

HELP OR HARM?

Help or Harm? Criminalizing Intimate Partner Violence and Feminist Abolitionist Frames

Katelyn Derr, MA¹

Angela J. Hattery, PhD¹

Earl Smith, PhD¹

¹Center for the Study & Prevention of Gender-Based Violence

Department of Women & Gender Studies

University of Delaware, Newark, Delaware, United States

Corresponding Author: Earl Smith, smithea@udel.edu

25 N. College Avenue, Room 205

Newark, DE 19716

Acknowledgements: We want to thank our colleagues at the Center for the Study & Prevention of Gender Based Violence, Department of Women & Gender Studies, University of Delaware

HELP OR HARM?

ABSTRACT

After decades of work by feminists to criminalize domestic violence, more recently feminist abolitionists have identified the harm that the carceral state has on all impacted by it, including victim/survivors. Based on interviews with a diverse sample of 22 women and men who were system-impacted, we find evidence of cases in which the criminal legal system both helped and harmed the victim/survivor. We identify policy interventions that promote alternative methods to intervening in intimate partner violence relationships that center the victim/survivor, create safety, and reduce the increased surveillance and overall impact of the criminal legal system.

Keywords: Domestic Violence, Intimate Partner Violence, Race, Criminal Legal System, Abolition

HELP OR HARM?

As abolitionist feminists' arguments have demonstrated, prisons cause irreparable harm. And, they don't reduce gender-based violence. Why? Because prisons are designed around punishment rather than treatment or rehabilitation. Furthermore as Ruth Gilmore and James Kilgore (2019) suggest, the carceral state has become the defacto default and only approach available in the United States to address the social inequalities that arise from systems of oppression including white supremacy, heteropatriarchy and neo-capitalisms. And, yet, not only do agencies that serve victims/survivors of gender-based violence collaborate with the criminal legal system, and even work inside of it, as advocates, judges, and prosecutors, but women themselves often turn first to the criminal legal system when they experience sexual or intimate partner violence. This paper illuminates the limitations of the criminal legal system as well as documents the costs of relying on it for help, even when one chooses to do so.

“A” grew up in a chaotic household where violence was a constant feature. Her story is a story of loss. Molested by her mother's boyfriend, a pastor, she told her mother who didn't believe her and sent her to live with her father. She lived with her father, on and off, across her entire life, but only when he was between wives and girlfriends. When he had no other woman in his life, he had room for “A.” But mostly, he didn't have room in his life for “A”...even when she was homeless. Not just facing homelessness, but homeless. When she was 16 years old her parents consented for her to marry a man who was in his twenties, to, in her words, get her out of the house. For the next thirty years she cycled in and out of abusive relationships and after serving seven years in prison for stabbing one of her abusers, she found herself in fear for her life. Afraid to go home with the partner who threatened to kill her, she turned herself into her probation officer and asked to be violated and remanded back into custody. “A” is just one of

HELP OR HARM?

many women whose stories illuminate the tension between carceral and abolitionist approaches to addressing gender-based violence.

Approximately 1 in 3 women and 1 in 4 men experience intimate partner violence in their lifetime, making intimate partner violence a significant public health issue (National Center for Injury Prevention and Control, Division of Violence Prevention, 2022). And, though extant literature exists, in a variety of fields and disciplines including sociology, psychology, family sciences and public health, only relatively recently have feminist abolitionist perspectives entered the debate with regards to strategies for addressing intimate partner violence. This study focused on the help-seeking behaviors of women and men (both white and Black) living in the United States, who were being abused by their partners. All of them interacted in some way with the criminal legal system, either because they (or someone else) called the police in a moment of crisis or because they (or their partners) were entangled in the criminal legal system for other reasons including substance use and sex work. Their stories expose the tensions between mainstream feminist approaches to addressing gender-based violence by utilizing the criminal and civil legal systems and the anti-carceral framework advanced by feminist abolitionist perspectives. Specifically we analyze the data from 22 qualitative interviews to elucidate the tensions between carceral and abolitionist approaches to addressing gender-based violence. At the core of the debate is the role that the criminal legal system can or should play as a pathway for obtaining justice for victims/survivors of sexual and intimate partner violence.

For decades, feminists fought to change and amend the legal definitions and policies that addressed gender-based violence. From the passage of the Violence Against Women Act (VAWA) in 1996 to the present, more and more cases of gender-based violence have been adjudicated in the criminal legal system. And, yet, rates of gender-based violence have not

HELP OR HARM?

decreased in any substantial way (Douglas, 2021; Goodmark, 2023). In response to this lack-luster impact, as well as to the use of the criminal legal system to criminalize survivors (Goodmark, 2023; Miller, 2005), abolitionist feminists began to decry the role that the criminal legal system plays in harming rather than helping victims/survivors of gender-based violence. The interviews we analyze here trouble the binary approach: we ask, can the criminal legal system both help and harm victims/survivors of gender-based violence and if so, at what cost?

Literature Review

Legal response to intimate partner violence

For the majority of human history, and certainly the majority of US history, domestic violence was not only *not criminalized*, it was legal. We begin by providing a brief summary and overview of the domestic violence laws and policies in the United States. We acknowledge that the US context is unique and that laws and policies that govern families and family violence vary across different societies and geographic regions.

Though some laws in the US were changed as early as the 1800s, substantial changes to criminal legal responses to intimate partner violence did not occur until the 1980s when feminists advocated for the implementation of mandatory arrest laws, specialized training for police responders and the development and implementation of “orders of protection” (Goodmark, 2023; Miller, 2005; Sweet, 2021). Bumiller (2008) traces a parallel movement in criminalizing sexual violence. Recently, in the state where we live and work, a policy was passed that allowed victim/survivors of sexual violence to file for an order of protection and this was lauded as a victory among many doing anti-violence work. And, though “tools” like an order of protection can serve as a deterrent, and if they are issued criminally, they can result in detention if they are violated, it is

HELP OR HARM?

widely believed –and has been demonstrated empirically– that they have a limited effect on preventing future violence (Douglas, 2021; Fleury, Sullivan, Bybee, & Davidson, 1998).

