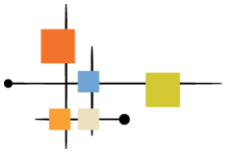
Mainstream and LGBTQ DV fields

LGBTQ Domestic Violence Targeted Recommendation:

Rethink pro-arrest policies and criminal justice reform using historic, current, and emerging knowledge from diverse sources in the DV field



National
LGBTQ DV Capacity Building
Learning Center

Recommendation: Rethink pro-arrest policies and criminal justice reform

Rationale

We must not pretend that the countless people who are routinely targeted by police are "isolated." They are the canaries in the coal mine whose deaths, civil and literal, warn us that no one can breathe in this atmosphere…. Until their voices matter too, our justice system will continue to be anything but.
—Justice Sandra Sotomayor, in her dissent re: Utah v Strieff

In her powerful dissent in *Utah v. Strieff*, Justice Sotomayor points to a fundamental tension in understanding the meaning and impact of individuals' negative interactions with law enforcement: Some believe that when policing does not work sometimes for some people, these problems are random, the fault of bad apples or bad luck, and the system as a whole is not implicated. Others maintain routine policing (and prosecution and prison) has negative impacts on particular groups of people that are systematic, predictable, over-determined, expected, and perhaps even intended.

Sotomayor demands that we take seriously the possibility that the second explanation is most accurate. She is not the first to do so[i], but she may be the most powerful voice to make this point.

We know from both research and practice that many survivors, and particularly survivors in marginalized communities, have problems with police response. Just a few examples:

- When asked if involving the police made them feel more or less safe, one third of domestic violence (DV) survivors across sexual orientation and gender identities said they felt *less safe* after police intervention.[ii]
- The US Department of Justice has reported that DV victims in same-sex couples are 30 times more likely to be arrested along with their abuser than female victims with male offenders.[iii]
- Transgender people, and particularly transgender people of color, report discrimination and abuse at the hands of law enforcement at high rates. A national survey of transgender people found that almost half reported being uncomfortable seeking police assistance.[iv] NCAVP's 2014 Report on LGBTQ DV, compiled from data collected by 14 organizations around the country, notes that of the survivors who reported IPV to the police, 14% found responding law enforcement officers hostile, and another 32% found them indifferent.[v]

The response of the DV field to recent research makes clear that significant conflict exists within the movement regarding how to understand, integrate, or evaluate evidence that challenges the assumption that strong criminal justice responses to DV benefits survivors.[vi] In the meantime, even as dramatic examples of police brutality toward communities of

color, and women of color in particular, flood our airwaves, most DV programs continue to direct survivors to the police as a resource—without carefully helping those survivors consider all the possible outcomes (including the negative ones) of a call to 911.

Recommendations for the mainstream and LGBTQ DV fields

The fields need to invest adequate resources and time to revise the operating consensus around the role of criminal justice system in helping survivors of DV. A series of convenings of leaders in the DV fields (with particular emphasis on advocates and leaders representing marginalized communities), academics, and researchers should take place to integrate LGBTQ community and other communities' perspectives regarding such issues as:

- The utility of mandatory and pro-arrest policies, given the persistent limitations of the criminal justice field with regard to sexism, racism, and classism.
- The meaning of the numerous critiques, research findings, and narratives from survivors over the last 30 years pointing to the damaging impacts of criminal justice interventions for DV.
- Where the DV movement should situate itself in the current conversations about systemic police bias, police brutality, and the role of intersectional oppressions in driving the experience of the criminal justice system by immigrants, people of color, and LGBTQ people.
- Assessment of the opportunity cost of focusing on the criminal legal system as opposed to other systems that substantially impact survivors' self-determination and options, such as access to housing, education, childcare, and economic justice.
- How to re-orient STOP and GTEA grant reporting guidelines to yield better information about the impact of funds on desired outcomes (e.g., decreased assaults, increased victim safety) versus outputs (e.g., number of training sessions).

Recommendations for Researchers

Create information that will assist the fields in nuanced discussion of the impacts of the last 30 years of criminal justice reform (mandatory arrest laws, training, collaboration) by the DV movement.

