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Situational Ambiguity and Gendered Patterns of Arrest for Intimate Partner Violence

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ABSTRACT

Using data from the 2005 National Incident Based Reporting System, this analysis focuses on the impacts that domestic violence mandatory arrest policies have on arrest outcomes in “situationally ambiguous” cases: cases where both the female and male partner have been identified by law enforcement as both a victim and an offender. Results indicate that although officers arrest male partners more frequently than female partners, after controlling for incident and individual factors, mandatory arrest policies disproportionately impact women. Furthermore, correlates of arrest differ for male-only arrests vs. female-only arrests. The implications of these findings are discussed in the context of changing legal responses to intimate partner violence.

INTRODUCTION

The decision of states to mandate arrest in cases of domestic violence—regardless of the victim’s wishes—has been highly controversial, with battered women’s advocates, feminists, and academics unable to reach a consensus as to whether mandatory arrest and pro-arrest policies are in the best interests of victims. Some advocates and academics have argued that changes in domestic violence procedures and policies force law enforcement and actors in the legal system to take domestic violence seriously. Furthermore, they argue that removing the arrest and prosecutorial decision(s) from the victim and placing it on the state alleviates the pressure that the victim may face from her abuser, friends, and family to prevent the police from making an arrest and/or “drop” any criminal charges or civil proceedings. Other advocates and academics have argued against the adoption of these policies, contending that the justice system may in fact further endanger the victim by arresting and/or prosecuting the batterer. Some research also indicates that with the adoption of these policies, there is an emerging problem of “victim-defendants”—victims who are mistakenly identified as the aggressor in the relationship and arrested and charged with domestic violence (Cramer, Cousin & Hardy, 2003).

Since the passage of mandatory arrest laws, there has been a marked increase in the percentage of women arrested for intimate partner violence (IPV) (Chesney-Lind, 2002; DeLeon-Granados, Wells, & Binsbacher, 2006), indicating that officers are changing their behavior in response to changes in policy. However, what is disconcerting to both advocates and academics is that the trend seen in female arrests has not been matched by a similar trend in male arrests. While the percentage of men arrested for IPV has increased, it has only increased slightly, which has led to a narrowing of the gender gap in the ratio of male to female arrests for IPV. There have been several theoretical explanations offered for the decreasing gender gap, including

changes in behavior by men and women, and changes in the institutional response to cases of IPV (for a description, see DeLeon-Granados et al., 2006).

This paper focuses on the changing institutional response to IPV, and examines the impact of state-level domestic violence arrest policies on arrest outcomes. There is an emerging body of literature that uses law enforcement data to analyze the arrest decision in cases of IPV at the jurisdictional, state and national level. All of these studies, however, use all reported cases for their analyses—whether that be for all offenders or for offenders by gender. In most of these cases, there is one victim and one offender. As only one person has committed an act of violence, the decision for the officer in these cases is *whether* to arrest the offender, not *whom* to arrest. These are the types of cases for whom mandatory arrest and pro-arrest policies were written—the officers arrive on the scene of the crime, identify the bruised and battered victim and the aggressive perpetrator, and then arrest the perpetrator for the crime. However, reality has proven far more complicated than this stereotypical version of IPV. In many cases, officers arrive on the scene and it is unclear who is the victim and who is the perpetrator—both parties may have injuries, both parties may have committed acts of violence (including who would probably be considered to be the victim). These are the types of cases where it may be unclear to the police what the context, motivation, and consequences of the violence are for both parties, and who should be considered the perpetrator in the relationship. It is in these types of cases that mandatory arrest and pro-arrest policies may have the greatest impact on officer decision-making, and thus in these cases where these types of arrest policies have the greatest consequences for women.

This analysis extends the current body of literature on arrests for IPV by examining the effect of state-level domestic violence arrest policies on arrest outcomes in these “situationally

ambiguous” cases. Situationally ambiguous cases are those cases where both the female partner and the male partner in an intimate relationship have been identified as both victims *and* offenders. It is in these cases that each partner is at risk for arrest, and thus one of four outcomes can occur: no arrest, arrest of male partner, arrest of female partner, or arrest of both partners (dual arrest). By understanding officer discretion in these cases, one can more closely examine the impact of mandatory and pro-arrest policies on both single and dual arrests for IPV, especially in cases that do not fit stereotypical expectations of IPV. Furthermore, one can investigate whether arrests for IPV are “gendered”—whether there are differences in the patterns of arrests for male and female offenders, and whether mandatory and pro-arrest policies have different impacts on men and women who have committed acts of IPV.

THE CRIMINALIZATION OF DOMESTIC VIOLENCE

Both the criminalization of domestic violence and the implementation of pro-arrest policies are a relatively new phenomenon. In 1970, only a handful of police departments encouraged their officers to make arrests in domestic violence cases—in fact, most had policies that explicitly discouraged officers from arrests, “even when victims were in serious danger and directly asked officers to arrest” (Ferraro, 1989, p. 61). This approach was endorsed at the federal level as well: the National Institute of Law Enforcement issued a report in 1970 that recommended officers “calm down” the situation through mediation instead of making an arrest (Bard, 1970 as cited in Maxwell, Garner & Fagan, 2001). One senior police officer reported that “before the implementation of the mandatory arrest laws, officers would respond more quickly to a ‘bike stealing’ than to a domestic call” (Sinden & Stephens, 1999). Spousal sexual assault was ignored altogether; no state had a law criminalizing marital rape (Zorza, 1992). This approach (or

lack thereof) towards domestic violence had serious consequences for victims. A 1979 study by Dobash and Dobash found that less than two percent of domestic assaults were reported to the police, and a 1976 Police Foundation report stated that in 85 percent of spouse homicides reviewed, police had intervened at least once in the prior 24 months.