The most significant public policy action came in 1994 with the passage of the Violence Against Women Act, which was embedded in the Violent Crime Control and Law Enforcement Act, 1994. The Violence Against Women Act or VAWA creates and supports action by the United States Department of Justice, Department of Health, and Health and Human Services to respond to the issues of both sexual and intimate partner violence. 1994 marks the first recognition by the United States government of intimate partner violence as a public health issue worthy of federal intervention (Modi, Palmer, & Armstrong, 2014). The first iteration of VAWA provided \$1.6 billion in funding towards the investigation and prosecution of violent crimes against women and expanded programs and protection each renewal cycle in 2000, 2005, 2013, and 2022 (National Network to End Domestic Violence, 2022). The bipartisan support of the Reauthorization Act of 2022 extended services to include all genders, restored tribal jurisdiction, expanded access to housing, introduced economic justice statutes and invested in culturally specific programming (National Network to End Domestic Violence, 2022). With reauthorization required every five years, the Violence Against Women Act is a powerful public policy tool in shaping, assessing, and administering responses to intimate partner violence.

Help or Harm? Criminalizing Intimate Partner Violence and Feminist Abolitionist Frames

HELP OR HARM?

Despite the many documented risks of contact with the criminal-legal system (Bumiller, 2008; Martin, 2005; Miller, 2005; Goodmark, 2023), which are compounded for people with marginalized identities, especially racial, ethnic and sex/gender minorities (Decker et.al, 2019; Goodmark, 2023; Hattery & Smith, 2021) the criminalization of gender-based violence is still viewed as a victory of feminist activism and one of the only escape routes for victims/survivors of intimate partner violence (Douglas, 2021; Bumiller, 2008; Sweet, 2021).

Though it had begun in the 1980s, cemented by the passage of VAWA, the “battered women’s” movement of the 1970s was co-opted by the neoliberal policies and neoconservative politics of the 1980s and ultimately feminist activists found themselves in a position of having to make important concessions in exchange for federal funding (Bumiller, 2008; Sweet, 2021). Transformed into an issue of “family violence,” politicians and policy makers engaged in a discourse with domestic violence advocates that ultimately led to the professionalization of the domestic violence advocacy field and the medicalization of intimate partner violence that continues to dominate the field today (Sweet, 2021). Sweet (2021) argues that while the carceral state is the right arm, the “therapeutic welfare state” is the left arm of the neoliberal policies created to deal with intimate partner violence. Obsessed with the “pathologies of dependency,” neoliberal policies imbued welfare programs with means testing, therapizing out of “dependency” on the state, and efforts to control conduct and limit rights of those participating in those programs (Bumiller, 2008; Sweet, 2021). This often resulted in victim/survivor of intimate partner violence being subjugated to seemingly endless requirements to qualify for services and protections; including, but not limited to individual therapy, group therapy, DCFS

HELP OR HARM?

mandated therapy for their children, immigration medical exams, domestic violence counseling (Bumiller, 2008; Sweet, 2019) as well as a requirement to apply for social welfare, which brought the arm of the state directly into the survivor's life (Bumiller, 2008). Taken together these policy requirements add another heavy layer of tasks and steps required to "escape their abuser," especially for poor women, women of color, queer, disabled and trans victims/survivors of intimate partner violence who face higher-risk requirements and are judged more harshly when they experience a failure (Sweet, 2019). Thus, though the criminal-legal system can be an entry point into escaping intimate partner violence, it also carries heavy risks of revictimization, surveillance, and associated stressors that are magnified for those who already face the most systemic disadvantage and highest risk of intimate partner violence (Bumiller, 2008; Goodmark, 2023; Miller, 2005; Richie, 2012).

Feminist abolitionists argue that the carceral state is rooted in systems of power, both white supremacy and heteropatriarchy (Alexander, 2010; Goodmark, 2023; Hattery & Smith, 2021) and that the motto "protect and serve" applies only to those with privilege, whereas Black and Indigenous people, immigrants, poor whites, and women are all subjected to harm by the criminal legal system that fails to see them or treat them as full citizens (Goodmark, 2023; Miller, 2005). As Martin's (2005) research illuminates, the criminal legal system's mission is to manage actions that society deems criminal. In cases of sexual and intimate partner violence, the criminal legal system's "job" as Martin (2005) describes it, is limited to responding if the incident is determined to be criminal. Their "job" is not to care for victims, though some agents of the criminal legal system certainly do. Therefore it's not surprising that many victims/survivors of any crime, but especially

HELP OR HARM?

those of sexual and intimate partner violence, report feeling mistreated, unbelievably, and even sabotaged by the criminal legal system.

In cases of domestic abuse, feminist abolitionists have documented the myriad cases and ways in which victims/survivors of abuse are harmed by the criminal legal system by being wrongly arrested in domestic violence incidents. But the harm, they note, goes much further, as they document the racialized and gendered impact on Black and Indigenous women (Goodmark, 2023; Richie, 2012). For example, women, especially if they are poor, can be incarcerated on material witness warrants as a strategy to compel them to testify against their abusers in cases involving severe violence, but also in cases of sex trafficking. And unsurprisingly, Black women are treated more severely at every turn in the criminal legal system (Decker et.al, 2019; Goodmark, 2023; Richie, 2012).