- Conduct a critical literature review to identify and assess the research on the impacts of pro-arrest/mandatory misdemeanor arrest policies on victims. Such a review should not assume that arrest or prosecution is in itself a positive impact for victims. The review should include evidence on the impact of pro-arrest policies on victim safety, stability, self-determination, community connectedness, and access to meaningful resources.
- Conduct studies to compare alternatives to mandatory or pro-misdemeanor arrest practices as it is currently being implemented, again centering the impact on survivors.

- Any research on criminal or civil justice systems should account for the presence of community-based advocates and the advocacy that participants receive. Advocacy is a significant variable that should not be ignored.

Resources

- Arrested Justice: Black Women, Violence, and America's Prison Nation, by Beth Richie (2012)
- INCITE! Women of Color Against Violence and Critical Resistance: Statement on Gender Violence and the Prison Industrial Complex (2001)
- Injustice at Every Turn
- Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Intimate Partner Violence in 2014
- Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses
- The Criminal Justice System Response to Intimate Partner Violence Victims: Developing a Research Agenda

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[i] Voices from within and outside the domestic violence movement have repeatedly raised questions about the risks involved with reliance on the criminal justice system (CJS) to address violence against women, and the transformation of the problem of intimate partner violence into a criminal problem that may be solved by reforming criminal justice institutions as opposed to a problem rooted in expansive and systemic social injustices interwoven with patriarchy, white supremacy, and capitalist ideologies. Writing in the early 1980s, Susan Schechter pointed to the skepticism within the "battered women's movement," especially on the part of women of color, regarding a focus on criminalizing domestic violence. She notes advocates at that time pointed to the risk of the unintended consequences that communities of color might bear as a result, further empowering a racist criminal justice system. (Women and Male Violence, p 178) Thirty years later, in her powerful book *Arrested Justice*, Beth Richie catalogues the strategic decisions made within the DV movement that have led to a broad "consensus" that criminalizing IPV and then training CJS actors represents the way forward, and the impact of those decisions on disadvantaged Black women, in particular. She notes that along the way, advocates in communities of color raised concerns regarding differential impacts, institutional racial bias, and the potential for survivors to end up as targets of criminal interventions, and concludes that "Black women, and other women of color, lesbians, immigrant women, human rights activists, women involved in prostitution, and outspoken survivors of rape and battering continue---30 years later---to find themselves in conflict with leaders in the anti-violence movement." (Richie, B. E. (2012). *Arrested Justice: Black Women, Violence, and America's Prison Nation* (pp. 97). New York: NYU Press.)

[ii] National Domestic Violence Hotline (2015). Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses. Washington, DC: Logan, T. & Valente, R.

[iii] Hirschel, D., Buzawa, E., Pattavina, A., Faggiani, D., & Reuland, M. (2007). Explaining the Prevalence, Context, and Consequences of Dual Arrest in Intimate Partner Cases (No. 218355). U.S. Department of Justice.

[iv] National Center for Transgender Equality and National Gay and Lesbian Task Force. (2011) *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*. Washington, DC: Grant, J.M., Mottet, L.A., Tanis, J., Harrison, J., Herman, J.L., & Keisling, M.

[v] National Coalition of Anti-Violence Programs. (2015). *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Intimate Partner Violence in 2014*. New York, NY: Jindasurat, C. & Waters, E.

[vi] For example, the mainstream DV field has soundly rejected Laurence Sherman's recent research following up on mortality rates of subjects in the Milwaukee Arrest Experiment, which demonstrated that African American women in the "arrest" had much higher mortality rates than those in the "warn/no arrest" condition. (Sherman and Harris, 2015). The Wisconsin Coalition Against Domestic Violence issued a strong statement disputing the relevance of the findings; this statement has been referenced by other coalitions across the country in responding to the findings.

Rethink Pro-Arrest Policies and Criminal Justice Reform
One in a series of targeted recommendations from the LGBTQ Domestic Violence Capacity Building Learning Center intended to improve policy, research, intervention and prevention efforts regarding LGBTQ DV.

The LGBTQ DV CBLC is a project of the Northwest Network for Bisexual, Trans, Lesbian and Gay Survivors of Abuse with foundational partner the National Coalition of Anti Violence Programs

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