

**THE BILL BLACKWOOD  
LAW ENFORCEMENT MANAGEMENT INSTITUTE OF TEXAS**

**A Better Solution to the Family Violence  
Dilemma for Law Enforcement Agencies**

**A  
Policy Research Project  
Submitted in Partial Fulfillment  
of the Requirements for the Professional Designation  
Graduate, Management Institute**

**by**

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January, 1998**

## ABSTRACT

Prior to the late 1980's Texas Law Enforcement had no authority to act in a family violence incident. Law Enforcement officers were left to their own resources and imaginations to protect family members. The Texas Legislature recognized a need to give Law Enforcement authority to arrest in these incidents. Their first attempt at a new statute was vague. Approximately two years later the Legislature created a very good statute that gave Law Enforcement definitive authority in a family violence incident, which made it less difficult to effect an arrest. However, simply arresting the offender will not solve the family violence problem. There have been many programs and services designed with the victim in mind. These programs are excellent and needed. Unfortunately, even with the new laws allowing Law Enforcement to arrest - arrest is simply a temporary or Band-Aid solution. The batterer needs the opportunity to attend treatment. It is anticipated that professional counseling will have a positive affect on most batterers. A Deferred Adjudication Program should be established to afford the batterer an opportunity to change his behavior. This author does not believe that Deferred Adjudication will heal all batterers, but it is immeasurably better than simply arresting the individual. Thus, arrest with the option of Deferred Adjudication into a Batterer's Treatment program is a more definitive approach to solving the family violence epidemic.

## Introduction

The purpose of this research is to demonstrate the need for either State, County, or Municipal governments to establish a Deferred Adjudication (or probation) program for Batterers. Our Criminal Justice System has developed many programs to assist the victim and her children. I vehemently applaud these programs. However, this author intends to demonstrate that arrest and incarceration will not solve a family violence situation for the long term. This author believes that arrest with the opportunity for counseling for the batterer is a better solution.

The problem is that traditionally our Criminal Justice System has not afforded an opportunity for a batterer to attend counseling prior to incarceration. Our current system was designed in the nineteenth century to help rehabilitate individuals who found themselves in situations that forced them to commit crimes. The nineteenth century theory depended on the system to retrain criminals, so they would become a law-abiding individual. I believe this system is a miserable failure. Our failure is no more evident than when our system is involved in solving a family violence incident.

The intended audiences of this project are State, County, and Municipal governments. Research sources will come from published articles, personal interviews, video tapes, and lesson plans.

The intended outcome of this project is to bring awareness to our governmental entities that there is a better solution, relating to family violence incidents, other than simply arresting the offender. Arrest is a very necessary variable in the formula, but arrest will only treat the symptom. I believe that arrest with the possibility for counseling

(Deferred Adjudication), and oversight by the arresting agency, will help save the family in a family violence situation.

#### Historical, Legal or Theoretical Context

I was a rookie officer on Mother's Day, 1985. It was a hot and humid day. At approximately 5:30 P.M. my partner and I were dispatched as an assist unit to a shooting call at an apartment complex. Upon our arrival we approached the apartment where the shooting occurred. The crowd that had gathered around the front door separated as we approached.

After the crowd moved, I had a direct visual sight into the apartment. Just inside the front door I noticed a woman laying on the floor face up. Where her right eye used to be, there was now a .44 caliber hole. The back of her head was gone, and there was brain matter distributed around the immediate area. The suspect was handcuffed and sitting on the couch. He was the woman's common-law husband. I was then informed that the victim was eight and a half month's pregnant.

The paramedics who were there on the scene ordered me to initiate CPR, because the baby had gone full-term. I conducted CPR for approximately fifteen minutes. After the paramedics took over they began to remove the body. I was then ordered to move the crowd away from the ambulance that was waiting outside. While conducting these duties, a vehicle screeched to a halt near the ambulance. An older woman frantically exited the vehicle and ran toward the stretcher. I placed my arms around her and forced her away from the stretcher and next to my patrol unit. I then learned that she was the dead woman's mother. This mother asked me in a very shaken, scared, and emotional

voice, "Is she dead?" I could only shake my head, "yes." The woman collapsed, and I called another ambulance for her. My partner traveled with the ambulance to the hospital for evidentiary reasons. He watched the doctors conduct an emergency Cæsarian-Section and, unfortunately, deliver a dead baby. The suspect only received a suspended sentence of two years.

