

An Evaluation of Efforts to Implement No-Drop Policies: Two Central Values in Conflict

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During the late 1980s and 1990s, the law enforcement response to domestic violence changed remarkably. Legal impediments were removed for police officers making warrantless arrests for misdemeanors they did not witness. They were replaced by presumptive arrest statutes, under which police were encouraged to make arrests, or statutes making arrest mandatory when probable cause existed. Many victim advocates were pleased with these changes, arguing that taking the decision to arrest away from victims shielded them from possible retaliation by batterers.

The changes in police practices regarding domestic incidents were paralleled by changes in the prosecution of these cases. Many jurisdictions changed their prosecution policies to ensure that *all* legally sufficient domestic cases would be prosecuted whether or not victims were fully cooperative, to drop the requirement that victims sign a complaint, or to forbid victims from dropping charges once they were filed. Other jurisdictions facilitated the process of obtaining restraining orders; established special domestic violence courts staffed with personnel trained to handle domestic cases; or established better coordination between police, prosecution, judicial, and probation agencies.

Some prosecutors adopted a policy that paralleled mandatory arrest policies of the police. So-called no-drop or evidence-based prosecution was pioneered in places such as Duluth, Minnesota, and San Diego, California, in the late 1980s in response to the high dismissal rate of domestic violence cases. Until then, it had been the practice of most prosecutors and judges to dismiss domestic cases in which the victim was unwilling to come to court or to testify against the defendant. Because many victims failed to cooperate for a variety of reasons, domestic violence cases had dismissal rates many times higher than other crimes.

In particular, the San Diego City Attorney received a lot of national press about evidence-based prosecution. The office realized that forms of evidence other than the testimony of victims could be collected in domestic violence cases. Advocates convinced the office to treat domestic violence like any other crime and not rely solely on the victim to determine how to proceed. Statements made on 911 tapes or to responding police officers could be admissible under certain circumstances. Photos of injuries could be taken and the testimony of medical personnel entered. Physical evidence could be collected from the household. The statements of witnesses could be used. San Diego prosecutors fought hard to convince judges to accept these forms of evidence. Over time, with the passage of key statutes on admissibility of evidence, the city attorney's office prevailed and was able to win convictions in a large percentage of cases, even without (or in spite of) the testimony of the victim.

San Diego's success convinced other prosecutors to follow suit. Some advocates argue that no-drop policies are victim-friendly because they take the burden of continuing a prosecution away from the victim and decrease the abuser's power to force the victim to drop charges. By contrast, others have argued that no-drop policies take away power from the victim and assume the State's interests should supersede those of the victim. The present study looked at the impact of no-drop policies on the victim and the criminal justice system.

Purpose of the Research

The researchers wanted to learn if prosecution without the victim's cooperation was feasible with appropriate increases in resources. They identified three sites where the Office of Justice Programs had awarded funds for no-drop prosecution under the Office on Violence Against Women's (OVW) grant program to encourage arrest policies. Included were Everett, Washington, Klamath Falls, Oregon, and Omaha, Nebraska. San Diego was added to the list because of its historic importance, even though it had not applied for funds under the arrest policies grant program. San Diego was the first place to institute a no-drop policy and is widely respected as being the most successful no-drop site. The researchers felt they could not conduct a study of no-drop policies without including the longest-running and strongest program.

The study was designed to examine the effects of no-drop policies on court outcomes and victim satisfaction with the justice system and feelings of safety. Four research questions were addressed:

- ◆ Did implementing a no-drop policy result in increased convictions and fewer dismissals?
- ◆ Did the rate of trials increase in jurisdictions where no-drop was adopted as a result of the prosecutor's demand for a plea in cases in which victims were uncooperative or unavailable?
- ◆ Did prosecutors have to downgrade sentence demands to win the willingness of defense attorneys to negotiate pleas in the new context of a no-drop policy?
- ◆ What was the impact on victims? Did victims who did not want their intimate partners prosecuted eventually come to believe prosecution was a good thing, or did prosecution without the victim's consent result in angry victims who were discouraged from calling the police in the future?

