

What do women survivors of partner abuse think about mandatory charging?

A review of the research

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Introduction

For over three decades police services in Ontario have followed a policy of mandatory charging in cases of domestic violence. Feminist activists, researchers and service providers working with abused women continue to debate the merits of this policy based on concerns about possible unintended consequences. A research project initiated by the Ottawa Coalition to End Violence Against Women (OCTEVAW) and the Building a Bigger Wave Ontario Network (BBWON) is addressing these concerns through a research project examining how mandatory charging policies are affecting abused women in Ontario. The first step was this review of relevant research that explores the experiences and perceptions of women who have experienced abuse. The review, as well as focus groups with BBWON members, helped define the areas to address in surveys of abused women, service providers and police.

Most research on mandatory charging policies shows that front-line advocates believe pro-charging policies are important for women's safety and for connecting survivors to supports in the community. Overall, the studies reviewed here show uneven support for mandatory policies among survivors of domestic violence. While many women endorse mandatory policies, negative impacts are felt more

Highlights

- Many women survivors endorse mandatory policies but show less support in their own specific cases.
- Specific populations of women survivors, including indigenous and racialized women, feel greater negative impacts as the policy can be more harshly applied in their communities.
- Mandatory charging can reduce reporting among immigrant women survivors sponsored by their partner because of fears of loss of immigration status or negative response from their community.
- Women survivors' needs and goals change over time and may not always fit with mandatory charging. They can wish to stop the violence without charges or accurately perceive charges as presenting an increased risk in their situation.
- Mandatory policies are best implemented in conjunction with social and community supports to help women understand criminal justice processes, increase safety and provide financial assistance.

acutely by specific populations of women and some are less likely to contact police in light of previous experiences with the criminal justice system. Some researchers conclude that mandatory charging reduces the ability of justice systems to respond to women's varied experiences and needs and that these policies are best implemented in conjunction with social and community supports.

Background

Mandatory arrest and mandatory charging policies¹ came into common use throughout North America in the 1980s as governments came to terms with the seriousness of domestic violence. These policies create an onus on police officers to arrest or lay charges against a violent partner where there are reasonable and probable grounds to do so thus removing this decision from the victim. In Ontario mandatory charging policies have been coupled with pro-prosecution policies. Those working in the violence against women (VAW) sector have expressed both support and concerns about mandatory policies (Han, 2003; Miccio, 2005) and debates in the research literature identify both benefits and unintended negative consequences. However, most support an aggressive criminal justice response to domestic violence even while recognizing the problems and limitations.

Research finds support for these policies among abused women, although there are variations based on social location and experiences with the justice system (Tutty et al., 2008; Bohmer et al., 2002; Barata & Schneider, 2004). Women who are marginalized by poverty, racism or other social factors experience particular negative impacts (Coker 2001). In addition, critics argue that mandatory arrest policies tend to be applied as a 'one-size-fits-all' solution that does not respond to unique situations (Dayton, 2002) and shifts decision-making authority from victims to police, thus increasing the power of the state while further disempowering women (Goodmark, 2009; Mills, 2003). Women of colour raise concerns about efforts to criminalize domestic violence that further increase the over-criminalization of women and men in their communities since mandatory charging policies, like all criminal justice responses, are more harshly applied to these groups (Crenshaw, 2011; Incite! & Critical Resistance, 2005). The literal application of mandatory charging policies has also led to arrests of female victims of male partner violence when women are charged for acts of self-defence or retaliation in the context of an abusive relationship (Deleon-Granados, 2006; Finn, 2006; Pollack, Green & Allspach 2005).

Notwithstanding these concerns, few critics would argue to abandon pro-charging policies (Fraehlich and Ursel, 2014) as they can respond to the immediate safety needs of women and help condemn the violence (Sinclair, 2010; Ursel, 1998) while the social and community

¹ Depending on the policing jurisdiction, mandatory policies can prescribe either "arrest" or "charges." Both arresting a suspect and laying criminal charges require reasonable and probable grounds that a crime has occurred although charging requires higher substantiation of the evidence. In this review of the research we use the terminology used by the authors.

supports that are activated when police lay charges can help mitigate some of the negative impacts (Han, 2003; Lewis, 2004; Sacuzzo, 1999).