After this tragedy I began to question what agency should have known that this family was experiencing difficulties and was in a crisis, even before the shooting. Without question I believe that the law enforcement agency should have known about this family's plight. It is very common for agencies to have responded many times to prior family violence calls. I began to realize that family violence was similar to an illness and that a cure needed to be found. In fact, two former surgeon generals of the United States have called domestic violence an epidemic. (Schechter)

This tragedy was a demonstration to me that law enforcement had little authority in a family violence situation. Even if law enforcement was aware of this family's situation, they had no legal authority to act, unless the victim wanted to press charges. Many times the victim will refuse to press charges for fear of retaliation, the loss of income, or being ostracized from the family or community. Consequently, most officers were simply trained to; separate the parties, have one of the parties go for a walk, or try to arrest the offender on a different charge. (Hurst PD Lesson Plan). Then, in 1989 Law Enforcement was given the authority to arrest a family member for committing an assault against another family member (CCP 14.03 (a),(2). However, this statute states, in part that, "... and the peace officer has probable cause to believe that there is danger of further bodily injury to that

person." This made it difficult for officers to arrest, because many times there would not be enough evidence to support the portion of the statute requiring future violence.

Approximately two years later the Legislature created Article 14.03 (a),(4). This statute states, in part that, "... persons who the peace officer has probable cause to believe have committed an assault resulting in bodily injury to a member of the person's family or household." This revision removed the requirement that officers must determine probable cause that future violence would occur.

Our Legislature realized that families were being destroyed, and that Law Enforcement did not have the legal tools to stop the violence. Article 14.03(a),(4), gave Law Enforcement the absolute authority to effect an arrest of a family member. However, as wonderful as this authority is, it only treats the symptom. In fact, this author believes that the only way incarceration will definitively work is if the batterer receives the sentence of life without parole or the death penalty.

Since the advent of Article 14.03(a),(4) this author believes that governments now have a tremendous opportunity for a deferred adjudication system for batterers to be established. Theoretically, such a program could work for misdemeanor and felony family violence assaults. The program is easily administered and has the best chance for actually solving family violence. Administration of the program would begin after the offender is arrested for a family violence offense. Then, the offender would be offered mandated counseling in lieu of incarceration. Eisikovits & Buchbinder state, "Intervention with survivors and

perpetrators of intimate violence is becoming increasingly professionalized." (Zvi C. Eisikovits & Eli Buchbinder). Further, "...the assertion that the criminalization of violent behavior will necessarily lead to a decrease in intimate violence is being increasingly questioned (e.g., Berk, 1993; Buzawa & Buawa, 1993).

#### Review of Literature or Practice

Authorities are beginning to realize that incarceration is not going to cure this "epidemic." Einat Peled states, "Stopping violence and healing from its effects are possible only through coordinated, multi system response." He further states, "...Programs should consist of efforts to prevent future violence from happening, to teach both victims (women and children) how to survive it while it occurs, to teach perpetrators how to end their violence, and to help all heal from the aftereffects" (Peled et al., 1995).

Results of past studies such as the Minneapolis Domestic Violence Experiment (Loving, 1980), indicated that arrest seemed to be an effective way to deter repeat violence.

However, this experiment had many flaws. The primary one being that officers on the street failed to conduct the experiment in the manner it was designed.

A study conducted by the Loyola University Department of Criminal Justice indicated that, "women and men preferred counseling significantly more than they wanted jail or probation. Also, women preferred jail & counseling more than men. The most preferred disposition overall was court-ordered mediation" (Lurigio, Arthur J; Stalana, Loretta J. 1995).

Finally, a study conducted in 1991 indicated that "arrest and treating the serious offender case will increase the chances of success during each of the first six months by about 15% as compared to simply arresting the offender" (Hamm, Mark S; Kite, John C. 1991).

According to the Texas Council on Family Violence, 92% of offenders are male (Texas Council on Family Violence). Traditionally men are resistant to counseling. But, this author believes that when an individual is faced with a choice of only incarceration, or incarceration with an opportunity for deferred adjudication (counseling), then the individual is left with the feeling that he is still in control. Therefore, the offender may be more receptive to counseling.

The concept of deferred adjudication for family violence is relatively new. Officer Cheryl Kovach (Family Violence Unit Coordinator for the Hurst Police Department), stated that she doesn't have any data to argue if the Hurst P.D. Batterer's Intervention Program is having an effect on family violence within her city. This is partly due to the transient population within the apartment complex community. However, she stated that, "we are not seeing the same families over and over again due to family violence."

During an interview with Ronna S. Quimby (Outreach Program Coordinator, Women's Haven of Tarrant County, Inc.) she stated that they conduct pre surveys and post surveys of their clients in which their significant others attended and completed counseling. During the post surveys conducted with the victims, they are consistently seeing a 75%-80% decrease in emotional abuse from their partner. Also, they are seeing an 85%-90% decrease in physical and sexual abuse from their partner.