Methods

The study evaluation encompassed process and impact components. During the process component, the researchers collected data on no-drop program implementation through a review of written materials, interviews with local officials, and onsite observations. The impact evaluation assessed the overall effect of the coordinated approach to domestic violence implemented at each site. At the three sites that had recently implemented no-drop policies (Everett, Klamath Falls, and Omaha), researchers attempted to collect samples of 200 domestic violence court cases during the year before implementation of the no-drop policy and 200 cases after its implementation. That was not possible in Omaha because domestic violence cases were prosecuted by the city attorney before the no-drop policy and by the county attorney afterward. Thus, a pre- and post-comparison of office processing was not possible.

In San Diego, which has had a no-drop policy since the mid-1980s (and thus a pre-/post-sample was not feasible), the researchers examined the effects of two State laws favorable to prosecutors. These statutes were designed to make it easier to admit certain types of evidence and thereby increase the prosecutor's chances of succeeding in trials without victim cooperation.

To assess the impact of the statutes on domestic violence cases in San Diego, samples were collected of 200 cases before and 200 cases after the new statutes took effect.

For sampled cases, the researchers collected information on charges, defendants' criminal histories, relationships between victims and defendants, court outcomes, sentence and special conditions of sentence, issuance of protection orders, prosecution of violations of protection orders, contacts with victims by phone or in person, assessments of victim willingness to prosecute, subpoenas or body attachments issued for victims, and victims' attendance in court.

For cases resolved under the no-drop policy, telephone interviews with victims were attempted to ascertain their desires about what should have been done with the case (from dropping charges to sentencing batterers to jail terms), their willingness to cooperate with criminal justice officials, their contact with victim advocates, their belief that their views were heard and considered by criminal justice officials, their satisfaction with officials and with the case outcome, their beliefs about whether the criminal justice outcome had increased or decreased their safety, and the level of violence experienced after the case was resolved in court.

Findings

San Diego

San Diego's no-drop policy is the model others have copied. Because the policy began so long ago, an archival comparison was not possible in San Diego. However, researchers did study the impact of the 1997 changes in legislation regarding admissibility of evidence. Analysis revealed the following:

- ◆ Researchers found differences in case processing between 1996 and 1999. The processing time declined from an average of 91 days in 1996 to 32 days in 1999. The rate of adjudications of guilt was an amazing 96 percent in both years.
- ◆ No differences were found in the proportion of guilty defendants whose sentences included jail time, probation, or batterer treatment. However, a significant difference was found in the proportion of offenders whose sentences included a no-contact provision. In 1999, 61 percent of offenders were ordered to stay away from victims, up from 38 percent in 1996.
- ◆ None of the changes found between 1996 and 1999 was related in an obvious way to the new legislation. Rather, they seem to be the result of changes in implementation of a specialized domestic violence court.
- ◆ If the legislation made a difference in whether important evidence was admitted during the course of trials, then there should have been a difference in conviction rates after passage of the new laws. However, no difference in trial conviction rates was found between the two samples.
- ◆ Both samples were examined for differences in whether judges admitted prosecution evidence in trials. Three categories of evidence were examined: (1) *statements*, which

included statements and admissions made by defendants, statements by victims to the police, and statements to 911 operators; (2) *witnesses*, which included eyewitness testimony, police witness testimony, medical testimony, and expert witness testimony; and (3) *corroborating evidence*, which included physical evidence, photographic evidence, medical records, copies of restraining orders, and prior violence by the abuser. Researchers found that witness testimony and corroborating evidence were almost universally accepted by judges in both samples. In 9 cases out of 10 or better, judges allowed prosecutors to introduce these forms of evidence at trial. Prosecutors were less successful with defendant or victim statements in 1996, when they were admitted in only 72 percent of cases. In 1999, however, statements were admitted in 89 percent of cases in which prosecutors tried to introduce them.

- ◆ Because San Diego had a large trial sample ($N = 90$), the researchers were able to examine the effects of evidence on trial outcomes in ways not possible in the other sites. They found that *none* of the forms of evidence significantly influenced the outcome of trials among the entire sample or among no-drop cases.

