

LAW ENFORCEMENT MANAGEMENT INSTITUTE

SELECTED FAMILY VIOLENCE ISSUES
RELATING TO LAW ENFORCEMENT
TRAINING AND POLICY DEVELOPMENT

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BY
ROBERT S. ARCHER

HARLINGEN POLICE DEPARTMENT
HARLINGEN, TEXAS
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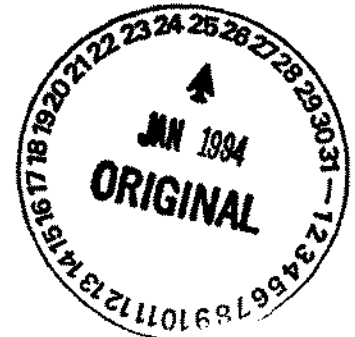


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INTRODUCTION

The purpose of this research paper is to review family violence issues as they relate to the delivery of services by law enforcement agencies and the multi-directional training required to support those services. Hopefully the findings and conclusions reached here may be helpful to other police officials faced with making decisions related to the topic.

Understanding the enormity and dynamics of the problem of family violence is important in becoming an effective law enforcement manager. Chapter 5 of the Texas Code of Criminal Procedures states:

family violence is a serious danger and threat to society and it's members Victims of family violence are entitled to the maximum protection from harm and abuse as is permitted by law.¹

The problem of family violence is pervasive in our society. It has no boundaries with regard to race, religion, profession, financial status, or social station in life.² No one is immune from it nor will it go away if left untreated.

If allowed to go unabated, family violence is self-perpetuating. It is passed from one generation to the next in a continuing cycle of violence.³ A child who witnesses violence in the home has that early experience to use as a

frame of reference. Later, as an adult, this learned violence is often relied upon when all else fails.⁴

Family violence presents itself in many forms. Besides the assaultive behavior of battering, family violence may include associated offenses such as terroristic threats, retaliation, sexual assault, kidnapping and murder.⁵ Often these accumulated calls tax an agency's ability to effectively deliver services.

Historically, law enforcement's approach to dealing with family violence, except in extreme cases, was to consider it a civil matter. The accepted manner of intervention was to separate, send one party away or mediate. This approach did not work.⁶ Later, crisis intervention techniques were tried with limited success. Later still, pro-arrest and mandatory arrest policies were seen as the answer, but they also fell short.

Recent changes in the law and a better understanding of the underlying dynamics of family violence mandate a change in the way law enforcement responds to this class of calls. Clearly the old way of doing business has changed or is changing for all law enforcement agencies. Today an agency must take a multi-directional approach, combining prevention, intervention, mediation, criminal sanctions, and

interagency cooperation to effectively combat family violence. To do this, law enforcement managers must understand the areas of training which support these changes.

HISTORICAL ISSUES

VIOLENCE AGAINST WOMEN

Family violence is the legal term for physical violence in a family. In Texas, the legal definition for family violence includes violence against any members of a household by another, between persons related by blood or marriage, or between the biological parents of a child.⁷ In law enforcement, most of the time it refers to adult male violence against an adult female. In the past, this type of violence was referred to as domestic violence, spouse abuse or wife beating.

The concept of answering a call of family violence and finding a female victim is supported by the results of the 1991 Texas Family Violence Data Collection. These results show the majority of victims are females between twenty and forty years of age, while the majority of offenders are males between twenty and forty five years of age.⁸ In fact, where the sex of the offender was identified, 86% were male and 14% were female.⁹

Many theories abound trying to fix the blame for male violence on one causative factor or another. Some authors cite differences between the sexes in brain structures and hormonal levels.¹⁰ Others subscribe to environmental

factors such as families of origin relating to learned violence, or the socialization of sex rolls.¹¹

Whatever the reason, throughout history male violence against women has been accepted as the norm if not a right. In "Under The Rule of Thumb" a report to the U.S. Civil Rights Commission, Friar Cherubini of Siena (circa 1450 A.D.) is quoted:

when you see your wife commit an offense, don't rush at her with insults and violent blows...Scold her sharply, bully and terrify her. And if this still doesn't work, take up a stick and beat her soundly, for it is better to punish the body and correct the soul than damage the soul and spare the body...Then readily beat her, not in rage but out of charity and concern for her soul, so that the beating will redound to your merit and her good.¹²