Most agencies in the Tarrant County area rely on the District Attorney's Batterer's Intervention Program. Typically, Tarrant County agencies will arrest an offender for the Class "A" violation (Assault with Bodily Injury), then refer the case to the District Attorney.

The Hurst Police Department's Family Violence Deferred Adjudication Program was modeled after three similar programs. These agencies were: Albuquerque, New Mexico, Newport News, Virginia and Rye, New York. The City of Newport News, VA., Police Department started a mandatory arrest policy in 1984. Through the next couple of years family violence homicides steadily decreased (Magee, Greg 1990). Unfortunately, Mr. Magee's article failed to mention that incorporated with Newport News' mandatory arrest program is a deferred adjudication program, and the suspect is offered counseling in lieu of trial. (Video, "Agents of Change") The above-mentioned programs recognized the need for professional assistance when dealing with batterers and their families. In the video, "Agents of Change" each agency reflects significant decreases in domestic violence homicides, which they attributed to the intervention of a batterer's program.

A comparison of these programs and the Hurst program shows that each agency has the support of the courts. For instance, the courts will issue warrants for those offenders who would not complete the entire program, or failed to pay their portion of the program. Further, the officers on the street felt better about making family violence arrests, because in the majority of the cases there would be professional follow-up and intervention. As a result, arrests for family violence related offenses increased. (Video, "Agents of Change") It should be noted, every agency, counselor, and court, agreed that arrest is the first step

toward a batterer's rehabilitation.

The primary differences between the above-mentioned programs and the Hurst Program, is when the intervention program begins and the length of the program. A great number of an officer's family violence calls involve Class "C" violations. This author believes this is the best time for an offender to begin a program, and this is the best time one can expect positive results. Quimby also mentioned that a first time offender has a better probability of successfully completing and benefiting from an intervention program, then an offender who has been arrested multiple times for a family violence related offense.

The next difference between the Hurst program and the above-mentioned programs are the length of the programs. The City of Hurst has the option of offering an offender a choice of a six-week program or a twenty-week program. Officer Kovach stated that her criterion for determining which program to offer an offender is: the seriousness of the offense, the criminal and family history of the offender, interviews with family members when necessary, and consultation with the counseling agency if necessary. First time offenders are usually assigned the six-week program. As stated earlier, it is believed that this is a time when the offender is most amiable to the treatment. Coupled with the shock of being arrested and incarcerated, the first time offender tends to be more receptive to information that will help change the abusive behavior.

The twenty-week program is designed for the offender who has previously been exposed to an intervention program or for the serious offender. However, the offender is not offered treatment if he has committed an assault within one year of the last judgement.

## Discussion of Relevant Issues

There has been a significant amount of time and effort dedicated to programs for the victims of family violence. This author applauds the efforts of the brave men and women who have taken steps to insure these safeties. In fact, according to Schechter, "Since 1975 through 1995 the battered women's movement in the U.S., focused on the following three major initiatives: (a) Establishing and maintaining shelters and other crisis support services for women and their children, (b) Expanding women's options for legal protection, and © Educating the public about domestic violence. Since then, there have been more than 1200 shelters and safe homes projects in every state, and other protections"- Susan Schechter.

There have been new laws enacted that allow the officer to take definitive action that will stop the violence for a period of time. Unfortunately, even with these new laws, the Criminal Justice System has only treated the symptom. This author believes that State, County, and Municipal governments should use their authority to impose batterer intervention treatment programs along with a penal consequence.

Without question the act of battering should be treated like a crime. However, treatment programs incorporated with arrest, will teach the batterer of the long term effects he is having on the victim, the family, and his entire life. Of special consideration the batterer will learn of the psychological effects his actions are taking on his loved ones. "Battering men are often less aware than battered women of the effect of the effects of violence on their children. Many perpetrators also see less of their children following the exposure of violence and parental separation. Nonetheless, efforts should be made to help

battering men develop and strengthen their parenting skills." (Einat Peled). Like the doctor searching for the cause of an illness, I believe a government should facilitate the Criminal Justice System and social services to find a cure for battering. Now, more than ever before the Criminal Justice System has an excellent opportunity to facilitate a true solution to a crime that has a devastating effect on families.