Throughout the 1970s and 1980s, increasing public awareness of the problem of domestic violence, in combination with pressure from feminists, researchers and advocates, led to significant changes in both the legal definition of and response to domestic violence. In 1976, Nebraska became the first state to criminalize marital rape and Pennsylvania the first to pass protection order laws. Oregon became the first state to enact a mandatory arrest law in 1977 with the passage of the “Family Abuse Prevention Act” (Multnomah County Health Department, 2007). By 1980, nearly every state had passed some form of domestic violence legislation (Horton, Simondis & Simondis, 1987).

The growing criminalization of domestic violence was hailed as a “symbolic” victory for women (Chesney-Lind, 2002), and advocates of mandatory arrest laws argued that their implementation sent a “powerful message” to both batterers and society about the seriousness of domestic violence (Goodmark, 2004, p. 31; Miller, 2001). The adoption of pro-arrest policies was intended to encourage the justice system to treat domestic violence crimes as seriously as other crimes, to deter abusers from future violence, and to help keep victims safe by placing the locus of responsibility for arrest and prosecution on the state (so that the abuser did not have an incentive to threaten or harm the victim).

The first large-scale field experiment examining domestic violence pro-arrest policies and recidivism rates was the 1984 Minneapolis Domestic Violence Experiment (MDVE) (Sherman & Berk, 1984). Initial evidence from the MDVE showed that arresting the perpetrator did benefit

victims. Recidivism rates were 50 percent lower when the batterer was arrested than when officers chose another form of intervention (either ordering one party out of the home or mediating between the parties at the scene). These results dramatically shifted the way that law enforcement responded to cases of domestic violence. After these results were made public, over one-third of all police departments adopted some form of a pro-arrest domestic violence policy (Maxwell et al., 2001), and as of 2000, all states had authorized warrantless arrests for intimate partner violence if there is probable cause that an offense has been committed by the arrestee (Miller, 2004).

Recent research, however, indicates that pro-arrest policies may not be as effective in deterring violence as previously thought, and may, in fact, have negative consequences for victims (especially women and girls). The original MDVE study was criticized for methodological problems (Fagan, 1989) and only two of the other Spouse Assault Replication Program experiments provided any support for arrests as a deterrent—in fact, three of the studies showed that arrests led to an *increase* in recidivism (Maxwell et al., 2001). Maxwell et al. reviewed the data from the six experiments and conducted new analyses. They concluded that although “arresting batterers was consistently related to reduced subsequent aggression” (2001, p. 2), factors such as the batterer’s prior criminal record and age had greater impacts on recidivism.

The results of other studies are mixed (Smith, 2000; Chesney-Lind, 2002). Studies by Dugan (2003) and Smith (2001) found that “mandatory laws would actually reduce their (victims) chance of reporting future incidents of domestic violence” (Smith, 2001, p. 1398). Victims may be less likely to report assaults to the police because they may fear retribution by their abusers, while other women fail to report because do not want their intimate partner arrested for abuse—they “simply want the violence to stop” (Miller, 2001, p. 1342). Furthermore,

some victims are misidentified by the police as the offender and subsequently arrested and charged with a domestic violence offense (Cramer et al., 2003). Frye, Haviland & Rajah (2007) reported that 24 percent of callers to a telephone hotline reported that they had experienced a “retaliatory arrest” where their abuser had had them arrested for domestic violence, and another nine percent had been arrested at the same time as their partner (dual arrest). Similarly, Houry, Reddy & Parramore (2006) found that nine percent of female victims of officially reported IPV in Atlanta were arrested. The arrest of female victims for IPV has significant impacts on their future help-seeking behaviors — of the 13 victims arrested for IPV interviewed by Cramer et al. (2003), “all of the women said they would never call the police again if they were being assaulted by their spouse or partner” (p. 23).

TRENDS IN SINGLE AND DUAL ARRESTS FOR IPV

Even with the implementation of mandatory and pro-arrest policies, several studies have shown that police are still less likely to make an arrest in cases of IPV than in cases of violence between non-intimates (Avakame, Fyfe & McCoy, 1999; Avakame & Fyfe, 2001; Buzawa, Austin, & Buzawa, 1995; Fyfe, Klinger, and Flavin, 1997). Since mandatory and pro-arrest policies were implemented, arrest rates for intimate partner violence have increased. Pattavina and her colleagues (2007), using law enforcement data from the 2000 National Incident Based Reporting System (NIBRS), found that arrest rates were significantly higher in jurisdictions with mandatory and pro-arrest laws (Pattavina, Buzawa, Hirschel & Faggiani, 2007). Hirschel & Buzawa (2002) estimate that arrest rates for intimate partner violence in the 1970s and 1980s were seven to 15 percent, while studies in the 1990s (after the passage of mandatory and pro-arrest laws) reported rates of 33 percent or more (see also Bourg & Stock, 1994; Mignon &

Holmes, 1995). Similarly, Schmidt & Sherman (1993) found that between 1984 and 1989, arrests for simple assaults (including domestic violence assaults) rose by 70 percent. More recent studies report higher arrest rates, ranging from 44 percent (Hirschel, Buzawa, Pattavina & Faggiani, 2007) to 50 percent (Pattavina et al., 2007).

One of the consequences of the passage of mandatory and pro-arrest laws is the marked increase in female arrests for IPV. In California alone, between 1991 and 1996, arrests of women for domestic violence rose by 156 percent. Additionally, even though arrest rates for women skyrocketed, rates of prosecutions for women for crimes of domestic violence in California remained relatively constant (Strack, 2000, p. 1). Similar trends have been documented in other jurisdictions: the percentage of women arrested for domestic violence increased from 23 to 35 percent in New Hampshire (1993-1999), from 11 to 18 percent in Connecticut (1987-1997), from 12 to 25 percent in Boulder County, Colorado (1997-1999), and from 13 to 25 percent in a county in Minnesota (Miller, 2001; Crager, Cousin, & Hardy, 2003; Martin, 1997). Although some of these increases have been attributed to an increasing use of violence by female partners, others have argued that these trends are not solely due to a behavioral change but to an institutional change (Chesney-Lind, 2002; DeLeon-Granados et al., 2006; Miller, 2001). Notably, no one of the criminal justice professionals or social service providers interviewed by Miller (2001) “believed that women’s violence was increasing” (p. 1351), lending support to the idea that changes in the institutional response are responsible for the increase in female arrests.