Everett

In 1997, the Everett Police Department received a Violence Against Women Act (VAWA) grant that created a domestic violence unit that brought together prosecutor, police, and victim services coordinators under one roof to increase collaboration. An experienced domestic violence prosecutor was hired to introduce a more aggressive style of prosecution and teamed with specialized domestic violence police officers and a victim coordinator.

The researchers examined data from a sample of 156 cases before and 200 cases after the start of the policy. They compared processing time, trial rates, and guilty plea rates. The pre-no-drop case files did not contain data on sentences, so researchers were not able to compare rates of jail terms, no-contact orders, or conditions of probation. Key findings in Everett showed that—

- ◆ Processing time declined from 109 days to 80 days after the formation of the special domestic violence unit.
- ◆ Dismissals declined from 79 percent of dispositions to 26 percent of dispositions. Conversely, adjudications of guilt (by plea or trial) increased from 19 percent to 53 percent and diversion dispositions increased from 2 percent to 22 percent.
- ◆ The implementation of the no-drop policy resulted in a large increase in trials, from 1 percent before formation of the unit to 10 percent after. Prosecutors won four in five of the trials held after the shift in policy.

Klamath Falls

In 1996, Klamath Falls received a grant from OVW's pro-arrest program to implement a no-drop policy. A subsequent grant was received the following year. In the first year, the grant supported a full-time deputy district attorney, two probation and parole officers, two victim advocates, a unit coordinator, and a member of the clergy. In the second year, Klamath Falls added a second full-time deputy district attorney, an attorney to supervise the unit, and an investigator. The

analysis of case outcomes before and after the 1996 no-drop policy revealed findings similar to those in Everett:

- ◆ Dismissals and acquittals dropped from 47 percent before the policy change to 14 percent after.
- ◆ The proportion of diversion dispositions dropped from 6 percent before no-drop to 0 percent after.
- ◆ Adjudications of guilt rose from 47 percent to 86 percent.
- ◆ The proportion of cases resulting in trials jumped from 1 percent before the no-drop policy to 13 percent after. The prosecutor in Klamath won 63 percent of trials after the no-drop policy was put into effect.

Omaha

VAWA grant funds were used to establish a special prosecution unit in the county attorney's office to aggressively prosecute domestic violence cases. Staffed by five persons, the unit adopted a no-drop policy so that cases would be pursued even when victims refused to cooperate with officials. In addition, grant funds were used to create a specialized unit in the police department to conduct followup investigations on domestic violence calls. The unit also uses the police department's victim advocates in domestic violence cases.

In Omaha, the researchers were unable to obtain information on case dispositions before and after implementation of the no-drop policy. A shift in responsibility for prosecuting misdemeanor domestic violence cases from the city attorney to the county attorney coincided with a major improvement in recordkeeping.

A different question, therefore, was asked in Omaha. The researchers had heard from Omaha officials that judges differed widely in their willingness to admit evidence in the absence of victims on the trial date. Some judges were said to be receptive to admitting hearsay evidence while others were described as reluctant. The researchers analyzed dispositions in cases in which victims were absent on the trial date according to the perceived receptivity of judges to a no-drop policy. They expected to find more frequent use of no-drop (i.e., fewer trial date dismissals) when judges sympathetic to no-drop policies presided. Instead, they found little difference in dismissal rates between judges rated as sympathetic and those rated as hostile to no-drop. The major finding was that *roughly four in five cases were dismissed when victims were absent on the trial date* for both groups of judges. No-drop efforts largely failed in Omaha.

From Victim Interviews Across the Four Sites

- ◆ Seventy-nine percent of victims wanted the defendant to be arrested.
- ◆ Seventy percent of victims were satisfied with the police, 4 percent reported feeling somewhat satisfied, and 26 percent were dissatisfied. Satisfaction with the prosecutor was slightly less but still substantial. Sixty-four percent were satisfied, 9 percent were somewhat

satisfied, and 27 percent were dissatisfied. Similar marks were awarded to judges. Sixty-seven percent were satisfied, 8 percent were somewhat satisfied, and 25 percent were dissatisfied. Case outcome satisfaction rates were ranked lower. Fifty-nine percent were satisfied, 13 percent were somewhat satisfied, and 29 percent were dissatisfied.