Monterrosa's research with Black women who are partnered with Black men who are system impacted documents not only the impact of the criminal legal system on their relationships (2021) but she also argues that the violence transferred from the carceral state directly onto women's partners as well as indirectly through their relationships with them constitutes a new form of violence she terms intimate carceral violence (2023) which includes various forms of coercive violence induced by the state and state systems and both the criminal and civil legal systems (Monterrosa & Hattery, 2022, p. 5-6):

At the most extreme, the criminal legal system can, through incarceration, remove an individual's liberty and restrict many of their civil and human rights, including the right to vote, the right to work for a living wage, and of course their right to freedom... At the less extreme end of institutional and state violence, individuals may experience considerable impingements

HELP OR HARM?

on their civil rights, including, having to make themselves available to constant, 24-hour a day, seven day a week monitoring, restrictions on driving, limitations on working, and so forth.

This paper examines the experiences of 22 people who sought help from the criminal legal system in the moment of crisis, when they experienced an incident of domestic abuse. Their stories illuminate the nuances in the spaces between mainstream (carceral) feminist and anti-carceral or abolitionist feminist approaches to addressing gender-based violence while simultaneously offering insight into the design of policies and practices that can be implemented to keep victims/survivors safe while minimizing harm.

Methods

The data in this paper come from in-depth, face-to-face interviews with 22 women and men impacted by intimate partner violence. These interviews were conducted between April and August of 2021 by the research team at a large, public, land-grant university in the mid-Atlantic region. Based on Monterrosa's (2021, 2023) previous research that illustrates the processes by which abusers' who are system-impacted bring the strong arm of the state into their intimate relationships, we intentionally recruited participants who themselves had been involved in the criminal legal system or whose partners had been. Additionally we were interested in the experiences of Black women and men whose racial/ethnic identity produces precarity and higher risk for surveillance and contact with the criminal legal system. We hypothesized that the combination of race and previous contact with the criminal legal system would impact their help-seeking choices and their experiences when seeking help. In order to identify a sample of people with this complex

HELP OR HARM?

inclusion criteria, participants were recruited through partner agencies that serve victims/survivors of intimate partner violence, “batterer intervention programs,” and parole and probation offices. The academic program with which we are affiliated has long-standing relationships with these organizations and the trust and rapport we have developed over many years with those leading these organizations greatly facilitated our access to potential participants. Parole and probation offices proved to be one of the most successful of all of our recruiting efforts and required additional approval from the department of corrections.

The final sample included seven (7) Black women, eight (8) Black men, four (4) white women and three (3) white men, All of the women and two (2) of the men (both Black) identified as victim/survivors, three (3) of the men identified exclusively as offenders, with the remaining men (6) identifying as both victims/survivors and offenders. Contact with the criminal legal system--for oneself or their partner-- included calling 911 for assistance, being arrested, being incarcerated, being sentenced to probation or parole, seeking an order of protection or being referred to the Department of Family Services. Because of the small sample size we are not able to draw any conclusions about differences in the experiences of participants who occupy specific demographic groups (e.g. Black women whose partners are on probation). However, the strength of the sample is its diversity. What our analysis reveals is the complex and nuanced nature of the interactions between people who experience violence as well as those who are accused of perpetrating it, and the criminal legal system.

Interviews were conducted using a semi-structured format that allowed flexibility in responding to interviewees’ stories and experiences. Interviews began with asking

HELP OR HARM?

participants about the families in which they grew up, the interview then transitioned into a discussion of their intimate relationships. Participants were asked to describe the escalation that led to the abusive incident that led them (or someone else on their behalf) to seek help. The discussions centered on the experiences that participants had during the process of help-seeking, including their perceptions of their interactions with those providing the help (e.g. agents of the state). Each interview lasted between one and two hours.

Interviews took place in settings chosen by the participants. Participants who lived in the same or nearby community were interviewed in person in spaces that were easily accessible and comfortable for the participants, including in libraries, community spaces, and in the cases of participants who were required to be electronically monitored (e-carceration or house arrest) they were conducted in their places of residences, specifically in sober houses. Participants who lived outside of the immediate community were interviewed via zoom. Audio was recorded and instantly transcribed using the transcription software Otterai. Transcripts were further refined and corrected after each interview. Each interviewer also took notes and recorded impressions during and after each interview, otherwise referred to as “memo-ing.”

Intensive interviewing techniques have particular strengths, one of which is that they allow participants to tell their stories in their own words and to curate the telling of those stories in ways that emphasize the details and context that is important to them. Conducting interviews in person, in public spaces or in private residences allowed us to make ethnographic observations as well, which provided additional points of data that added to our understanding of a person’s circumstances. When we interviewed people in

HELP OR HARM?

their homes, we were able to observe their surroundings, including the shelves of laundry detergent, canned goods and boxes of naloxone, or to meet their children after the interview was over, or to observe their interactions with their abuser via the text messages he sent, or to read their court documents, or see pictures of their bruises and lacerations that they had saved on their phones. As Desmond (2014) argues: “Ethnography involves studying fields rather than places, boundaries rather than bounded groups, processes rather than processed people, and cultural conflict rather than group culture. While this approach comes with its own set of challenges, it offers an ethnographic method that works with the relational and processual nature of social reality.”

Coding was done a few months after all of the interviews were completed. Coding was influenced by grounded theory blending the strengths of both inductive and deductive reasoning by moving between each (Corbin & Strauss, 2015). Additionally, interpretive coding of the data was utilized to “learn about how the subjects...view their social world and how these views fit into the larger frame of...these issues and interpretations” (Berg, 2009).

Transcripts were coded first for major themes and in the second round, minor themes were identified. The research team included upwards of 10 members, and thus we utilized both traditional and software assisted techniques. Coding began with each individual in the research group coding two of the same interviews independently and codes were compared for consistency and reliability. Once the team agreed on the major themes, the transcripts were imported into NVivo in order to refine themes and identify sub-themes. The diversity of the sample, qualitative interviewing methodology, and

HELP OR HARM?

applying a grounded theory approach to coding allowed for new and unexpected themes to emerge.