While arrest rates for men for IPV have increased, they have not increased at the same rate as for women. For example, in California between 1991 and 1996, arrests of men for domestic violence only increased by 21 percent, far less than the 156 percent for women (Strack, 2000). The consequence of this disproportionate increase for women is that the gender gap in

arrests for domestic violence has significantly decreased. The narrowing of the gap, however, is not reflected in broader trends of female offending. Steffensmeier, Zhong, Ackerman, Schwartz & Agha (2006) compared data on female-to-male interpersonal violence from the Uniform Crime Report (UCR) to the National Crime Victimization Survey (NCVS). They found that although there has been a substantial narrowing of the gap between men and women in arrests for aggravated and simple assault, that trend was not reflected in the victimization data. The gender gap in the commission of assaults (as measured by victimization data) has remained relatively stable. What this suggests is that the increase in female arrests is not due to an increase in the commission of assaults, but is instead due to a shift in officer decision-making, either by individual officers or, more likely, on a departmental level. However, men are still more likely to be arrested for interpersonal crimes than are women. According to Stolzenberg and D'Alessio (2004), officers show considerable leniency to female offenders for most types of interpersonal crimes (not limited to domestic assaults). Controlling for other factors related to arrest, the probability of arrest for females for simple assault was nine percent lower than for males, and for intimidation the probability for females was 27 percent lower than for males.

Much of the increase in female arrests has been attributed to the increase in dual arrests (both intimate partners arrested) since the adoption of mandatory and pro-arrest laws. Estimates of dual arrests for officially reported domestic violence calls range from one to two percent (Hirschel et al., 2007; Mignon & Holmes, 1995) to 33 percent (Martin, 1997). Dual arrests are most likely to happen when both intimate partners are injured, used weapons, or when it is unclear which partner is the primary aggressor. Dual arrests disproportionately affect female partners; Henning & Renauer (2005) found that those women arrested for IPV were four times more likely than male arrestees to have been dually arrested. Women dually arrested are more

likely to have been victimized previously by an intimate partner (Martin, 1997). Furthermore, female defendants are significantly more likely than male defendants to have been dually arrested (Melton & Belknap 2003), and dual arrest defendants are more likely to be women, white, and younger than those who are singly arrested for IPV (Martin, 1997).

However, no research using data from the NIBRS to analyze the relationship between arrest policies and arrest decisions in cases of IPV has found an effect for either the victim or the offender's sex. Eitle (2005) included two variables capturing the sex of the victim and the sex of the offender; neither was significantly associated with arrest. It is important to note that the dependent variable was arrest vs. no arrest, and that Eitle did not disaggregate the arrest outcome by arrest type. Hirschel et al. (2007) also included the sex of the victim and offender in their models, and found that sex was not a predictor of arrests for domestic violence in either of their models (arrest v. no arrest and dual arrest v. single arrest). Thus, at least with studies using NIBRS data, there is little support for the hypothesis that increases in female arrests for IPV is attributable to a changing institutional response. Neither study, though, disaggregated arrests beyond a binary outcome.

Furthermore, most of the previous studies examining the impact of mandatory and pro-arrest laws on arrest decisions using law enforcement data, however, draw from the entire population of officially reported cases of IPV. In most of these cases, there is a single offender. For example, in Thompson, Saltzman, and Bibel's 1999 study using NIBRS data, 99 percent of cases of IPV with a female victim had only one offender. In a second study using NIBRS data from Idaho, 82 percent of the cases had a single offender (Vazquez, Stohr, Skow & Purkiss, 2005). More recently, Hirschel et al. (2007) used 2000 NIBRS data to analyze the effects of mandatory and pro-arrest policies on arrest decisions, but limited their analysis to only those

cases with one victim and one offender. Eitle (2005) and Pattavina et al. (2007) also limit their analyses to cases with one victim and one offender. No previous study has used NIBRS data to examine the arrest decision in cases where the entire range of arrests are realistically possible — no arrest, male arrest, female arrest, or dual arrest — for every case included in the sample.

DATA AND METHOD

The data for this analysis comes from the 2005 National Incident Based Reporting System (NIBRS) Incident-level file. NIBRS contains information about all incidents of criminal activity reported to law enforcement in participating jurisdictions on an annual basis; as of 2005, 28 states and the District of Columbia were participating in NIBRS.

Several elements of the structure of NIBRS afford researchers the unique opportunity to examine cases of domestic violence reported to law enforcement. First, cases of domestic violence can be identified as detailed information about the relationship between the victim(s) and the offender(s) is recorded; in the Uniform Crime Report (UCR), the relationship is not recorded beyond “stranger” vs. “nonstranger”, making it impossible to identify IPV (United States Department of Justice 2008).

Second, the UCR only collects information on “Part 1 crimes”: murder and nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson (United States Department of Justice, 2008). NIBRS contains information about 46 crimes (and arrest information about an additional eight crimes), allowing researchers to look at a wider array of IPV offenses, thereby providing a more comprehensive analysis of IPV. For these analyses, the expanded list of crimes in the NIBRS allows for the identification and inclusion of incidents involving intimate partners where kidnapping/abduction, forcible sodomy,

sexual assault with an object, forcible fondling, simple assault, and/or intimidation occurred. These incidents would not appear in the UCR. Furthermore, in the UCR forcible rape is not recorded for male victims, only for female victims. In the NIBRS, forcible rape is recorded for both male and female victims.

The UCR also has a “hierarchy rule”. Only one crime is recorded for each incident. If more than one crime is committed by the offender, only the “highest”, or most severe, crime is recorded for that incident. So, for example, if an offender committed both a forcible rape and an aggravated assault, only the forcible rape would be recorded; the aggravated assault would be omitted from the UCR dataset. In contrast, the NIBRS includes information on up to 10 offenses committed by each offender in the incident.