For agencies involved in Community-Based Policing, a Deferred Adjudication Program for family violence is an excellent opportunity for an enhanced relationship with various groups. This program allows the agency to network with: other divisions within the department, within the Law Enforcement community, within the courts, within the various social service agencies, and most importantly the community itself. In his book, "Expanding Sanctions for Batterers, What Can We Do Besides Jailing and Counseling Them?" Richard M. Tolman makes some very good suggestions. Aside from having a choice of the length of counseling, some of his suggestions include the following: weekend incarceration, in which the time spent in confinement could be used to prepare the batterer for treatment; "Day Reporting Centers," where monitoring of the batterer is intensive and requires at least three times weekly and sometimes daily visits. They could require the offender to submit an itinere. The offender could be required to call the center several times a day. (Diggs & Pieper, 1994). Finally, "Intensive Probation" usually for violent criminals with extensive criminal histories. "Some evidence suggests that offenders view intensive probation of some length and intensity as more punishing than more brief jail or prison sentences." (Tolman)

Cost of the program is nominal. Most law enforcement agencies assign an officer

that oversees the program, or they run the program through their existing Criminal Investigation Divisions. Other agencies run the program through their Community Services Division. The Hurst Police Department found that the paperwork necessary for the program was readily available. A contractual form was the only additional form necessary. The only other paperwork necessary were warrant forms, which are already existing.

A family violence Deferred Adjudication Program may also help prevent or significantly limit exposure to civil law suits. In the case of Thurman v. City of Torrington, CT., 595 f. Supp. 1521 (1984), the City of Torrington, CT., lost almost three million dollars. In that judgement it was shown that the police "failed to protect Tracy Thurman." Ms. Thurman was able to show that the police failed to take any substantial steps toward protecting her Civil Rights. Also, a lawsuit filed against the Dallas P.D., Yvette Lewis et al. v. City of Dallas et al., Cause No. Ca3-85-1572-t, resulted in the Dallas P.D. also losing a substantial amount of money. Again, they were shown to be at fault for "failure to protect." This author believes that had either of these Cities been involved in a Deferred Adjudication Program for the batterer they would have been able to show that they have taken significant steps toward the protection of the victims civil rights.

#### Conclusion/Recommendations

Tolman states, "counseling or education programs for batterers attempt to change batterers' abusive behavior by changing their attitudes, teaching skills, ameliorating psychological problems, or other mechanisms . . . the sanctions might be most powerfully used in various combinations." (Petersilia & Deschenes, 1994)

The mechanism to begin an individual in a deferred adjudication program is already in place-our criminal justice system. Many social service agencies have qualified counselors on staff that could work with batterers. The offender should be made to pay for a portion of the treatment. Paying for a portion of the treatment gives the batterer a sense of ownership. Thus, a Deferred Adjudication Program should be virtually self-sustaining. Unfortunately, "The debate is heated both ideologically and professionally and is critical for the major stakeholders who are competing for funds through the debate" (Zvi C. Eisikovits, Eli Buchbinder). Cost of this program should remain nominal. The focus should remain on healing families and not as a profit making device.

The purpose of this research was to demonstrate the need for either State, County, or Municipal governments to establish a Deferred Adjudication Program for Batterers. There has been a significant amount of time and effort dedicated to programs for the victims of family violence, but this has not solved the problem. The Criminal Justice System has only treated the symptom. This author believes that State, County, and Municipal governments should use their authority to impose batterer intervention treatment programs along with penal consequences.

Of significant relevance is that the local government has a system in place where the families can return should the need arise. With a Deferred Adjudication Program, the family has a foundation of help they may return to, the police are seen as less threatening, and the community are served through a very simple and inexpensive process. The Hurst Police has had situations in which officers were dispatched to a family disturbance. When there was not an assault, they were able to refer the family back to the organization that

was assisting them.

The problem this author has attempted to show is that arresting a member of a family for an assault will not solve the families' crisis. The Criminal Justice System is simply treating the symptom with this method and not curing the illness.

The intended outcome of this project is to bring awareness to our governmental entities that there is a better solution relating to family violence, rather than simply arresting the offender. Arrest is a very necessary variable in the formula. But, arrest will only treat the symptom. It is recommended that arrest, with the possibility for counseling (Deferred Adjudication), and oversight by the arresting agency, is the best solution to help save the family involved in family violence.

The initiation of a Deferred Adjudication Program will solve a myriad of problems for the family, for the Law Enforcement community, for the State, County, or Municipality, and the Community. Aside from dealing with treatment for the batterer, counseling will uncover other maladies within the family such as: alcohol abuse or mismanagement, drug abuse or mismanagement, financial difficulties, or improper communication skills. Then, the family or individual could be referred to agencies to address those specific issues.

In conclusion, the Criminal Justice System is simply putting a Band-Aid on the epidemic of family violence. There has been a tremendous amount of money and effort directed to the victims of family violence, and rightfully so. Now, it is time that a cure, like deferred adjudication for the batterer, is established.



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