Findings

The interviews were wide ranging and included discussions of the intergenerational transmission of violence, institutional betrayal, and negative maternal/child health outcomes. This paper focuses on participants' descriptions and discussions of their attempts to seek help when they were in crisis and actively experiencing intimate partner violence. Specifically, we focus on two broad themes that emerged that we term “help” and “harm.”

Help: Using the system to escape

Five of the participants indicated that they had utilized the criminal-legal system as a means of escaping their abuser. The forms of help that participants described largely fell into two categories: (1) the police arriving on the scene and arresting the abuser and (2) the court system awarding protection from abuse orders and/or prosecuting abusers.

Several of the participants recounted times in which the physical abuse was so severe that they or someone else called the police. Dede's son called the police after Dede's abuser caused her miscarriage. With her abuser in jail, Dede took advantage of this unexpected opportunity to escape: “He went to jail, and I left him. I pressed charges. I ran.”

Like Dede, Katie relied on the police to interrupt an episode of severe physical violence. Katie's abuser was struggling with mental illness. Rather than seek a divorce, she tried to make her marriage work despite years of physical and emotional abuse. One day,

HELP OR HARM?

her abuser, in a rage, started beating her with a wiffle bat. Trying to protect her son and her unborn child, Katie called the police for help.

Yeah, [the beating] just went on and then at that point, that's when those cops came for me. Took me down, took my statement, took pictures that are still—I still have those pictures of them and all of that.

In addition to arresting her abuser for assault, the responding officers filed the paperwork for a protection of abuse order for Katie. She recounts:

And they put in a restraining order for me, on behalf of me also had a restraining order with the county so he wasn't even allowed to come into the county. But I do remember feeling safe. I remember them having my best interest. It wasn't like they were trying to make it my fault. They clearly saw that there was something and I don't even know if that was heard of that the police would even put, do all that paperwork for me. Like I didn't do any of that.

Katie reflected on how she felt lucky to be treated this way by the police. She speculated that her job with the county positively influenced their treatment of her.

Like Katie, Samantha had endured what can only be described as the outer limits of violence; she described that on many occasions, her abuser nearly killed her--by strangling or stabbing her--or threatening to, including by holding a loaded gun to her head in games of “Russian roulette.” Samantha hid the abuse for nearly a decade before her sister finally confronted her about the symptoms of severe stress she had observed. Samantha’s family urged her to leave before it was too late, and her mother, who was a

HELP OR HARM?

paralegal, helped her file for a protection from abuse order. Together, they collaborated with the police to arrange for her abuser to be arrested. He was eventually prosecuted and deported from the country. Samantha describes the process this way:

I'm still living with him trying to keep up the facade. Meanwhile, coming up with my escape plan in the background. I get an emergency PFA. I talked to the neighbors and the bank to get what I was legally entitled to. In the courthouse, everyone was incredible. He got served the PFA, the next day, we had an exact sequence of events of what we had to do. I had to file for an extended PFA because it was like 24 hours or something. So I applied for that. Got it. I almost passed out in the courthouse, because I was so scared. So in this moment of leaving, I was sure he was going to show up and shoot me...Biden just passed this new bill. You can have a no expiration, PFA. And I was like, I want that one. And she said, well, then we have to have a formal hearing. You'll have to go into the courtroom, he will be there at the other table. And a judge will have to hear you know your case and videotape. I was like sick, like I was going to throw up, but also I was like I need to do what I need to do.

Initially granted an emergency Protection from Abuse Order (PFA) Samantha was able to escape her abuser when she was granted a “no expiration” PFA which she presented at the bank, thus allowing her to withdraw her portion of the funds held in a joint account. She was also able to use the “no expiration” PFA to work with her landlord so that she was protected from eviction from the home she and her abuser shared. Her

HELP OR HARM?

abuser was also prohibited from owning a firearm and ultimately deported. There is no question that the system “worked” for Samantha in ways that are only now being written into the legal statutes; specifically bans on the ownership of firearms by people with a domestic violence conviction and the recognition of financial abuse as a form of domestic violence.

“A,” whose story opens this paper, experienced both help and harm from the criminal legal system. She described how she utilized the police and then her parole officer as a means of escaping her extremely violent abuser:

I even sent myself to prison trying to get away from him. One winter, he just threw me outside in three feet of snow. And I've wrapped up in the car and the car seats trying to keep warm. And I said this is never going to happen to me again. And I've managed to get duplicate identification. So I hid underneath the trailer. I had a small bag with duplicate identification and some clothes, sort of a getaway bag. Yes. I hid it. The next time he threw me out the house. I grabbed that bag and I walked all the way to [a local medium-sized town]. And I went to a car dealership. I test drove a car and I didn't take it back.But you know. I didn't know what to do. They didn't know where to turn or who to turn to. And so I just called the police. I turned myself in and I said I stole the car. Please come arrest me because I didn't want to be on the street.

“A’s” abuser bonded her out of jail and almost immediately he started physically abusing her. She describes how she pleaded with her probation officer:

HELP OR HARM?

And I went to my probation officer the next time I was supposed to report, and I begged him. I begged him to please violate me. I can get away from this man. I don't care what you say. Just do it. New change of address or whatever please violate me. And he did. I went to the BCI [the women's prison in the state]. I was there for a couple months.

“A” chose incarceration and the consequences of a criminal record when faced with the choice of homelessness or staying with her abuser.