Of the 300,859 incidents of IPV reported to the police in 2005 in participating jurisdictions, a subset of 14,728 “ambiguous” incidents are included these analyses. Ambiguous cases of IPV are cases that meet four selection criteria. First, the incident must involve two individuals, each of whom is listed as both a victim and an offender. Second, the two individuals must be “intimate partners”: spouses, common-law spouses, ex-spouses, or “boyfriend/girlfriend”. Third, the incident must be an act of “domestic violence”. Incidents that included offenses coded as “domestic violence” included aggravated assault, simple assault, and intimidation. Incidents where only sexual offenses (forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling) or kidnapping had occurred were omitted from the analyses as they were relatively rare among those dyads where both partners had committed at least one act of IPV (48 cases, or less than .3 percent of the sample). Finally, only heterosexual couples were included in these analyses as police decision-making may be different in cases of same-sex violence than for heterosexual couples; even greater differences are found between

male same-sex couples and female same-sex couples (Pattavina, Hirschel, Buzawa, Faggiani & Bentley, 2007).

MEASURES

Dependent variable. As noted previously, the dependent variable is the arrest outcome for the case; a single four category variable with mutually exclusive categories: neither the male nor the female partner were arrested, only the female partner was arrested, only the male partner was arrested, or both parties were arrested. Table 1 shows the distributions of the dependent and independent variables; in 55 percent of the incidents included in these analyses no arrest was made. In six percent of these incidents only the male partner was arrested, and in four percent only the female partner was arrested. In 36 percent of these incidents both partners were arrested.

<<Table 1 about here>>

Independent variables. The key independent variable of interest is the *arrest policy* as specified by state law for domestic violence incidents. This data was collected from the relevant statutes for each state (available on-line through Lexis-Nexis). There are three main types of domestic violence arrest policies: mandatory arrest, pro-arrest, and discretionary arrest. Each type of law requires a certain action of law enforcement officers within that jurisdiction, and thus each has different implications for domestic violence victims and perpetrators.

Mandatory arrest

Mandatory arrest laws require law enforcement to make an arrest if there is evidence that an act of domestic violence has taken place or that there is an imminent threat of physical or sexual harm. The definition of what constitutes an act of violence or an imminent threat,

however, varies widely. According to Hirschel et al's 2007 report, in some states any assault would result in a mandatory arrest, while in others the assault must be a felony or have been committed within the past 12-24 hours. Of the 23 states included in these analyses, 10 had mandatory arrest policies; 7,618 of the 14,728 cases for this analysis (52 percent) come from these states.

Pro-arrest

Pro-arrest laws do not require that law enforcement officers make an arrest. Instead, these laws explicitly state that arrest is the “preferred” or “encouraged” outcome. Six states included in these analyses had preferred arrest policies in 2005; 5,228 cases in the sample (35 percent) are from states with preferred arrest policies.

Discretionary arrest

Seven of the states included in these analyses had discretionary arrest policies in 2005; 1,882 cases (13 percent) occurred in states with discretionary arrest policies. Discretionary arrest policies allow law enforcement to make an arrest if there is probable cause that an act of domestic violence has occurred, but do not mandate arrest. In some states with discretionary arrest policies, officers can issue a citation instead of arresting the suspect (Miller 2005). The suspect is then required to appear at a later court hearing.

Incident Characteristics

Several characteristics of the incident were included in the analyses as they may influence the likelihood of arrest. The *type of offense* committed during the incident was included

as officers may be more likely to arrest one or both parties depending on the perceived severity of the assault. Martin (1997) found that incidents resulting in single arrest were more likely to have more serious charges than were incidents resulting in dual arrest. Dichotomous variables (0=no, 1=yes) indicating whether the female partner had been the victim of an aggravated assault or an act of intimidation and whether the male partner had been the victim of an aggravated assault or an act of intimidation were included in the analyses. The reference categories for the type of offense committed were simple assault committed against the female partner and simple assault committed against the male partner. The offense type in cases where the female and/or male partners suffered multiple victimizations was coded as the first offense listed by the responding officer that met the criteria for an act of intimate partner violence. As is shown in Table 1, of the female partners, 8 percent were the victims of an aggravated assault, 86 percent were the victims of a simple assault, and 6 percent were the victims of an act of intimidation. The distribution of victimizations for the male partners is nearly identical to that for the female partners; 10 percent of the male partners had been the victims of an aggravated assault, 84 percent had suffered a simple assault, and 6 percent had been the victims of an act of intimidation.

The likelihood of dual arrest in a domestic violence incident may also be influenced by the relative degree of severity of the offense. Incidents in which the offenses committed by each partner are relatively similar (i.e., each party has committed “*equivalent*” offenses) may be more likely to result in a dual arrest, while incidents in which the offenses committed by one partner are more severe than those committed by the other partner may be more likely to result in the arrest of the party who committed the more serious offense. Whether “equivalent” offenses were

committed by each party is measured by a dichotomous variable (0=no, 1=yes). Equivalent offenses were committed in 95 percent of the cases included in these analyses.

Research has shown that cases involving the *use of weapons* by either partner are more likely to result in either single and/or dual arrest (Avakame & Fyfe, 2001; Connolly, Huzurbazar, & Routh-McGee, 2000; Felson & Ackerman, 2001; Houry et al., 2006; Mignon & Holmes, 1995). The use of a weapon (other than hands/feet) (0=no, 1=yes) by either partner was also included in the analyses; a weapon was used in 12 percent of the incidents.