In sum, complex issues remain for women survivors who wish to engage the criminal justice system in cases of intimate partner violence that have not been resolved by mandatory charging policies. The Ontario Domestic Violence Advisory Council (DVAC) called for an impact study in 2009 (Freeman, 2009) which has not been undertaken; the research study behind this literature review aims to address the gap in understanding the impact of these policies in Ontario and Canada.

Methodology

This review was undertaken to provide background information for a survey regarding mandatory charging in Ontario. The goal of the project was to understand the impacts of mandatory charging on abused women and their children. What we learned in this literature review helped us design the questions for three questionnaires – one for abused women, one for service providers and one for police.

We searched the English international scholarly literature and reports on the web from organizations or governments. Thirty-two studies that reported on women survivor's experiences with mandatory arrest or charging were found. Eight of the studies included in the review were undertaken in Canada, one in Britain and 21 in the United States. Each the of the studies focused on issues relating to women's experience, needs, preferences, interests and/or help-seeking behaviours in the context of a mandatory arrest/pro-arrest, or mandatory charging environment. The small sample sizes, variety of approaches and qualitative aspect of the majority of these studies meant that, while they provided rich descriptions in relation to their research participants, many had limitations and findings cannot be generalized. Despite these limitations, these studies provide an opportunity to identify issues that may be affecting larger numbers of women. Simultaneously, as part of this project we conducted focus groups within the Building a Bigger Wave Ontario Network, a provincial network of community-based coalitions addressing violence against women. Themes identified by focus group participants were compared to the literature search to ensure full coverage of the issues.

Themes

Women survivors presented a wide range of responses to mandatory charging policies. Two studies found a high degree of support for mandatory charging: 90 percent (Barata and Schneider, 2004) and 75 percent (Smith, 2000) respectively. Over 80 percent of women in another study gave a positive rating of police helpfulness (Apsler et al., 2003). A more equivocal response was reported in other studies. For example, Novisky & Peralta (2015) found that 27 percent of women identified mandatory arrest as “always a good thing,” 35 percent as “good on some occasions,” 25 percent as “not sure” and 14 percent as “rarely or never a good thing.” A higher degree of support for mandatory polices among service providers than among abused women was noted by Bohmer et al. (2002). It has also been argued that women relate

strategically to criminal justice system (CJS) policies and that their needs change over time, suggesting that support for, and benefit from, mandatory policies might also fluctuate (Erez & Belknap, 1998; Minaker, 2001). Barata (2007) found a wide range of attitudes toward mandatory policies in her study of women residing in a shelter. She organized these into five perspectives: the CJS can be trusted; the CJS has potential but is usually disappointing; victims should have an impact on the direction taken and be sure they want to engage with CJS; the CJS cannot protect victims and can make matters worse; and, the CJS should be used for safety, rehabilitation and justice.

We found a significant gap in research focusing on various demographic groupings of women. While 26 of the 30 studies include ethnic and/or racial characteristics in descriptions of their sample, only 11 provide an analysis of variations in experience or interests that might result. Just one study documents the inclusion of women with disabilities (Apsler et al., 2003). Nineteen studies report the age of the respondents but none did an analysis based on this characteristic and none of the studies noted the inclusion of women in same-sex relationships.

In the few studies that focus on their needs and experiences, women of colour, Indigenous women and immigrant women identify unique impacts of mandatory charging policies. A New Brunswick study identified immigrant women's concerns with increased social isolation, fear of police and other authorities, and increased economic insecurity (Wachholz & Miedema, 2000). A small Toronto-based study found that systemic racism makes mandatory charging less effective in Black Caribbean communities as women may be concerned about protecting their partners from the police (Harris, 2009). Dilemmas about reporting abuse were exacerbated for the primarily working-class Vietnamese-American women in a study by Bui (2003) as these policies do not align with cultural prohibitions and may worsen fears of police abuses. Vietnamese-American women have felt pressure from their communities not to report intimate partner violence to police (Bui & Morash, 2007). Willingness to reach out to the formal system for help increased when women had access to education, economic independence and mainstream contacts. Alaggia, Regehr and Jenney (2012) note that in discouraging reporting among immigrant women, mandatory charging can compound difficulties for sponsored women who are not yet citizens, as they must have formal documentation of the abuse to file an independent immigration application.