Sir William Blackstone, who wrote the Commentaries on the Law of England, and influenced the concepts of Common Law in the United States, is quoted:

for as (the husband) is to answer for her misbehavior, the law thought it reasonable to intrust him with this power of chastisement, in the same moderation that a man is allowed to correct his apprentices or children, with a rod not thicker than his thumb.¹³

Today, the law has changed and no longer allows a person to beat other members of their family. The clergy no longer advocates beating a person to save their soul. But for many in society these attitudes and practices seem to have changed very little. Society has long perceived family violence as a private matter, and the police as an agent of

society have been reluctant to intervene in private matters.¹⁴

POLICE RESPONSE TO FAMILY VIOLENCE

Police have traditionally avoided becoming involved in family problems. Family violence was considered a family problem and not real police work.¹⁵ Police officers often avoided taking reports and actively discouraged victims from filing charges unless there was serious injury involved. They were tolerant of family violence replacing the "Rule of Thumb" with the "No stitch Rule."¹⁶

In the early 1960s, the Michigan State Police Training Academy instructed officers to:

- I. Avoid arrest if possible.
- II. Explain problems involved in obtaining a warrant.
 - A. That the complainant must sign a formal complaint.
 - B. That the complainant must appear in court.
 - C. That the complainant must pay a filing fee.
- III. Explain to the complainant that attitudes usually change by the time the case comes to trial.
- IV. Recommend a postponement to taking legal action.¹⁷

The law enforcement response changed very little between the turn of the century and early 1960s. The idea of crisis intervention became popular as an alternative method of handling family violence calls. The rationalization for crisis intervention was not so much to aid the victims but to reduce the number of officers killed

or injured answering family disturbances.¹⁸ Buchanan and Chasnoff in " Family Crisis Intervention Programs": What works and What Doesn't, assessed crisis intervention programs in Michigan in the 1960s and found most programs goals were:

- I. Decrease assaults on police officers.
- II. Decrease homicides of police officers.
- III. Decrease family violence.
- IV. Decrease repeat calls.
- V. Decrease homicides in families.¹⁹

Under the concept of crisis intervention police officers received extensive training in counseling and mediation. It was believed if these officers could intervene early enough into family disturbances they could reduce the likelihood that violence would escalate and increase their own safety. Additionally, if there was less violence among at-risk families there would be fewer calls to answer.²⁰ Regrettably, the reverse proved to be true, and calls actually increased as couples came to rely on the police to mediate their problems.²¹ This reflects a much larger trend in society where individuals and families are increasingly looking to government for help to solve their problems.

While both researchers and practitioners thought better interpersonal skills would reduce assaults during family

violence calls, the training provided by crisis intervention did not decrease the number officers injured.²² However, crisis intervention officers reported using less physical restraint at family disturbance calls.²³ Whether this was a result of having better interpersonal skills is not clear. Crisis intervention officers saw themselves as care providers when working with couples. They avoided arrest because they did not want to add legal problems to the list of problems a couple already faced.²⁴ If they avoided arrest situations they also avoided using physical restraint.

The goal of reducing officer homicides during family violence calls resulted from a misconception that family disturbance calls were the most dangerous calls for an officer to make.²⁵ For many years the FBI reported a high percentage of officers killed during family disturbances. In fact, very few of these disturbances were family disturbances.²⁶

One of the positive results from crisis intervention training has been that officers became more sensitive to social issues and established closer contacts with social agencies.²⁷ Today, police officers are actively involved in making referrals to other agencies.