Assaults resulting in an *injury* may also be more likely to result in arrest (Avakame et al., 1999; Avakame & Fyfe, 2001; Bachman & Coker, 1995; Connolly et al., 2000; Felson & Ackerman, 2001; Ho, 2003) and/or dual arrest (Mignon & Holmes, 1995; Finn, Blackwell, Stalans, Studdard & Dugan, 2004). The greater the severity of the injury, the greater the probability that an arrest will occur (Connolly et al., 2000; Mignon & Holmes, 1995). Two dichotomous variables (0=no, 1=yes) indicating whether the female partner had suffered a *major injury* (“apparent broken bones”, “other major injury”, “possible internal injury”, “loss of teeth”, “severe laceration”, or “unconsciousness”) or a *minor injury* (“apparent minor injury”) were created, with the reference category of no apparent injury to the female partner. These two variables were replicated to indicate the type of injury, if any, sustained by the male partner. Two percent of the men and one percent of the women included in these analyses had sustained a “major injury”, 43 percent of the men and 45 percent of the women had sustained a “minor injury”, and 55 percent of the men and 54 percent of the women had not sustained an injury.

A variable indicating the *location of the incident* (1=public area, 0=private residence) was also included in the analyses, as the location of the incident is associated with arrest decisions

(Avakame et al., 1999). Seventeen percent of the incidents in this study occurred in a public location; 83 percent occurred in a private location.

A variable indicating whether the police noted *substance use* (alcohol and/or drug) by either partner (0=no, 1=yes) was also included in the analyses. Prior research has shown that the presence of alcohol and/or drugs at the crime scene were significant predictors of arrest or other “police sanction” (Avakame & Fyfe, 2001; Jones and Belknap, 1999). Furthermore, incidents with alcohol or drug use are more likely to result in dual arrest as compared to single arrest (Houry et al., 2006; Martin, 1997). Substance use was noted in 19 percent of the cases analyzed here.

Individual Characteristics

The results of prior research regarding the effects of race on the likelihood of arrest in cases of IPV have been mixed. Some studies have found that African-American offenders are less likely to be arrested for domestic violence than are other racial groups (Ho, 2003). Others have found that African-American offenders are more likely to be arrested for IPV than are other racial groups (Avakame & Fyfe, 2001; Bachman & Coker, 1995; Felson & Ackerman, 2001). Furthermore, arrest is more likely in cases involving white victims (Avakame & Fyfe, 2001; Felson & Ackerman, 2001). The *race* of the male and female partner was captured through the inclusion of four dichotomous variables indicating whether the male partner was African-American (0=no, 1=yes) or “other” (Asian/Pacific Islander or Native American, 0=no, 1=yes) and/or the female partner was African-American (0=no, 1=yes) or “other” (Asian/Pacific Islander or Native American, 0=no, 1=yes). Thirty-four percent of men and 30 percent of women

in the sample were African-American, 65 percent of men and 68 percent of women were white, and one percent of both men and women were of another race.

The *age* of the male partner and the female partner was measured in years. Age has been found to be positively correlated with the probability of arrest for IPV (Avakame & Fyfe, 2001; Eitle, 2005; Hirschel et al., 2007). The average age of male partners in the sample was 33.54 years; the average age of female partners was 30.92.

The *relationship* between the male and female partner was measured using two dichotomous variables: whether the partners were spouses/common-law spouses (0=no, 1=yes) or ex-spouses (0=no, 1=yes), with boyfriend/girlfriend as the reference category. Relationship status and arrest decisions have been linked in several ways. Jones and Belknap (1999) found that police are less likely to “take action” in cases where the couple had been or currently were married or had a common-law marriage, a finding confirmed by Avakame & Fyfe (2001). In their study, police were less likely to make an arrest when the couple was married than when the couple was unmarried (see also Bachman & Coker, 1995; Connolly et al., 2000). Unmarried and cohabiting couples are also more likely to be dually arrested than married couples (Houry et al., 2006; Martin, 1997). Of the dyads here, at the time of the incident 37 percent were married, six percent were common-law spouses, three percent were ex-spouses, and 54 percent were boyfriend/girlfriend.

ANALYTIC TECHNIQUE

To examine the bivariate relationship between arrests for IPV and domestic violence arrest policies, I compare the differences between the proportion of incidents that end in no arrest, female-only arrest, male-only arrest, and dual arrest for each policy type: mandatory arrest, pro-

arrest, and officer discretion. Incidents are grouped by policy type, not by state. As any observed differences may be due to other characteristics of the incident and of the individuals involved, I also conduct a multivariate analysis. To analyze the relationship between arrest policies and outcomes for cases of IPV on a multivariate level, I use multinomial logistic regression.

Multinomial logistic regression is appropriate as the dependent variable of interest — the type of arrest made — is nominal and contains four mutually exclusive categories. Multinomial logistic regression can be thought of as a series of binary logistic regressions that compare each of the three arrest types (female-only arrest, male-only arrest, and dual arrest) to a fourth reference category (no arrest). For each independent variable, then, there are three separate comparisons: no arrest vs. female-only arrest, no arrest vs. male-only arrest, and no arrest vs. dual arrest. To measure the magnitude of the effects of the independent variables on arrest outcomes, I calculate the odds ratio for each independent variable. Odds ratios with a value of less than one indicates that the variable decreases the odds of a particular outcome, and odds ratios with a value greater than one indicates that the variable increases the odds of a particular outcome.

RESULTS

As shown in table 2, states with mandatory arrest laws have the highest percentage of male-only arrest (7 percent), female-only arrests (5 percent), and dual arrests (43 percent). This suggests that mandatory arrest policies are having the desired effect of increasing arrests for IPV and decreasing the percentage of IPV cases that result in no arrest. It is notable, however, that in 46 percent of cases of IPV where at least two offenses have been committed (one by the male partner, one by the female partner) the officer(s) still do not make any arrest. These differences are statistically significant at the .05 level.

States with preferred arrest policies have the highest percentage of incidents resulting in no arrest (68 percent). It is surprising that these states have higher rates of no arrest than do states which have an officer discretion policy, as one would expect there to be a greater number of arrests in states where arrests for IPV are encouraged than in states with officer discretion policies. Preferred arrest states also had the fewest number of dual arrests (24 percent). States with preferred arrest policies and officer discretion policies had almost identical rates of male-only (5 percent) and female-only (3 percent) arrests.