Several other studies included an indigenous and racial or ethnic analysis. Minaker's (2001) study of 15 women in Winnipeg, where six were indigenous and three were immigrants, investigated (i) what women needed and, (ii) what they got in the context of mandatory policies. Her findings suggest that the race and class of abused women affect the quality of contacts with police and other system actors through, for example, stereotyping of particular neighbourhoods or ethnicities, indigenous identity as well as practices which ignore the situated reality of women's lives. A study examining the rise in charges against women after the implementation of mandatory charging in Toronto suggests that police used racial profiling of women when women of colour used defensive violence (Pollack, Green and Allsach (2005). Racialized and

immigrant women have also experienced threats of violence from police. Smith (2000; 2001) investigated women's support for mandatory arrest policies in two studies. In the first she found little difference between the responses of white and African American respondents and in the second there was a significant difference (53% of Black women and 79% of white women expressed support for the policies). Many studies that took into account racial or ethnic background did not analyze how these characteristics were associated with support for the policies or possible variations in the police response (e.g. Fugate et al., 2005; Henning, Renauer & Holdford, 2006; Li et al., 2015). Further analysis of these studies may help extend our understanding of the impact of these factors on women's experience of mandatory arrest or charging.

Another theme in the research relates to concerns about the effect of mandatory policies on women's autonomy and empowerment. Landau (2000) points out that many women contact the police without wanting criminal charges laid against their partners; others lack the necessary social supports to make the changes in their lives necessitated by a prosecution (Hoyle & Sanders, 2000) and some want control over making that decision (Erez & Belknap, 1998). Bohmer and colleagues (2002) argue that when support for mandatory policies is higher among front-line service providers than among abused women some women may be pushed to engage with the CJS. And Smith (2001) contends that mandatory arrest policies represent a universalistic solution that does not respond to women's individual needs. However, even with these concerns, 72 percent of women in Barata and Schneider's Canadian study (2004) indicated support for the use of these policies in their own case.

Barata and Schneider's (2004) finding that 72 percent of abused women supported mandatory policies in their own case is contrasted with a much higher level of general support (90%) for mandatory charging. The researchers suggest that this gap may be related to how women experience their own situation (e.g. love for partner or perception of danger) and lack this knowledge when considering the cases of other women. Others have suggested that lower support in one's own case may be related to: (i) a desire to reduce or end the violence rather than to punish (Minaker, 2001); (ii) skepticism on the part of women about the seriousness and effectiveness of CJS efforts to reduce and prevent intimate partner violence (Bohmer et al., 2002); or, (iii) differences between women's personal goals and the goals of the justice system (Burgess-Proctor, 2012).

Women who are likely to be less well served by mandatory policies include those who want to stay in their relationship or women who do not want the perpetrator arrested. Women who want to stay in their relationship may be looking for counselling for their partners rather than a justice system response (Apsler et al., 2003). Women who believe that in order to receive help they must leave the relationship may hesitate to make the initial call to police (Fugate et al., 2005). Some women may not believe their abuser should go to jail (Bohmer et al., 2002) or perceive the danger of involvement with police to be greater than any possible benefit (Hirschel & Hutchison,

2003). Women may have many reasons for not wanting an arrest; over half of the 65 victims who had contact with the police in Hoyle and Sanders (2000) did not want the offender arrested.

On the other hand, police do not always accept women's claims of victimization. Rajah, Frye and Haviland (2006) identified four undesirable outcomes of police involvement: unwanted arrest of the perpetrator; dual arrest; retaliatory arrest of the woman based on false allegations by perpetrator; and, no arrest. When women are arrested, or the perpetrator is not arrested, women who have experienced abuse may interpret this as an indication that they are not seen as worthy of support and concern.

As they are currently implemented, mandatory policies may increase the risk of women survivors being charged. Pollack et al. (2005) and others (Leisenring, 2011; Henning et al., 2006) found that women who have suffered ongoing abuse are susceptible to being arrested and charged under mandatory policies. There are several routes to this outcome. First, women may be falsely accused or manipulated into using violence by perpetrators (Burgess-Proctor, 2012; Frye, Haviland & Rajah, 2007). Women may also use violence to defend themselves or in response to the violence of the perpetrator. Henning and her colleagues (2006) found that over half of the arrested women in their US study were primary victims and Li and colleagues (2015) argue that there is a complex relationship between victimization and women's use of violence and that defensive or retaliatory violence increases among some women over time. While they showed that women generally use violence for different reasons than men do, they suggest that "interventions should not only focus on empowerment but also provide skills and strategies to avoid temptation to adopt aggression or violence as primary methods of self-protection" (Li et al., 2015, p. 416). First responders often have difficulty understanding the context of the situation they are encountering, especially if abusers are quick to claim that women used violence against them first.