During the 1970s, the political climate in the United States started to change. Grassroots women's organizations

became politically active and demanded change.²⁸ The National Organization of Women in 1975 proclaimed marital violence a major issue and established the National Task force on Battered Women/Household Violence.²⁹

The police during this time continued to espouse programs based on crisis intervention models. Many of these programs used the team approach where civilian social workers worked directly with officers. In some cases, teams would make up to five follow up calls or visits after a family violence report.³⁰

In the 1980s, following civil law suits brought against the police for failure to protect the police began pro-arrest and mandatory arrest policies.³¹ Police managers in attempts to avoid similar legal action adopted strict arrest policies to protect their departments. During this same period, many states passed legislation designed to increase the capability of the police to make warrantless arrest, make available protection orders for victims, and requiring the police to report statistical information on family violence incidents.³²

Although many departments developed strict arrest policies many officers resisted the change. Clearly police officers do not arrest as many offenders as are justifiable.³³ Police managers often overlooked at least four factors in developing their polices. First, the impact

of policies that do not take into consideration the need for discretion invites circumvention.³⁴ Police officers need some leeway in doing their jobs. If a policy does not provide some discretion, officers will ignore it or find a way around it. Second, officers comfortable with intervention and mediation resisted the change.³⁵ Third, new officers entering the field who were trained in the academy to make arrest soon took on the values of mentor officers.³⁶ Michael Breci states in Police Officers Values on Intervention in Family Fights:

younger officers are socialized into the police subculture through an intensive rite of passage on the streets where they learn how to survive not only in society but also with their peers.³⁷

Finally, the reason some officers resist making arrest may revolve around their own personal values and beliefs. Police officers are mostly males and socialized to masculine roles.³⁸ Also there is some evidence to suggest that female police officers tend to take on masculine roles and attitudes.³⁹ It is suggested that many police officers hold patriarchal and misogynist attitudes.⁴⁰ Also many police officers have experienced similar occurrences of violence in their own families.⁴¹ Peter Neidig conducted surveys which indicate police families experience violence at a rate more than twice that of the civilian population.⁴²

In the article "Interspousal Aggression in Law Enforcement,"

Neidig states:

the rates suggest that the issue of domestic violence among law enforcement personnel can not be dismissed as low frequency phenomenon. In addition to the prevalence rates (28% annually) suggest that domestic violence in law enforcement families should be of particular concern. (1) The impact of conflict on morale, retention, efficiency and judgement. (2) How officers enforce the law.⁴³

TRAINING ISSUES

Some authorities suggest that family violence calls represent over half the calls for service responded to by urban patrol officers.⁴⁴ Yet, until 1986, TCLEOSE required only four hours of training on family violence as part of the curriculum for basic certification.⁴⁵

Commonly, trainers suggest at least two areas of training need to be emphasized. They are, the dynamics of family violence, and laws specific to family violence.⁴⁶

DYNAMICS OF FAMILY VIOLENCE

In the article Domestic Violence-A New Point of View, James Halsted states:

wife beating is a complex problem that involves much more than the act itself, or even the personal interaction between a husband and wife. It has its roots in historical attitudes toward women, the institution of marriage, the economy, the intricacies of criminal and civil law, the structure of human values, the effectiveness of impulse control, the will power, the nature of human anxiety, fear, resentment, the hunger for recognition, the nature of violence, and the delivery system of social service agencies.⁴⁷

In truth, all of these issues make up only part of the dynamics of family violence. Essential to any course in family violence are basic social theories dealing with aggressive behavior and social victimization. The principal theories are:

1. The Walker cycle theory of violence
2. The continuum of violence
3. The generational cycle of violence
4. Learned helplessness, and
5. Socially learned aggression.⁴⁸

The Walker cycle theory of violence is based on research conducted by Dr. Lenore Walker working with battered women. In this theory, Dr. Walker sees violence in a relationship occurring in a three phase cycle. The three phases are:

Phase one, the tension building phase. In this phase tension builds between the batterer and the victim. Small episodes of violence may erupt but the batterer continues to internalize the anger building to rage. During this phase the victim often will try to prevent the escalation of violence by trying to calm the batterer and accept the blame.

Phase two, the acute battering incident. Violence erupts during this phase. The batterer usually justifies the violence by blaming the victim for making him lose control. This is the phase in which the police are usually called, if they are called.

