuted; less than 1% were jailed after a guilty plea or finding.
Milwaukee, WI	4 districts in city with most domestic violence	Excluded cases where suspect was not locatable or had outstanding arrests or restraining orders against him; 1. Full arrest; 2. Short arrest; 3. Warning message that if police return someone will go to jail.	According to police reports to hotline of all domestic violence incidents, arrest was not a deterrent. Researchers conclude arrest had a differential effect depending on whether abusers' employed or marital status.*	5% of offenders charged with a crime and 1% convicted.

Metro Dade, FL	Initially included only married couples, then expanded to cohabitants	Excluded cases where suspect or victim was not on the scene or suspect had outstanding arrests or restraining orders against him; Stage 1: Random assignment to arrest. Stage 2: Random assignment to Safe Streets Unit follow-up intervention (detectives visiting homes).	Victims interviews and official data indicate less recidivism for arrested offenders at 6 months; victim reports at 6 months indicate less recidivism employed suspects.* However, employment status was significantly related to whether arrest was a deterrent.	Average suspect spend 14.6 hours under arrest.
Colorado Springs, CO	Only 38% of cases involved an assault; 54% were harassment	1. Emergency protective order & arrest of suspect. 2. Emergency protective order & crisis counselling for suspect. 3. Emergency protective order. 4. Restoring order at the scene.	Police data shows slight difference for employed abusers. Victim interviews show arrest as deterrent.	7% of victims & 24% of suspects were in the military.

* Bold print indicates findings have been reported as statistically significant.

Appendix B: Milwaukee experiment

The Milwaukee experiment was conducted by the Milwaukee Police Department from April 7, 1987 to August 8, 1988. Reanalysis of the data from the replication studies conducted in Omaha and Colorado Springs by Sherman and his colleagues arguably substantiates the Milwaukee findings of the differential effect of arrest.

Police were randomly assigned three responses for misdemeanour domestic violence including standard arrest; short arrest⁵¹ and warning.

Considering the implications of the results of this experiment, it is important to look at the composition of the respondent sample. The experiment took place in four of the six police patrol districts in Milwaukee that were ethnically and economically diverse. However, most of the cases came from poor African-American neighbourhoods. According to Sherman et al. (1992d:145) this is consistent with other studies in America that have noted that there are more requests for police intervention in domestic incidents from lower socio-economic African-American neighbourhoods than European, working or middle-class areas. Consequently, 76 per cent of the 1200 eligible cases involved African-American suspects. The cases to be included in the experiment were for misdemeanour domestic violence only.

Of the total number of domestic incidents in the study area during that time fifty-eight per cent were deemed eligible to be included in the experiment. The most common reason for ineligibility was that the suspect was not on the scene. Police officers complied with randomly assigning the three different responses at a high rate (98 per cent). Thus the 1200 eligible cases were almost exactly evenly spread across the three responses at around 400 cases for each response (see Sherman et al. 1992d, p.148).

Outcomes were measured in four different ways to estimate the frequency and prevalence of repeat violence by the offenders; namely, through records from women's shelters⁵², police records of arrest and offence reports, and victim interviews.

The results were analysed in two stages; the first stage called 'main effects' compared the differences in outcome measures between the three types of response groups. The second stage examined differences in response effects within various subgroups of the samples. The subgroups were characterised by ethnicity, employment, marital status and education. Sherman et al. (1992d:150) states that of the two the 'main effects are more statistically powerful and more straightforwardly interpretable'.

⁵¹ The differences in custody time were to determine whether this affected the results of arrest. Apparently some police departments were releasing suspects within three hours (Sherman et al. 1992d:147).

⁵² These were Hotline reports to battered women's shelters called in by all police in Milwaukee, that included cases whether or not an arrest was made.

First stage analysis: 'main effects' results

In the first stage of analysis it was found that in the short term (around thirty days) both full arrest and short arrest responses had a clear initial deterrent effect in comparison to when the offender was just given a warning. However, Sherman et al. (1992d:56) concluded that there were no long-term deterrent effect for arrest. The authors state:

The only significant differences, in fact, are those showing arrest increasing the risk of violence. These differences are not consistent enough across measures for us to draw a conclusion that arrest backfired, and the magnitude of the increased risk from arrest is generally small. But the direction of the difference is fairly consistent across measures in favor of warnings yielding lower long-term risk of repeat violence (Sherman et al. 1992d:154).

Second stage analysis of Milwaukee experiment: variable effects on different subgroups

The second stage of analysis examined the variable effects on different subgroups to determine whether arrest had different effects on different kinds of people.⁵³ It was hypothesised that 'socially marginal people, as indicated by such characteristics as unemployment and unmarried cohabitation, would be less deterrable than less marginal people'. Other indicators of 'marginality', were also included in the experiment such as high school graduation, length of prior cohabitation and 'race (because of its effect on employment rates)' (Sherman et al. 1992d:156). Sherman et al. (1992d:156) found that arrest 'backfired' for more marginal groups in terms of frequency of repeat violence but less so with respect to prevalence.

The authors of this study however sound two cautions when interpreting their results. First, the analysis of subgroups was not incorporated into the random design of the experiment therefore 'post-hoc' analysis of the data 'cannot prove that there is a causal interaction effect between a randomized treatment and a correlated characteristic.'

Second, the findings of the Milwaukee experiment have to some extent been replicated in two further arrest studies in Omaha and Colorado Springs. While the replication of the results increased the authors' confidence in generalising these results they caution that it is important to remember 'these three experiments are just snapshots of three cities at three times' (Sherman et al. 1992d:158). How these results translate to other times and places is unknown.

⁵³ Only one measurement, the Hotline reports, was used for analysing repeat violence in the second stage of analysis.