

When Battered Women Are Arrested

By 2008, Battered Women's Support Services (BWSS) had become increasingly alarmed by the growing number of women accessing our services who have been arrested for allegedly perpetrating domestic violence against their partners.

In our experience, these arrests are occurring despite the fact that in all cases the women were in relationships where their partners were abusing them. What is clear is that some very worrying patterns are emerging. For example, women accessing BWSS' services nearly always claim to be acting to protect themselves when they were arrested. The police have also been involved in relation to the partner's abuse on previous occasions. It is also concerning that many women who are being arrested are from immigrant backgrounds.

There are huge legal, social, economic and emotional consequences for women who are arrested, which may include the involvement of MCFD, loss of child custody to a violent partner, the inability to find employment with a criminal conviction, incarceration and even deportation. These consequences add significantly to the burden already being shouldered by women who are victims of relationship violence. Further, women's negative experience of the criminal justice system may in many cases make them more vulnerable to further abuse.

Given the increasing prevalence of woman arrest and the dire consequences of being arrested, it is critical that advocates are proactive in assisting women who have been arrested. Women who are arrested should be provided with appropriate information, support and advocacy. This tool is designed to assist advocates to provide these services.

Why are women being arrested?

Most of the literature attributes the increase in women being arrested to the application of pro arrest, pro charge, no drop and mandatory arrest policies (often collectively referred to as 'mandatory charge' policies). Police may feel compelled by these policies to arrest any party who has perpetrated violence, regardless of the context. Ironically and unfortunately, these arrest policies are sometimes being used against the very people whom they were designed to protect.

In addition, when police attend scenes of domestic violence, the situation can often be difficult to interpret, making the decision to arrest a complex one. Police officers also often view the credibility of each of the parties at a domestic violence incident according to their own prejudices, assumptions and biases. Police officers may tend to arrest the more distressed and emotional party (often the woman), and accept the calm, rational account given by the perpetrator. Police officers may also view Aboriginal women, Immigrant women and/or women of colour as being more susceptible to perpetrating violence, and accordingly arrest them.

What are the relevant police and crown counsel policies around woman arrest?

There are three principal policies which apply to woman arrest for domestic violence in British Columbia: the RCMP “E” Division Operational Manual Part 2: Criminal Code Offences, persons, violence in relationships: Section 4, primary aggressor; the BC Violence Against Women in Relationships Policy (VAWIR Policy) and the BC Crown Counsel policy. These policies are largely inconsistent and lack any real coordination and integration. For example, while the RCMP policy requires a primary aggressor assessment, the VAWIR Policy contains no such requirement, and nor are Crown Counsel required by their policy to consider contextual factors in the decision to prosecute. Advocates should keep copies of these policies to assess whether they have been followed in specific cases.

BWSS believes that police in all cases should thoroughly investigate the context, history and dynamics of relationship violence before they make the decision to arrest a woman for perpetrating domestic violence. They should:

- upon arrival at the scene, interview both parties separately for their account of what happened, and if possible interview any neighbours or family friends who may have information regarding the abuse;
- if the woman is an Immigrant woman who does not speak good English, provide a qualified interpreter to translate;
- question the woman about the history of abuse and violence in the relationship;
- investigate any claims of self-defense made by the woman, and whether her use of violence was legitimate;
- assess which party is more dangerous, physically imposing, and in control of the situation;
- carefully assess any injuries sustained by both parties (including whether they are likely to have been sustained in self-defense);
- conduct a comprehensive risk assessment of the situation and help the woman prepare a safety plan;
- conduct detailed background-checks to assess whether the police have been called previously in relation to violence in the relationship, and whether the man has a criminal history in relation to domestic violence generally.

If it is not clear immediately who the dominant aggressor is, then police should not rush to arrest, but make further investigation using record searches, witness interviews, and follow up inquiries.

How can you support women who have been arrested?

There are a number of steps advocates can take to support women who have been arrested:

1. INFORM

Inform and educate the woman about the dynamics and prevalence of woman arrest, and the relevant police and Crown Counsel policies applying to her situation. Let her know she is not alone in her arrest experience.

2. ASSESS

Make a detailed assessment of the woman's arrest experience, which should include asking the following questions at the minimum:¹

Background

- Is English the woman's primary language? If not, is she fluent in English?
- What is the woman's immigration status?
- What is the gender of the other party?
- Has there been prior abuse in the relationship? Please provide details.
- Have the police been called in relation to the partner's abuse in the past? Please provide details.
- Does the woman or the other party have a prior criminal record?
- Is there anything else important about the background of relationship violence that the woman wants to raise?

Circumstances of the arrest

- Which police force arrested the woman? What is the police file number for the incident?
- What were the circumstances leading to the arrest itself?
- Did the woman use violence against the other party? Why?
- Was there any evidence of physical injury to either party? If so, what?

¹ These questions have been adapted from the document 'Anatomy of a Woman Arrested' prepared by Darcie Bennett of Pivot Legal Society.

- What evidence was available at the scene? What evidence led to the police officer's decision to arrest?
- Who called the police?
- What did the police do (interview both parties, length of time to assess the situation, provide an interpreter if necessary)?
- Was the other party arrested?
- Did the police follow the relevant policies relating to arrests for domestic violence?
- Is there anything else about the arrest that the woman would like to raise?

Impact of the arrest

- Was the woman detained in custody and for how long?
- Was the woman charged? With what offence(s)?
- Was the woman able to get legal representation? Please provide details of any problems with this process.
- Was the woman convicted? Please provide details of the sentence received.
- What was the woman's experience of the legal system?
- Did the arrest impact on a family law case and how?
- Did the arrest lead to the involvement of MCFD and how?
- Did the arrest impact on the woman's employment or financial circumstances?
- Did the incident affect the woman's immigration status?
- How was the woman affected emotionally or psychologically by the arrest?
- Are there any other relevant impacts that the woman would like to talk about?

3. ADVOCATE

There are a variety of ways to advocate on behalf of individual women who have been arrested, and for law reform in this area generally. Using a detailed assessment of a woman's particular arrest situation, advocates can:

- assist the woman to obtain adequate legal representation;
- write to police and/or crown counsel requesting that the charges be dropped (and alleging the failure to follow policy, if relevant);
- assist the woman to file a formal written complaint about the police's conduct in arresting the woman to either the Commission for Public Complaints Against

the RCMP (if RCMP officers arrested her) or the Office of the Police Complaint Commissioner (if municipal police officers arrested her);

- assess whether other legal avenues are open to the woman, including lodging a discrimination complaint with the BC Human Rights Tribunal or filing a small claim; and
- use the particulars of the woman's case to advocate to law enforcement agencies and Government for reform of both policy and practice in this area.

The specific, informed and written consent of the woman to use the particulars of her case must be obtained prior to taking any of the steps outlined above. Informed consent involves discussing with the woman all of the consequences of any of the above actions and how those consequences might affect her and her children, as well as investigating options for support with those options. For example, women should be advised about the problems with the police complaint system in Canada, not least of which is that the police investigate the police and that women accordingly often report feeling pressured and intimidated by the complaint investigation process. These and other problems should be discussed with women before they decide which course of action to pursue.

Advocates should also compile a list of all cases where women have been arrested for use in advocacy for changes in this area.

4. SUPPORT

Given the enormous ramifications of being arrested, it is important that advocates help women obtain the legal advice, representation and support they require to navigate the criminal justice system. Advocates should also assist the woman to obtain appropriate emotional support, which may include counseling, providing court accompaniment, or accompanying the woman to interviews in relation to any complaints about the conduct of police in arresting her.