Findings related to whether, in the context of mandatory arrest or charging policies, women survivors will be less likely to contact police in the future are mixed. Smith (2001) reported that 60 percent of the women in her study believe that mandatory arrest will increase reporting generally and Apsler et al. (2003) found that arrest against the victim's wishes did not reduce a willingness to contact police in the future. On the other hand, Smith (2001) found that the arrest of an abusive partner may decrease support for mandatory arrest and Thomas (2013) asserts that women who are arrested may perceive that the costs of reporting outweigh the benefits. A longitudinal study over six months found that 90 percent of women who had contact with the police did not call for some or all future incidents, suggesting these women may not receive police protection when they need it (Gover et al., 2013). While women who are in support of mandatory policies are likely to contact police, those who are not in support are more often deterred from reporting (Novisky & Peralta, 2015).

A number of features of CJS systems affect the success of mandatory charging policies as a strategy for responding to intimate partner violence. Structurally, the criminal justice system is

incident-based and thus can fail to identify and respond to the ongoing nature of an abusive relationship and the gendered nature of the abuse (Kelly & Westmarland, 2016; Minaker, 2001; Pollack et al., 2005). As well, the danger posed by threats and seemingly minor assaults that take place within a context of ongoing coercive control can be discounted (Stark, 2012). In a justice system in which the victim is relegated to the status of witness, decision making lies with the state and the costs to the victim of an intervention may be overlooked (Bohmer, 2002). Hoyle and Sanders (2000) argue for an empowerment approach in which pro-charging policies are coupled with ongoing community and social supports to address social and practical needs.

An additional concern is the potential for system actors to prioritize sending a strong message to the public over meeting the needs of individual victims (Bohmer et al., 2002; Landau, 2000). The justice system is necessarily static in its expression of institutionalized policies and procedures whereas women's needs are a dynamic response to an ongoing and changing personal situation. The goals of many women when they call the police are to stop the violence rather than prosecute their partner (Burgess-Proctor, 2012). Hirschel & Hutchison (2003) find that women's understandings of the risk are generally accurate and that women may perceive contact with the CJS as unlikely to bring the abuse to an end (Hoyle & Sanders, 2000). Bohmer and colleagues (2002) argue that consultation with women is needed to address these perceptions and ensure that mandatory arrest and charging policies meet the needs of women trying to end the violence in their lives.

Implications

The studies reviewed here provide support for mandatory arrest and charging policies even as they identify a number of problems. Some authors emphasize (i) the need for input from women to be included in policy directions (Erez & Belknap, 1998; Minaker, 2001; Smith, 2001) and in the decision to lay charges (Hirschel & Hutchison, 2003), and (ii) greater flexibility for police to act based on individual cases (Leisenring, 2012) thus maintaining a strong CJS response while at the same time responding to the varied needs of individual women (Barata, 2007).

Accomplishing this goal will require further research to illuminate the experiences and needs of diverse women. Many researchers argue that without community and social supports, mandatory policies can be ineffective or in some cases even reduce victim safety (Alaggia, Regehr & Rishchynski, 2009; Bui & Morash, 2007; Burgess-Proctor, 2012; Hoyle & Sanders, 2000; Novisky & Peralta, 2015; Rajah, Frye & Haviland, 2006; Thomas, 2013). In addition, proper implementation of these policies is considered crucial for achieving safety for women survivors and reducing intimate partner violence. Researchers have suggested expanding the role of police to include activities designed to reduce future violence, for example, support in finding counselling (Apsler, Cummins & Carl, 2003), further police training and supervision (Frye, Haviland & Rajah, 2007), providing alternatives to arrest that offer social supports to women (Dichter, 2013) or a focus on rehabilitation (Hoyle & Sanders, 2000), and building awareness of

mandatory policies among the public and conducting ongoing assessments of policies and their outcomes (Fugate et al., 2005).

Taken together, these studies point to the need for criminal justice responses to recognize and respond to the complexities and dynamics inherent in women survivor's situations. They also show that mandatory arrest or charging are not a panacea, but can form an important component of a comprehensive response. This review provided a strong foundation for the creation of a survey investigating the impacts of mandatory charging on abused women and their families. The results of the survey will be available in 2017.

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