Table 2 also shows that across each of the policy regimes, men are slightly more likely to be arrested for IPV than are women. Forty-one percent of cases of IPV that are reported to the police end in a male arrest (either singly or dually) and 40 percent end in a female arrest (either singly or dually). This pattern holds true for each of the three policy types. In states with mandatory arrest policies, 50 percent of men and 48 percent of women are arrested for IPV; in states with pro-arrest policies, 29 percent of men and 27 percent of women are arrested for IPV; and in states with officer discretion policies, 43 percent of men and 41 percent of women are arrested for IPV.

<<Table 3 about here>>

The results from the multinomial logistic regression analysis shown in Table 3 also support the hypothesis that officers in states with mandatory arrest policies are significantly more likely to make an arrest than officers in states with pro-arrest policies or officer discretion policies. After controlling for incident and demographic characteristics, incidents of IPV reported to the police in states with mandatory arrest policies are 1.59 times more likely to result in the arrest of the male partner (only), 2.33 times more likely to result in the arrest of the female

partner (only), and 1.38 times more likely to result in the arrest of both partners as compared to no arrest.

While the bivariate results in Table 2 indicated that men were slightly more likely than women to be arrested for IPV, the multivariate results in Table 3 tell a different story. These results indicate that mandatory arrest policies disproportionately impact women — in mandatory arrest states, after controlling for incident and individual characteristics, the odds of a female-only arrest is 1.47 times greater than the odds of a male-only arrest and is 1.69 times greater than the odds of a dual arrest. This is notable given that the proportion of female-only arrests is lower than the proportion for male-only arrests and dual arrests under all three policy regimes. As this effect is net of the type of offense committed and the injury sustained by the victim, this suggests that some of the dramatic rise in arrest rates for officially reported IPV is directly attributable to the implementation of mandatory arrest policies and not simply an increased use of violence in intimate relationships.

In pro-arrest states, however, officers are less likely to arrest the male partner or make a dual arrest than in states with officer discretion policies or mandatory arrest policies. Pro-arrest policies decrease the likelihood of the arrest of the male partner (only) by three-quarters and the likelihood of dual arrest by half as compared to no arrest. There is not a statistically significant relationship between the implementation of pro-arrest policies and female-only arrest.

Several characteristics of the incident were also significant predictors of arrest, most of which were consistent with previous research and in the expected direction. First, there was a significant relationship between the type of offense committed and the arrest decision. Incidents where the male partner committed an aggravated assault against the female partner were 2.16 times more likely to result in the arrest of the male partner (only) than to result in no arrest.

Similarly, incidents where the female partner committed an aggravated assault against the male partner were 1.79 times more likely to result in the arrest of the female partner (only) than to result in no arrest. However, there was a key difference by gender for dual arrests. Incidents where the female partner committed an aggravated assault against the male partner were 1.47 times more likely to result in dual arrest—but aggravated assault against the female partner was not significantly related to dual arrest. Thus when examining the decision to arrest both partners, the type of offense committed is significant for female offenders but is not significant for male offenders. Female offenders who commit aggravated assaults against men are more likely to be dually arrested, suggesting that officers may see these situations as mutually combative rather than as isolated, unidirectional acts of aggression against a male partner.

This explanation is also consistent with the pattern of results for the type of injury inflicted on the other partner. When the male partner suffers a major injury, the police are more likely to arrest the female partner (log odds of 2.98). Similarly, when the female partner suffers a major injury, the police are more likely to arrest the male partner (log odds of 2.66). Intuitively, this makes sense: when one partner is severely injured, the police are more likely to arrest the other partner. However, when the female partner inflicts a major injury on the male partner, the police are also significantly more likely to make a *dual* arrest (log odds 1.99). The converse is not true—there is no significant relationship between major injury of the female partner and dual arrest. This suggests that police often see incidents where the male partner is severely injured as mutually combative and perhaps more complex than as simply a case where one partner has committed acts of violence against the other. A second explanation for this effect is that women, who usually are physically smaller than their male partners, are forced to use more serious forms of violence in self-defense, resulting in more severe injuries to the male partner. Men’s use of

more serious forms of violence may be less likely to be in self-defense, which would also explain why major injury to the female partner is not significantly associated with dual arrest. Both of these explanations are consistent with the patterns of effects by gender for the type of offense committed on arrest outcomes.

Minor injuries to both the female and male partner are also associated with arrest outcomes. When the female partner suffers a minor injury, the male partner is more likely to be arrested, either singly or dually (log odds of 2.86 and 1.96), and when the male partner suffers a minor injury, the female partner is more likely to be arrested (log odds of 1.65 and 1.76). The key difference between the degree of injury and arrest decisions is the significant relationship between minor injury to the female partner and dual arrest. While major injuries to the female partner are not significantly associated with dual arrest, minor injuries are positively associated with dual arrest. Thus incidents with minor injuries have more similar outcomes for men and women than do incidents with major injuries, where there is a notable difference by gender. Incidents where the female partner has a minor injury may be more likely to be seen as mutually combative (and thus meriting the arrest of both parties) than are incidents where the female partner has a major injury (meriting arrest of the male partner only).

Three other incident level factors related to arrest outcomes differed by gender. Contrary to expectations, when both partners commit equivalent offenses officers are 1 ½ times more likely to make no arrest at all than to make a dual arrest, and more than twice as likely to make no arrest than to arrest the male partner. There was no significant relationship between equivalent offenses and female-only arrest. The use of a weapon by either partner was also a significant predictor of male arrest; these incidents were 1.45 times more likely to result in a male-only arrest, but were not related to female-only arrest or dual arrest. Incidents that occur in

a public location are significantly more likely to result in a female-only arrest (log odds 1.31) or in a dual arrest (log odds 1.23). There was not a significant association between location and male-only arrests. Substance use was positively associated with all arrest outcomes: it increased the odds of female-only arrest, male-only arrest, and dual arrest.