- ◆ Eighty-three percent of victims reported that they had seen or heard from the defendant since the disposition of the case. With the important exception of verbal abuse, most victims had not been bothered by the defendant.
- ◆ Most victims interviewed had positive things to say about the wisdom of prosecuting. In hindsight, 85 percent of victims said they came to see the prosecution as helpful. Only 10 percent said prosecution was not a good thing, and 5 percent said it was both good and bad.
- ◆ Seventy-nine percent of the victims said they would call the police if reabused in the future. Only 11 percent said they would not call and 10 percent said it would depend on the circumstance.

The victim interview results have to be treated cautiously. Victim response rates were low (21 percent in Omaha, 20 percent in San Diego, 17 percent in Klamath Falls, and 14 percent in Everett). Domestic violence populations are notoriously hard to reach, especially using a retrospective design as was employed in this study. The researchers attempted to reach victims several months after disposition of their case. The design was selected to allow questions to be asked about a victim's satisfaction with the case and officials and about renewed problems with the abuser. But the researchers found that many victims had changed their phone numbers sometime after arrests were made (actual refusal rates were small *if* victims could be reached by phone).

Compared with other studies, the response rate in this study was very low. Because researchers were able to interview less than one-fifth of the sample, it is unlikely that the victim interview results are representative of the population of victims in the four study sites. It is probable that the victims who remained in one place and kept the same phone number are different in fundamental ways from those who relocated or changed their numbers. Those who make themselves hard to find may be hiding from the defendant or from the prosecutor. If that were the case, then these victims would have a quite different perspective from the victims researchers contacted.

Implications for Researchers

The victim interview data suggested that victims may view prosecution as beneficial, even those victims who initially did not want any criminal justice action beyond arrest. However, the researchers stressed that they were unsuccessful in locating most of the victims they sought to interview, making it very unlikely that the interview results are representative of the victim populations in the study sites. Therefore, researchers found it difficult to conclude whether victims benefit when criminal justice professionals assume the exclusive right to decide when to prosecute and what outcome to seek. Further study of the impact of no-drop policy on victims is needed.

Implications for Practitioners

The researchers drew several implications and lessons from the study for practitioners. First, no-drop is more a philosophy than a strict policy of prosecuting domestic violence cases. No prosecutor pursued every case he or she filed. Prosecutors were rational decisionmakers who were most likely to proceed without the victim's cooperation if they had a strong case based on other evidence. Of course, definitions of what constitutes strong evidence varied from site to site, and some prosecutors were more likely to persist in the face of an unwilling victim than others were. None chose to proceed with every case in which the victim was unwilling to cooperate.

Second, adopting a no-drop policy can boost convictions dramatically. In the two sites in which pre- and post-implementation data were available, extraordinarily large increases in conviction rates, declines in processing time, and large increases in the number of trials were found.

Third, implementing no-drop policy requires significant case screening up front. Arrests with weak evidence need to be rejected by prosecutors so that they can credibly claim that they can prosecute the remainder of cases regardless of what the victim wants or does. All the sites engaged in significant screening of domestic violence cases, refusing to file as many as 30 percent.

Fourth, a successful no-drop policy requires judges who are willing to admit hearsay or excited utterances from victims, statements from defendants, or documentation of prior bad acts.

Fifth, no-drop prosecution is expensive. Successful implementation of no-drop policy involves significant training of police in evidence gathering, a realization that more cases will go to resource-intensive trials, and the energy to persuade judges to accept forms of evidence that historically have been considered controversial. Moreover, it is not enough to encourage arresting officers to do a better job gathering evidence; it is also necessary to have specialized officers (working closely with prosecutors) to conduct followup investigations. Intensive training, special units, and thorough investigations require substantial resources.