Phase three, loving contrition. During this phase the batterer expresses guilt and remorse. Both the batterer and the victim tend to minimize the level of violence.⁴⁹ In her

book The Battered Woman Syndrome, Dr. Walker states that with time the first and third phases grow shorter while the acute battering phase becomes more intense.⁵⁰

The continuum of violence theory states that as time goes by in a battering relationship the level of violence escalates. Episodes of violence which start out with pushing and shoving may lead to beatings and eventually murder.⁵¹ This theory is of particular interest when tied with the Walker cycle theory of violence. A study of Kansas City domestic homicides revealed the police had been called to the scene at least once in 85% of the cases and at least five times in 50% of the cases.⁵²

The generational cycle of violence theory states that violence is passed from one generation to the next through witnessing violence in the home. Children who grow up in homes where they are battered as children, or where they witnessed battering are much more likely being involved in violent relationships as adults.⁵³

The learned helplessness theory, or battered woman's syndrome, states victims are conditioned to believe nothing will ever improve and if they try to leave a relationship things will only get worse.⁵⁴ This is considered one of the leading reasons why women stay in a battering relationship.

The theory of socially learned aggression holds that boys are socialized to use violence and aggression while girls are socialized to be dependant and submissive.⁵⁵

LAWS SPECIFIC TO FAMILY VIOLENCE

Mike Simpson the author of TCLEOSE training course #3903, in an eight hour in-service training course on family violence stated:

no peace officer can be expected to remember verbatim all Texas law. It is important, however, for a peace officer to have a general awareness and be able to consult the actual text of a provision of law when need be.⁵⁶ His course places emphasis on training officers on the following laws:

Texas Code of Criminal Procedure:

Chapter 2. Duties and Powers (of peace officers)

Chapter 5. Family Violence Prevention Act

Chapter 6. Preventing Offenses

Chapter 14. Arrest Without Warrant

Chapter 17. Bail

Chapter 56. Rights Of Crime Victims⁵⁷

Texas Penal Code:

Chapter 9. Justification

Chapter 20. Kidnapping And False
Imprisonment

Chapter 22. Assaultive Offenses

Chapter 25. Offenses Against The Family

Chapter 26. Offenses Against Property⁵⁸

Texas Family Code:

Chapter 3. Protective Orders (with
divorce)

Chapter 12. The Parent Child
Relationship

Chapter 17. Emergency Orders (child
attachment)

Chapter 34. Report Of Child Abuse

Chapter 35. Consent To Medical Treatment

Chapter 71. Protective Orders⁵⁹

POLICY ISSUES

How police respond to family violence calls through the implementation of policy is a problem faced by police managers. Understanding the legal requirements imposed by law and the level of guidance needed to direct officers in combating family violence will help a manager in forming a family violence policy.

LEGAL REQUIREMENTS

In Texas, by law, certain requirements are imposed on officers responding to family violence calls. Chapters 5 and 14 of the Texas Code of Criminal Procedure set out basic requirements and dictate that the police take an active role when responding to family violence calls.

Chapter 5, Art. 5.04 state the primary duties of a peace officer who investigates a family violence allegation or who responds to a disturbance call that may involve family violence are:

- Protect any potential victim of family violence
- Enforce the law
- Make lawful arrest of violators.⁶⁰

Chapter 14, Art. 14.03 (a) (3) and (4) cites the authority to make warrantless arrest and states officers may arrest:

(3) Persons who the peace officer has probable cause to believe have committed an offense defined by section 25.08, Penal Code (violation of a Protective Order), if the offense is not committed in the presence of the peace officer: or

(4) Persons the peace officer has probable cause to believe have committed an assault resulting in injury to a member of the person's family or household.⁶¹

Further, arrest are mandated in Chapter 14, Article 14.03 (b)

A peace officer shall arrest, without a warrant, a person the peace officer has probable cause to believe has committed an offense under section 25.08, Penal Code (violation of a Protective Order), if the offense is committed in the presence of the peace officer.⁶²

The law stops short of requiring a department to enforce a mandatory arrest policy. It is clear from the emphasis placed on family violence by Chapter 5 of the Texas Code of Criminal Procedures that a department must take a proactive stand in dealing with family violence.⁶³