Harm: Criminalizing Victims

In contrast to the experiences of Dede, Katie, and Samantha who received help from the criminal legal system in response to their experiences with abuse, other women we interviewed described harm they experienced at the hands of the system; consistent with prior research (Goodmark, 2023; Miller, 2005), some women were arrested when they called the police during an incident of domestic violence while others reported their reluctance to call the police based on their prior negative experiences, a circumstance that has been well-documented (Decker et.al, 2019; Roberts, 2023). Finally, other women described “indirect” harm by the system that included increased abuse by their partners after they had reported them to the police and the fear of losing “benefits” associated with the relationship if the partner was either arrested or left (Douglas, 2021; Hattery, 2009).

Lola had a physically and financially abusive relationship with her husband. After she got pregnant with a high-risk pregnancy that required bedrest, her husband abruptly left her alone in the house for two weeks. Angry, Lola explains what happened after she attempted to keep her abuser from returning to her house:

HELP OR HARM?

My mom's daughter was here to help me and he came home and acted like everything's normal. So, I locked him out. He called the cops. They come and tell me if I lock him out again I'm gonna get locked up. They said they didn't care and that I can't lock him out. He lives here. Don't do it again.

Shortly after, their son was born a micro-preemie, requiring extensive medical care and life support machines. While their son was a newborn, Lola threw a toy at her husband. He called the police and a police officer said he wanted to make an example out of Lola, who is Black. In contrast to Samantha's experience (Samantha is white), Lola was arrested and her husband was granted a restraining order. Although the house was in her name and her medically fragile child was inside, Lola was forced to vacate under police escort. Lola felt she could not rely on the "cops" for help and explains how she did not realize her husband had issued a protective order against her:

Yeah, I think it was automatic. He was the one doing all this to me the whole time and while I was being arrested he was laughing. Clearly, he didn't want to hear anything because after I sat down that's all he said. So I was out of here for several weeks, and then had to go to court and he dropped the charges.

The very protections that Lola sought from the police when she was locking her abuser out of her house were used against her. Lola believes her race was an important factor in why the police insisted she allow her husband to stay in her home. Her abuser was then able to manipulate the court into further penalizing Lola by removing her from her

HELP OR HARM?

home and child when an automatic order of protection was granted against her based on her husband's police report.

Ivana who is also Black recounted a similar experience. Like Lola, Ivana found that when she called the police during an incident of domestic violence the police arrested her and not her abuser. She described one of these incidents.

I remember two [town] cops walking in my house. I was in the front room and he was in the bathroom. And that cop said he claims that he said "Well if you're going to arrest him, you're gonna arrest her too." They said you need to look at him because he had a little cut and they thought I hit him. But you're gonna take him out of here because he's the abuser not me. They were mad at me, so they didn't take him.

Ivana's repeated interactions with the police in this small town may have contributed to her belief the police were mad at her and for their repeated refusal to arrest her abuser.

Men who identified as victims also reported that they were arrested when the police were called in response to violent episodes. They attribute this to the dominant belief held by police that men can't be victims and thus must be considered the primary aggressor (Hattery & Smith, 2020). Brett, who is Black, was arrested multiple times despite the fact that he argues that it is his girlfriend who is the aggressor. Brett's anecdote illustrates how he was victimized again by the police when they labeled him as the aggressor:

She'd hit me. And so if I was to grab her by her hands or her arm, it's almost like the police didn't see that as trying to protect myself or

HELP OR HARM?

keeping from getting hit in the face. They thought I'm abusing her because I could have just walked away. I am walking away but I'm still getting hit as I'm walking away. I'm in a house and I have to get out the door. So how do I get out the door, if she's swinging, how am I even going to make it?

Matt, who is white, also experienced arrest when he attempted to resolve a dispute with his abuser. After he bribed her to leave his house to prevent the neighbors from calling the police, his abuser refused to leave, and Matt took off down the street to a local gas station. Matt explains how the police decided to arrest him, despite his attempt to de-escalate the argument:

So she told the cops that I said I was gonna kill her. I pulled a knife on her. I took a swipe at her while she was running and cut the back of a shirt wide open. I caught her cell phone charger. And I took my belt off around her neck and was choking. That I was punching her in the back of the head because that don't make marks. Just ridiculous things she was saying, that when I had the belt around her neck, I picked her up off the ground multiple times until she was almost unconscious. I got charged with terroristic threatening, offensive touching and aggravated menacing, which is two felonies and misdemeanors. They took me to jail. And because of COVID I sat for four and a half, almost five months waiting all for hearsay. She didn't have a mark on her. Not a tear in her eye and was fully dressed and they took my keys in my house out of my pocket and took them to her

HELP OR HARM?

while I was incarcerated. She sold everything. She sold all my belongings, she sold my pool table, my gym. Everything.

“A” whose experience of being helped by the system is described above, recalls a time in which she was harmed indirectly by the system after she reported an incident of domestic violence. After she called the police during her second abusive relationship, “A” recalls that she received a severe beating when her abuser was released from police custody. In this case, the harm was not caused by the system itself, but rather as a consequence of her decision to utilize the system as a means to intervene in the violence she was experiencing.

Sydney's childhood was characterized by chaos and instability which she largely attributes to her father's drug addiction and periodic incarceration, as well as her mother's alcoholism. She started experimenting with drugs and was eventually kicked out of high school after she was raped. Her drug use and issues with unstable housing continued throughout her adulthood and characterized her intimate relationships. She contracted HIV and was forced into sex work by her abusive partner. When asked if she ever wanted to contact the police, she noted that she worried that if her partner was locked up, she would be alone on the streets.

I did, but I didn't [want to call the police]. And I would always threaten to call them but then again, like it could have got worse. Or at the time, I'm like, young and dumb. I didn't want him to break up with me. I blamed the drugs. He would go back to jail and then I'm out there by myself.

HELP OR HARM?