Of the individual characteristics included in the model, only the race of the male and female partner achieved statistical significance, and only for female-only arrests and dual arrests. Officers are less likely to make female-only and dual arrests in incidents with an African-American male partner (log odds of .63 and .71, respectively). Officers are more than twice as likely to make a female-only arrest when the female partner is not white or African-American (log odds 2.31). Incidents with a male partner who is not white or African-American are also more likely to end in a dual arrest (log odds of 1.67) than to result in no arrest.

The age of the female and male partner and the relationship between the two parties were not significantly associated with the arrest outcome. The lack of an association of age and arrest outcomes is somewhat surprising as both the Eitle (2005) and the Hirschel et al. (2007) studies found a positive relationship between age and arrest for IPV. The type of relationship also was not significantly associated with the arrest outcome. Although previous research indicates that married couples and common-law spouses are less likely to be arrested for IPV than are unmarried couples, after controlling for policy type and incident and individual characteristics, there were no significant differences in the patterns of arrest for spouses, common-law spouses, ex-spouses, and dating couples.

DISCUSSION

This study is the first to use NIBRS data to examine the impact of domestic violence arrest policies on arrest outcomes in situationally ambiguous cases — cases where both intimate partners have committed acts of violence against their partner. Extant research on arrests for IPV has examined the impact of mandatory and pro-arrest policies on arrest decisions for all cases of IPV reported to the police. In the majority of these cases, there is only one victim and one offender, and the decision facing the officer(s) is not whom to arrest but whether to make an arrest. In situationally ambiguous cases, however, officers must decide not only whether to make an arrest but which individual(s) should be arrested. Because of the complexity of these cases, I argue it is in these cases where mandatory and pro-arrest policies have the greatest impact on officer decision-making, and thus in these cases where domestic violence arrest policies have potentially the greatest consequences for women.

The results of this study lend support to the idea that mandatory and pro-arrest policies have direct impacts on arrest decisions in situationally ambiguous cases of IPV, and that these impacts are gendered—they have differential impacts for men and women. Although a greater proportion of men are arrested for IPV than are women, multivariate analyses indicate that after controlling for incident and individual characteristics, mandatory arrest policies disproportionately impact women. Net of incident and individual characteristics, officers in states with mandatory arrest policies are 2.33 times more likely to make a female-only arrest, 1.38 times more likely to make a dual arrest, and 1.59 times more likely to make a male-only arrest in cases of IPV that are situationally ambiguous. However, even in cases where officers have determined that both partners have committed acts of IPV, officers only make an arrest 54 percent of the time; in 46 percent of these cases no arrest is made, despite the fact that mandatory arrest policies *require* arrest when acts of IPV have been committed.

In pro-arrest states, cases of situationally ambiguous IPV are actually less likely to result in an arrest than in states with officer discretion policies or mandatory arrest policies. Officers make arrests in only 32 percent of these cases. As pro-arrest policies are intended to encourage arrests for IPV, the low proportion of cases resulting in an arrest is somewhat surprising. However, when arrests are disaggregated by arrest type — female-only arrest, male-only arrest, and dual arrest — it becomes clear that the decrease in the likelihood of any arrest is due to a sharp decrease in the number of dual arrests. Officers in states with pro-arrest policies make dual arrests only 24 percent of the time, far lower than the 43 percent in mandatory arrest states and 39 percent in officer discretion states. One explanation for the lower rate of dual arrests is that officers take seriously their mandate to determine which partner is the primary aggressor and which partner is the victim in the case rather than just arresting both parties. However, one would expect that if this were true, there would be a commensurate increase in the number of male-only and female-only arrests. Instead, the proportion of cases that end in male-only and female-only arrests in pro-arrest states is actually lower than in mandatory arrest states, and is nearly identical to officer discretion states. Further research is needed to determine why the proportion of incidents resulting in arrest is lower in states with pro-arrest policies than in other states.

In many respects, the findings of this analysis are similar to those in other studies of IPV reported to law enforcement. Race is a significant predictor of arrest, as is the type of offense, the use of a weapon, substance use, the location of the crime, and whether injuries were sustained. However, previous research has not found a significant relationship between the gender of the offender and the arrest outcome. The results of this study indicate that gender is an important component of the arrest decision in situationally ambiguous cases. For example, major injury to the female partner is a correlate of male-only arrest, while major injury to the male partner is a

correlate of both female-only *and* dual arrest. Similarly, aggravated assault to the female partner is a correlate of male-only arrest, while aggravated assault to the male partner is a correlate of both female-only *and* dual arrest.

There are several limitations to this study, and thus caution should be used when interpreting the findings presented here. First, generalizability is a potential problem. The data are not nationally representative. Unlike the Uniform Crime Report, which covered 95 percent of the U.S. population in 2005 (United States Department of Justice, 2005), the 2005 NIBRS data used here comes from only 23 states, and not every jurisdiction in each of the 23 states participates in NIBRS. Furthermore, rural states (and within each state, rural jurisdictions) are overrepresented in the NIBRS. Thus the findings here may not be representative of more urban states and jurisdictions.

Another limitation of the study is the lack of information about the ethnicity of victims and offenders. NIBRS only collects information about Hispanic origin for arrestees, not for victims or offenders. As the race of both the female and male partner was significantly associated with female-only and dual arrest outcomes, it is reasonable to assume that ethnicity may also be correlated with arrests for intimate partner violence. This omission is particularly striking given the proportion of the U.S. population that is of Hispanic origin. According to the 2006 American Community Survey, 14.8 percent of the population of the United States is of Hispanic origin. In some states, well over one-third of the population is Hispanic — 29 percent of the population in Arizona is Hispanic, 36 percent of the population in California is Hispanic, and in New Mexico, fully 44 percent of the population is Hispanic (United States Census Bureau, 2006). These numbers are projected to rise over the next few decades, and accurate law enforcement data as to

the ethnicity of both victims and offenders will be increasingly important in understanding the dynamics of arrest decisions in cases of intimate partner violence.

Finally, the models analyzed here do not include other incident and individual characteristics that may be correlated with the arrest decision, such as the demeanor of the female and male partner, whether either partner has left the crime scene, or whether there are other court orders or warrants. Each of these factors may influence the arrest decision, but are not available in the NIBRS data.

