

## **Predominant Aggressor Legislation: Protecting Victims in Domestic Violence Cases**

The Advocates for Human Rights recently traveled to Sofia, Bulgaria to conduct a workshop on monitoring the implementation of domestic violence laws. During the workshop sessions, The Advocates' colleagues in the Central and Southern Europe region expressed growing concern over the increase of dual arrests in domestic violence cases. Dual arrests occur when batterers and their victims are both arrested during a domestic violence incident.

Dual arrests in the region may be the result of several factors:

- 1) Police on the scene fail to differentiate between offensive and defensive injuries;
- 2) Legislation defines domestic violence to include psychological, and economic violence; and
- 3) There is community backlash and resistance to domestic violence legislation.

When police fail to differentiate between offensive and defensive injuries and arrest both parties involved in a domestic violence incident, law enforcement fails to fulfill its protective mandate. Further, in countries where legislation includes economic and psychological violence as a part of the definition of domestic violence, offenders may undermine the intent of the laws by claiming this kind of abuse. That is, if a woman claims physical violence, a violent offender may state that he was responding to economic or psychological violence. Police then feel compelled to arrest both parties.

Dual arrests may also be a reflection of community backlash and resistance to domestic violence legislation. Advocates for domestic violence legal reform throughout the world still encounter a pervasive view that it is acceptable for men to use coercive power to control women, including but not limited to physical violence.<sup>1</sup> Legislation punishing this type of behavior is often met with community resistance and, in some cases, increased victim-blaming.

This Expert Corner discussion will focus upon dual arrests which are caused by mutual physical violence. Dual arrests often have dire consequences because victims who are arrested when they request police intervention are less likely to seek remedies through the justice system again. They are more likely to remain in violent and damaging situations.<sup>2</sup> Predominant aggressor legislation can address this problem and prevent dual arrests and further harm to victims of domestic violence.

The United States has faced similar difficulties with dual arrests.<sup>3</sup> To address this issue, many U.S. states created predominant aggressor laws to ensure that police identify and arrest the abusive party and to ensure that victims are not punished for seeking help. This legislation commonly identifies a predominant aggressor as the "party who is the most significant or principal aggressor."<sup>4</sup> For example, the California Penal Code states:

*...Peace officers shall make reasonable efforts to identify the dominant aggressor in any incident. The dominant aggressor is the person*

*determined to be the most significant, rather than the first, aggressor. In identifying the dominant aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense...*<sup>5</sup>

States should adopt predominant aggressor legislation in order to ensure victim safety and offender accountability in cases of mutual physical violence. Enacting and enforcing such legislation would entail educating law enforcement officials on the dynamics of domestic abuse, instructing them to determine the predominant aggressor, and training them to understand the type of self-defense actions a victim will use to defend against their attackers. Police should be able to distinguish between defensive and offensive wounds, and they should be able to detect injuries that are not readily evident, as batterers often know how to injure their victims with little visible damage. In particular, police should be knowledgeable about [strangulation](#), a potentially lethal form of domestic violence where injuries are not immediately or readily apparent but where victims may, in self defense, inflict visible injuries on the abuser.

To determine the predominant aggressor, police should consider:

- Offensive and defensive injuries
- The seriousness of injuries received by each party
- Threats made by a party against the other or a family member or a pet
- Whether a party acted in self-defense or in the defense of another
- The height and weight of the parties
- Which party has the potential to seriously injure the other party
- Any prior history of domestic violence between the parties, or on one party's part
- Prior convictions of assault
- Orders for protection that have been filed by a party
- Whether a party has a fearful or controlling demeanor
- Witness statements

The determination of the predominant aggressor, as well as the reasoning behind that determination, should be included in the police report. If the predominant aggressor is not identified and both parties are arrested, offenders will successfully manipulate the system and victims will remain unprotected, contributing to increased victim reluctance to contact police in the case of future violence.

Women's rights advocates have seen an improvement in victim safety and perpetrator accountability since the passage and enforcement of such primary aggressor laws. These laws can increase the protection of women's rights and should be considered by countries that are committed to effective domestic violence legal reform.

For more information on this subject, please visit the [Determining the Predominant Aggressor](#) section of [www.StopVAW.org](http://www.StopVAW.org), as well as the [Domestic Violence](#) page.

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<sup>1</sup> See: UN report, The World Women 2010: Trends and Statistics, 20 October 2010.

<sup>2</sup> See: Hirschel, David, Domestic Violence Cases: What Research Shows About Arrest and Dual Arrest Rates, 25 July 2008.

<sup>3</sup> See: Chapter 2, “Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors, and Judges,” June 2009.

<sup>4</sup> See: Strack, Gael B., “She Hit Me, Too:” Identifying the Primary Aggressor: A Prosecutor’s Perspective.

<sup>5</sup> Cal.Penal Code § 13701 (b).