Similar to “A,” Sydney is less worried about the direct harm to her from the criminal-legal system and more about the [un] intended consequences of exposing her partner to the criminal legal system, which is consistent with the findings of Monterrosa (2021, 2023; Monterrosa & Hattery 2022).

Each of these instances resulted in significant consequences for victims. Some experienced significant time in jail or lost access to their home and belongings. Lola was physically separated from her premature infant. Arrests were made with and without physical injuries. And, most commonly, victims/survivors experienced harm that was an [un] intended consequence of their initial contact with the criminal legal system, including increased aggression by their partners.

Discussion

Previous research suggested that women who had prior negative encounters with the police (Decker et.al., 2019) or whose partners were system impacted (Monterrosa, 2021, 2023; Monterrosa & Hattery, 2022) would be reluctant to engage the criminal legal system. The findings from this research paint a more complex portrait of the role of the criminal legal system in addressing intimate partner violence; in some cases victim/survivors sought and received help from the criminal legal system, while in other cases, they were criminalized (Miller, 2005; Goodmark, 2023) by the very system from which they sought help. Though the sample size is much too small to draw any distinctions, there were differences based on the race and gender identities of the participants as well as their prior experience with the criminal legal system.

Among the women we interviewed, some victims/survivors utilized the criminal-legal system to escape their abusers. Police intervention, applying for a protective order

HELP OR HARM?

(Fleury, Sullivan, Bybee, & Davidson, 1998), committing a crime to be arrested and put in jail, and violating parole were all identified as ways to escape intimate partner violence in this study. Contrary to the findings in previous studies, the data in this study do not support the theory that Black victims are less likely to contact the police (Decker et.al., 2019) or be criminalized when they seek help (Goodmark, 2023; Miller, 2005), but the sample size is much too small to make any generalizations. Consistent with previous research, there were no men who identified as victims who sought or received help from the criminal legal system. These stories reflect the protective possibilities of the criminal-legal system. Through police contact after extreme violence, arrest of the abuser, or after receiving an order of protection from the court, some of these interviewees were able to utilize the criminal-legal system to protect themselves. More research in this area could uncover how victims of intimate partner violence utilize the system to their advantage and the degree to which race and gender play a role in the type of actions they take. Although intentional parole violation or begging to be sent (back) to jail are not strategies *designed* to assist victims of intimate partner violence, they may be commonly utilized strategies for those at the margins, as was the case for “A.”

Other participants in this study reported that they were harmed by the criminal legal system when they sought help or when others, typically their partners, engaged the system by calling 911, which was the case for all of the men we interviewed. As is well documented by feminist abolitionists (Miller, 2005; Goodmark, 2023; Richie, 2012), many victims reported that they were criminalized by the system, typically by being arrested. And, much like those who received help from the system, their race and gender identities and previous experiences with the criminal legal system shaped the response; for example,

HELP OR HARM?

system-impacted interviewees had a higher likelihood of police contact. Often the police are the first agents of the criminal legal system to have contact with victims/survivors of intimate partner violence and can provide a first step in seeking assistance. Or, as the case of Ivana demonstrates, police contact can have the reverse outcome; her repeated contact with local police officers in a small, rural town resulted in the police threatening to arrest her while taking no action against her abuser. Furthermore, interviewees who indicated they were arrested when seeking help experienced financial, personal, material, and job-related losses due to coercive violence used by their abusers (Monterrosa & Hattery, 2022). This finding also highlights the harmful effects the criminal-legal system can have on individuals, especially those seeking help. Mandatory arrest policies, police abandonment after too many distress calls, gaslighting by the abuser to the police about the victim, and race and class intersect in these stories to highlight harms of the criminal-legal system when it comes to intimate partner violence (Sweet, 2019b).

Gender also played a role in how the police interacted with victims and offenders. Two men in this sample--Brett and Matt-- who were arrested when seeking help were arrested due to the reporting police officers' gender bias which stereotypes women as victims and men as aggressors (Hattery & Smith, 2020; Lichtenstein & Johnson, 2009).

Perhaps the most interesting finding in this study is highlighted by the case of "A" who experienced both help and harm from the criminal legal system. Her experience is not likely unique and is not limited to the realm of intimate partner violence. As Carolyn Sufrin's (2017) research reveals, women who are pregnant and cycling in and out of jail often report that despite the harm resulting from incarceration, they often committed petty

HELP OR HARM?

crimes in order to get arrested and detained while they were pregnant in order to access pre-natal care they could not access on the outside.

The stories of the women and men we interviewed illuminate the tension between those who endorse law-enforcement based responses to domestic violence, including a variety of prevention and intervention programs funded by VAWA (see Sweet 2020 for a comprehensive review), and non-carceral responses advocated by feminist abolitionists (Goodmark, 2023; Renzetti, et. al., 2017; Richie, 2012). In the cases of those participants who reported harm by their contact with the criminal legal system, the recommendations endorsed by feminist abolitionists are clear and make sense; women like Lola and Dede would have benefitted from a *non-criminal legal response* to their crisis, for example a *non-emergency, interdisciplinary response team* who could have responded and assisted with intervening in the conflict and in finding safe housing, accessing social services, and even medical care. Because the very presence of the police leaves open the possibility that someone will be arrested, the utilization of non-emergency, interdisciplinary response teams holds the potential to significantly reduce not only the criminalization of victims/survivors but also the attendant state surveillance that is often initiated by contact with the criminal legal system.

But, what to do about cases in which victims/survivors who utilized the criminal legal system as a pathway to safety? Again, we point to the aforementioned recommendation. If “A” had been able to call a non-emergency, interdisciplinary team for help, rather than begging her parole officer to lock her up, she would have been both safe and not further criminalized.

HELP OR HARM?