Given these limitations, this analysis has important implications for future research. The results of this study suggest that some of the reasons for the increase in arrests for IPV are due to the passage of mandatory and pro-arrest policies, and that women have been disproportionately impacted by these policies. Prior research with the 2000 NIBRS failed to find a relationship between the gender of the offender and arrest outcomes. One possible reason for the differences in the findings of this study as compared to other studies is that previous research used the 2000 NIBRS, while this study uses data from the 2005 NIBRS. Further research is needed to investigate whether the effect of mandatory and pro-arrest policies has changed over time. The lack of an association may also be due to the use of different sampling and modeling strategies. This study exclusively focused on heterosexual dyads where each intimate partner was both a victim and an offender, while previous studies used only incidents where there was one victim and one offender. The previous studies with NIBRS data also used slightly different dependent variables—arrest vs. no arrest, and dual arrest v. single arrest—than the four category dependent variable used here. Future analyses with the NIBRS data can examine each of these possibilities to determine which, if any, of these factors is responsible for the differences in the pattern of arrests by gender.

Table 1. Arrest outcomes, arrest policies, incident and demographic characteristics (n=14,728).

Variable	Dyad/ Incident Mean (sd)	Men Mean (sd)	Women Mean (sd)
Arrest decision			
Neither partner arrested	.55 (.49)		
Only male partner arrested	.06 (.23)		
Only female partner arrested	.04 (.19)		
Both partners arrested	.36 (.47)		
Arrest policy			
Mandatory arrest	.52 (.50)		
Pro-arrest	.35 (.48)		
Officer Discretion	.13 (.33)		
Type of offense (victimization)			
Aggravated assault		.10 (.30)	.08 (.27)
Simple assault		.84 (.37)	.86 (.35)
Intimidation		.06 (.24)	.06 (.24)
Equivalent offenses	.95 (.21)		
Weapon(s) used (either partner)	.12 (.33)		
Injuries			
Major injury		.02 (.14)	.01 (.10)
Minor injury		.43 (.50)	.45 (.50)
No injury		.55 (.50)	.54 (.50)
Location (public place)	.17 (.38)		
Substance use (any alcohol or drugs, either partner)	.19 (.39)		
Race			
African-American		.34 (.47)	.30 (.46)
White		.65 (.48)	.68 (.46)
Other		.01 (.09)	.01 (.11)
Age		33.54 (10.59)	30.92 (9.85)
Relationship			
Spouses	.37 (.48)		
Common-law spouses	.06 (.23)		
Ex-spouses	.03 (.16)		
Boyfriend/Girlfriend	.54 (.50)		

Table 2. Arrest rates by arrest policy type (n=14,728).

Variable	No arrest %	Male only arrest %	Female only arrest %	Dual arrest %	All male** %	All female** %
All states	54.72	5.71	3.83	35.74	41.45	39.57
Mandatory arrest	45.56*	6.51*	4.84*	43.08*	49.59	47.92
Pro-arrest	68.29*	4.84	2.85	24.02*	28.86	26.87
Officer discretion	54.09	4.89	2.44	38.58	43.47	41.02

*p<.05, comparison category = states with officer discretion policies.

**Sum of men arrested both singly and dually; sum of women arrested both singly and dually.

Table 3. Multinomial Logistic Regression Model Results (n=14,728)

	Only Male Arrested			Only Female Arrested			Both Arrested		
	<i>B</i>	<i>SE B</i>	e ^B	<i>B</i>	<i>SE B</i>	e ^B	<i>B</i>	<i>SE B</i>	e ^B
Mandatory arrest	.46**	.12	1.59	.85**	.16	2.33	.32**	.06	1.38
Pro-arrest	-.28*	.13	.76	-.14	.18	.87	-.73**	.06	.48
Female Victimization									
Aggravated Assault	.77**	.19	2.16	.24	.28	1.27	.22	.14	1.24
Intimidation/Other	-.03	.13	.97	-.45	.49	.64	-.35	.19	.71
Male Victimization									
Aggravated Assault	-.24	.19	.78	.58*	.29	1.79	.38**	.14	1.47
Intimidation/Other	-.43	.33	.65	-.26	.50	.77	.07	.19	1.07
Equivalent Offenses	-.75**	.16	.47	-.21	.25	.81	-.34**	.11	.71
Weapons (any)	.37**	.13	1.45	.29	.15	1.33	-.00	.08	1.00
Female Injury									
Major	.98**	.30	2.66	-.83	.45	.44	.17	.22	1.18
Minor	1.05**	.09	2.86	.18	.11	1.17	.67**	.05	1.96
Male Injury									
Major	.24	.26	1.27	1.09**	.27	2.98	.69**	.17	1.99
Minor	-.11	.09	.90	.50**	.11	1.65	.56**	.05	1.76
Location (public place)	.11	.10	1.12	.27*	.11	1.31	.21**	.05	1.23
Substance Use (any)	.20*	.09	1.23	.39**	.11	1.48	.23**	.05	1.26
Race									
Black female	-.09	.15	.98	.29	.18	1.33	-.10	.08	.91
Other female	.37	.37	1.49	.84*	.37	2.31	.04	.20	1.04
Black male	-.17	.14	.84	-.46*	.18	.63	-.35**	.08	.71
Other male	-.38	.53	.69	.06	.49	1.06	.51*	.23	1.67
Age									
Female	.00	.01	1.00	-.01	.01	.99	-.00	.00	1.00
Male	-.01	.01	.99	.01	.01	1.01	.00	.00	1.00
Relationship									
Spouses	-.11	.08	.89	-.13	.10	.88	-.04	.04	.96
Common-law	-.09	.16	.91	-.04	.18	.81	-.05	.08	.54
Ex-spouses	.07	.22	1.08	-.38	.33	.68	-.19	.12	.83
Constant	-2.08			-3.30			-.63		

*p<.05, **p<.01. Base outcome is no arrest.

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