LEVEL OF DIRECTION

When assessing the level of direction needed in developing policy, managers need to keep in mind two determining factors. First, the level of maturity within the organization.⁶⁴ Second, the amount of discretion officers must have in carrying out their mission.⁶⁵

When determining the amount of discretion an officer is allowed, managers sometimes confuse policy with procedures and rules.⁶⁶ Policy provides "what" is desired,

procedures describe "how" to get there while rules set a standard of conduct.⁶⁷ Policy, procedures and rules guide or limit discretion by the employee. Examples provided in the TCLEOSE manual of the Policy Development Workshop on Family Violence, July-August, 1990 are:

A. Policy:

- A specific, descriptive statement of objective couched in the broader goals and objectives of the organization.
- Policies are the managements best vision of what "ought" to be in the pursuit of such goals and objectives.
- Policies exist only when management deems it imperative to limit or to guide in what occurs in the workplace.

B. Procedure:

- A specific and sequential set of descriptive instructions for employees to follow, useful (if not critical) to carrying out policy.
- Procedures describe the task themselves, and the steps through which the task are performed.
- Procedures exist when management deems it imperative to limit or guide discretion in how the work is to proceed.

C. Rule:

- A descriptive, inflexible statement of behavioral imperative espoused by management with respect to the conduct of workers.
- Rules express and define specific behavioral limits on employees relative to their conduct in the workplace.⁶⁸

How much discretion to allow is predicated on the maturity level of an organization.⁶⁹ Generally, more discretion is given in those organizations where the maturity level is high,

While maturity is a difficult term to operationalize it can be assessed by analyzing the following factors:

- Average length of service of employees.
- Average age of employees.
- Average educational level of employees.
- How long have current management policies have been in place.
- How many resources are available to employees.
- The level of discipline.⁷⁰

As previously mentioned, policy must allow for discretion or officers will find ways to circumvent it. Mandatory arrest policies start with the assumption of a very low level of organizational maturity. Strict mandatory policies work more at controlling the behavior of officers than in coming to grips with the overall problem of family violence.

Policy must allow for adjustments in the field and provide police officers the opportunity to utilize the resources made available by a multi-dimensional approach. To do this, policy makers need to include mandatory training in the dynamics of family violence, legal issues, and multi-

dimensional\multi-agency intervention technics and
resources.

CONCLUSIONS

The problem of family violence is enormous and wide spread. The fact that family violence is so well entrenched in American society has made it very difficult for the police to mount long lasting, effective responses. Police attitudes in the past reflected societies attitudes which tolerated and even condoned family violence. It is not surprising then, when called upon to intervene and stop the violence, police often only interrupted the violence at best.

Previous experiments at controlling family violence through crisis intervention were not well thought out and were put in place for many of the wrong reasons. Police managers thought they could reduce the number of repeat calls and at the same time make the calls safer. These early programs failed because police departments were not prepared to face the issues using a multi-agency approach. Families with problems started relying on the police to help them resolve more of their problems. The good to come out of this is the police now actively make referrals to other agencies.

More recently, police managers tried controlling family violence by implementing strict mandatory arrest policies. Again police managers were reacting for the wrong reasons.

The fear of law suits and legal entanglements prompted these changes and the changes were wide scale. While there have been several negative side effects to the implementation of strict mandatory arrest policies, one positive effect has been to bring the issue of family violence to the forefront.

Today, police departments are becoming more socially involved in their communities. The role of the police has expanded to include solving the causes of problems not just the problems themselves. Community policing concepts are being applied for issues from gang violence to drug interdiction. These strategies not only look to the traditional police response of controlling the problems through arrest, but they also look for ways to prevent the problems in the first place.

New methods need to be found which incorporate the best parts of active police enforcement with active police intervention. Training courses need to start emphasizing alternative interventions besides arrest. Arrest are often preferred, but giving officers viable options using local social resources can be better. Community teams utilizing the multi-agency task force approach are being used in some cities. This task force approach may be the wave of the future.

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