Bumiller (2008) similarly details the ways in which victims/survivors employ agency. She describes a woman who, like “A” uses her knowledge and experience with the rental market to secure housing even in light of having poor credit and criminal conviction. Like “A,” however, we would argue that a positive outcome is not, alone, an indicator that a system is working for victims/survivors. Indeed Bumiller (2008) quotes the victim/survivor as indicating it was partly just luck.

Abolitionist feminist approaches to addressing gender-based violence force us to refocus our attention and critically assess the role of the criminal legal system as a strategy for addressing gender-based violence in our families and communities. But, as articulated in the Survivor’s Agenda (see Herman 2023 for a review) they do more than that, they also require us to center the needs of the victim/survivor. The vast majority of gender-based violence occurring in the US involves people who know each other, who belong to the same communities, and in the specific case of intimate partner violence, who desire to maintain some sort of on-going relationship. In these cases, abolitionist feminist recommendations for community-based accountability seem to meet the needs of both victims/survivors and public safety. For example, these approaches require the harm-doer to acknowledge the harm done and safety plans are designed for victims/survivors who intend or are required to remain in some form of relationship with the person who harmed them, including because they share custody of children. Whether these approaches will ultimately reduce harm in the long-run have yet to be empirically tested, but the successes of restorative justices practices suggest there is reason to be optimistic (Herman 2023).

Conclusion And Recommendations

HELP OR HARM?

Based on previous research findings (Monterrosa, 2021, 2023), we expected that victim/survivors whose partners were system impacted would be reluctant to call the police. In contrast, the participants in our study were more concerned about the impact of calling the police on *their own well-being* or the blow-back in violence that would follow a police interaction. Only Sydney mentioned that she didn't call the police because she was afraid of the impact on her partner, and of the very real possibility that if he were jailed, she would end up homeless.

Of equal importance we believe that our research significantly advances knowledge on what is currently known about how Black women victims/survivors respond to the violence that has taken over their lives. This research found that for some victims/survivors, the criminal-legal system can act as an entry point, assisting them in interrupting a violent episode and/or facilitating escape from an abusive partner, as it did for both Samantha and Katie. However, we argue that just because a system provides some relief from violence, is not an indicator that the system itself is ideal for addressing intimate partner violence. "A's" experience is a case in point. Just because she was able to escape and avoid an episode of violence by returning to jail, doesn't mean that a criminal legal intervention is ideal. In fact, any period of incarceration, however brief, carries with it the removal of significant civil and human rights, as was the case for the pregnant women in Sufrin's research (2017).

The challenges to abolitionist feminist approaches to addressing gender-based violence come more often in the cases of the kinds of severe violence the people in our study experienced. In the cases of some of the women we interviewed, whose stories form the basis of our analysis, they were in fact helped by the criminal legal system. The arrest

HELP OR HARM?

of their abuser allowed them the space to escape the violence. And, “A’s” case dramatically illustrates the decisions many survivors make to seek out the criminal legal system as a strategy for safety in a moment of crisis: be violated or be killed.

And, yet, abolitionist feminism invites us to envision something we haven’t seen before; it forces us to imagine a context in which “A” isn’t forced to “choose” between being taken back into custody or being killed by her abuser. “A’s” choice, from an abolitionist feminist lens, is in fact, no choice at all, it just appears to be because it’s the only option we’ve ever really tried for addressing severe forms of gender-based violence.

In the state where our research was conducted, the family court is the process of building Family Justice Centers in each of the counties in the state. Based on the same conceptual model as one-stop-centers that are well-established in South Africa, sub-Saharan Africa, South Asia, and Latin America (Ellsberg et. al., 2015; Hattery, Monterrosa & Porter, 2019), Family Justice Centers offer the potential to provide multi-disciplinary, wrap-around, non-criminal legal system solutions to interrupt intimate partner violence and preventing future violence by providing access to education and job training, job placement programs, and affordable housing and health care, daycare, and other social safety net services. Martin’s (2005) research suggests that critical to the success of Family Justice Centers will be establishing a clear mission that centers the experiences of victims/survivors and their care and well-being. We look forward to their implementation and in studying their impact on interrupting violence and preventing future violence.

As communities begin to experiment with reforms, such as building Family Justice Centers, we recommend that they also consider policies that have proved to be effective on college campuses, including immunity from prosecution for other crimes such as drug or

HELP OR HARM?

alcohol possession or sex work (as Sydney feared) or stealing a car (as “A” did) that are either the result of coercion by an abuser or undertaken in an attempt to escape. Finally, our data suggest that even when there is some “benefit” to utilizing the criminal legal system, that ultimately if we want to keep victims/survivors safe, hold abusers accountable, and prevent future violence, we must divest in reliance on the criminal legal system, which, in the balance, does more harm than help victims/survivors of intimate partner violence and invest in community based accountability for abusers and prevention programming that begins in early childhood (see specifically Hirsch and Khan (2020)).

HELP OR HARM?

References

- Alexander, M. (2010). *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. The New Press.
- Bumiller, K. (2008). *In An Abusive State: How Neoliberalism Appropriated The Feminist Movement Against Sexual Violence*. Duke University Press.
- Corbin, J., & Strauss, A. (2015). *Basics of Qualitative Research*. Sage.
- Decker, M. R., Holliday, C. N., Hameeduddin, Z., Shah, R., Miller, J., Dantzler, J., & Goodmark, L. (2019). “You do not think of me as a human being”: Race and gender inequities intersect to discourage police reporting of violence against women. *Journal of Urban Health*, 96(5), 772-783.
- Desmond, M. (2014). Relational Ethnography, *Theory and Society*, 43, 547-579. <https://doi-org.udel.idm.oclc.org/10.1007/s11186-014-9232-5>
- Douglas, H. (2021). *Women, Intimate Partner Violence, and the Law*. Oxford.
- Ellsberg, M., Arango, D. J., Morton, M., Gennari, F., Kiplesund, S., Contreras, M., & Watts, C. (2014). Prevention of violence against women and girls: What does the evidence say? *The Lancet*, 385, 1555–66. [http://dx.doi.org/10.1016/S0140-6736\(14\)61703-7](http://dx.doi.org/10.1016/S0140-6736(14)61703-7)
- Fleury, R. E., Sullivan, C. M., Bybee, D. I., & Davidson, W. S. (1998). Why don't they just call the cops?: Reasons for differential police contact among women with abusive partners. *Violence and Victims*, 13(4), 333-346.
- Gilmore, R., & Kilgore, J. (2019). The Case for Abolition. *The Marshall Project*. <https://www.themarshallproject.org/2019/06/19/the-case-for-abolition>

HELP OR HARM?

- Goodmark, L. (2023). *Imperfect victims: Criminalized survivors and the promise of abolition feminism*. University of California Press.
- Hattery, A.J., Porter, E.F. & Monterrosa, A. E. (2019). *GBV Learning Agenda: The Effectiveness of One-Stop GBV Resource Centers*. USAID Report.
- Hattery, A. J. (2009). *Intimate Partner Violence*. Rowman & Littlefield Publishers.
- Hattery, A., & Smith, E. (2020). *The social dynamics of family violence* (Third edition ed.). Routledge.
- Hattery, A., & Smith, E. (2021). *Policing black bodies* (Updated edition ed.). Rowman & Littlefield.
- Herman, J. (2023). *Truth and Repair: How Trauma Survivors Envision Justice*. Basic Books.
- Hirsch, J., Khan, S. (2020). *Sexual Citizens: A Landmark Study of Sex, Power, and Assault on Campus*. W.W. Norton.
- Lichtenstein, B., & Johnson, I. M. (2009). Older african american women and barriers to reporting domestic violence to law enforcement in the rural deep south. *Women & Criminal Justice, 19*(4), 286-305.
- Martin, P.Y. (2005). *Rape Work: Victims, Gender, and Emotions in Organization and Community Context*. Routledge.
- Miller, S. (2005). *Victims as Offenders: The Paradox of Women's Violence in Relationships*. Brunswick. Rutgers University Press.
- Modi, M. N., Palmer, S., & Armstrong, A. (2014). The role of violence against women act in addressing intimate partner violence: A public health issue. *Journal of Women's Health, 23*(3), 253-259. doi:10.1089/jwh.2013.4387

HELP OR HARM?

Monterrosa, A. E. (2023). Imprisoning Intimacy: The Expanding Sites of Racialized-Gendered Carceral Violence. *Gender & Society*, 37(3), 447–467.

<https://doi.org/10.1177/08912432231171169>

Monterrosa, A. E. (2021). Romantic (in)justice: Criminal-legal system-impacted black women’s romantic relationship status and quality. *Feminist Criminology*, 16(4), 424-446.

Monterrosa, A. E., & Hattery, A. J. (2022). Mapping coercive violence. *Violence Against Women*, 29(9), 1743-1763. <https://doi->

[org.udel.idm.oclc.org/10.1177/10778012221125499](https://doi-)

National Center for Injury Prevention and Control, Division of Violence Prevention.

(2022). Fast facts: Preventing intimate partner violence. Retrieved from

<https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html>

National Network to End Domestic Violence. (2022). *Reauthorize violence against women act (VAWA) with key enhancement and no rollbacks*.

Renzetti, C. M., Follingstad, D., & Coker, A. L. (Eds.). (2017). *Preventing intimate partner violence* (1st ed.). Policy Press.

Richie, B. (2012). *Arrested justice: Black women, violence, and America's prison nation*.

New York University Press.

Roberts, D. (2023). *Torn Apart: How the Child Welfare System Destroys Black Families--and How Abolition Can Build a Safer World*. Basic Books.

Sufrin, C. (2017). *Jailcare: Finding the Safety Net for Women behind Bars*.

University of California Press.

Sweet, P. L. (2021). *The Politics of Surviving: How women navigate domestic violence and*

HELP OR HARM?

its aftermath. University of California Press.

Sweet, P. L. (2019). The paradox of legibility: Domestic violence and institutional survivorhood. *Social Problems*, 66(3), 411-427.

Sweet, P. L. (2019b). The sociology of gaslighting. *American Sociological Review*, 84(5), 851-875.

Biographies

Katelyn ‘Kate’ Derr, MA is Academic Program Coordinator for Women & Gender Studies at the University of Delaware. Kate is also the Coordinator for the Center for the Study and Prevention of Gender-Based Violence.

Angela J. Hattery, PhD is Professor of Women & Gender Studies and Co-director of the Center for the Study and Prevention of Gender-Based Violence at the University of Delaware. Prior to coming to UD, she held positions at Ball State University, Wake Forest University, Colgate University, and most recently at George Mason University. Her research and teaching are focused on race and gender inequalities. She is the author of 12 books. Her most recent book *Way Down in the Hole: Race, Intimacy and the Reproduction of Racial Ideologies in Solitary Confinement* explores the ways in which racial antagonisms are exacerbated by the particular structures of solitary confinement.

Earl Smith, PhD, Emeritus is Professor of Sociology and the Rubin Distinguished Professor of American Ethnic Studies at Wake Forest University. He is currently Professor of Women & Gender Studies and a Research Fellow in the Center for the Study and Prevention of Gender-Based Violence at the University of Delaware. Professor Smith has numerous publications (books, articles, book chapters etc) in the areas of professions, social stratification, family, urban sociology, gender based violence and has published extensively in the area of the sociology of sport.