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NO RIGHT TO CHOOSE: EVALUATION OF DOMESTIC VIOLENCE PROCEEDINGS WITHIN THE UNITED STATES CRIMINAL JUSTICE SYSTEM

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NO RIGHT TO CHOOSE: EVALUATION OF DOMESTIC VIOLENCE PROCEEDINGS
WITHIN THE UNITED STATES CRIMINAL JUSTICE SYSTEM

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A capstone project submitted for Graduation with University Honors

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ABSTRACT

Information about the Criminal Justice System, let alone the state of California's criminal court system, is elusive and non-circulating. Subsequently, victims are not directly informed of their individual rights, how criminal cases work, the steps to the Criminal Justice System, and so forth until after they are involved in a criminal case. This lack of information could cause detrimental effects that people are unaware of until they are or have been directly impacted by the justice system. The line, "after a police report is filed by the district attorney, the case is out of your hands and it is up to the state of California whether or not they choose to drop it" is daunting, but most commonly used amongst California's and the federal Criminal Justice System due to the "no-drop policy" implemented with the mandatory prosecution policy of domestic violence cases. This paper poses as an evaluation of whether or not this policy and other criminal justice proceedings should be in effect along with both its benefits and detriments. By studying and analyzing existing victim experiences and institutional legitimacy in-depth, the normative reasonings about the implemented policies through extensive critical evaluation will produce and organize possible solutions to combat the disparity between the expectations and realities. The main objective of this article is to raise awareness to dispel the possible determinants of the "no drop policy" within the prosecution of domestic violence cases and to mend these disparities on an institutional level.

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TABLE OF CONTENTS

ABSTRACT

ACKNOWLEDGEMENTS

INTRODUCTION

PART ONE: HISTORICAL EVALUATION AND OVERVIEW

- An Overview of Domestic Violence Legislation
- Mandatory Arrest, Prosecution Mandate, and No-Drop Policy
- Violence Against Women Act of 1994

PART TWO: NO-DROP POLICY OUTLINED

- Preliminary Outline of Criminal Justice System
- Victim's Rights
- Victim's Experiences and Impact

PART THREE: PUBLIC PERCEPTION

- Legitimacy
- Normative Reasoning

PART FOUR: CONCLUSIONS

- Possible Conclusions

REFERENCES

PART ONE: HISTORICAL EVALUATION AND OVERVIEW

An Overview of Domestic Violence Legislation

The Criminal Justice System in America continues to exercise jurisdiction in domestic violence and abuse cases. As shown throughout history, the evolution of the Criminal Justice System's response to domestic violence cases has been demonstrated through the progression of its various legislations. Although the topic of domestic violence is a contemporary and ongoing interest of the United States of America's congress and federal government, this article will discuss the progression and fruition of current legislation.

To begin, due to the proliferation of procedural mistreatment with domestic violence cases within history, the judicial system has taken slow efforts to combat the issues by shedding light and modifying the systematic outlook on domestic violence and abuse cases. Up until half a century ago, the Criminal Justice System continued to view domestic violence cases as private matters, meaning official police or prosecutorial action were not required or deemed as an appropriate approach to the "criminal" conduct (Mills 307). Without consistent criminal justice intervention and assistance, the recognition that domestic violence, violence against women, and abuse are isolated instances rather than a societal issue continued to prevent the victims of crime and the criminal case from proper treatment.

In the 1970s, the only civil and societal remedy for battered wives or the victim of the crimes were to restrain their abusers by pursuing a divorce or legal separation (Zorza 53). In the 1970s, clear non-arrest policies were the procedural response to handling the abuser or perpetrator within domestic violence cases (Zorza 40). In the 1970s, the police department was trained to blatantly ignore domestic violence calls as it was not recognized as a crime. In the 1970s, individuals would not be held accountable or prosecuted for abuse or rape as it would be underplayed and placed as an assault misdemeanor instead of the proper charges as defined today (Zorza 50-51).

However, during the late 1980s and 1990s, changes within law enforcement and the criminal justice responses were finally introduced and later implemented (Smith III-4-3). Through the substantial political work and lobbying efforts of feminists and women's groups, changes within the treatment of perpetrators and victims began to generate as the collective redefined the means for action within the Criminal Justice System (Mills 307). As the United States government and its people progressed, domestic abuse proceedings could no longer be ignored and swept under the rug. The crime inflicted on women, people of color, and other marginalized groups is presently established as a direct crime against both the victims themselves and the state. After the modification of the public outlook on domestic violence cases, several supreme state courts such as: Massachusetts with the Commonwealth V. Chretien case; New Jersey with State v. Smith; New York with People v. Liberta; Florida State v. Rider; and Georgia Warren v. State, all began to declare the criminalization of rape against intimate partners in 1981 (Zorza 51).

As reforms to government approaches to domestic violence progressed slowly, it took nearly four years later, in 1985, for twenty states to permit the prosecution of domestic violence between intimate partners (Zorza 51). In other words, not only were domestic violence incidents blatantly ignored in the public sphere, it was explicitly illegal to take any sort of action to punish the persecutor until the year of 1985. These new laws, however, began to enforce stronger arrest and prosecution orders, including mandatory arrest, the No-Drop policy, the prosecution mandate, along with other laws pertaining to domestic violence legislation. These policies are jurisdictions that elicit new approaches to the criminal justice response (Mills 307). As domestic violence and abuse intervention is considered a recent discipline of research, literature on the appropriate response to this matter is an extremely fluid field topic. Researchers are currently bridging the gap between the institution

and the individual, as well as evaluating methods to enhance the overall victim experience within the Criminal Justice System.

Mandatory Arrest, Prosecution Mandate, and No-Drop Policy

Mandatory arrest policies were put in place to require police involvement and the apprehension of possible perpetrators of assault, battery, or other incidents that can potentially cause harm to victims. This was the first response to the frustration of women who were violently mistreated by their abusers and were continuously victimized due to the negligence of police departments or lack of government intervention. Upon the implementation of this policy, empirical data suggests that these authoritative actions resulted in an effective overall decline in violence (Buzawa 86). Due to mandatory arrest, the mandation and automaticity in the response towards alleged perpetrators, creates a new approach to protect the safety and autonomy of alleged victims.

According to the Sherman and Berk studies on mandatory arrest, 314 cases of misdemeanors were evaluated over a 6-month period and compared the rates for relapse in criminal behavior depending on the type of intervention enacted. The three types of police response or intervention analyzed were (i) the mandatory arrest policy, (ii) the separation of batterers and victims for over 8 hours, and (iii) the couple counseling route with police supervision (Mills 309). Through a combination of detailed in-person interviews and consistent follow-up phone calls, the official rates for crime recidivism were reached. The study found that “the arrested subjects engaged in significantly less subsequent violence when compared to the baseline treatment of separation with 13 percent committing a repeat assault compared to [the] 26 percent” (Sherman 1). With mandatory arrest the rate of 19% was found, while those who were intervened through physical separation is 33% and officer mediation is 36% (Mills 310). However, the effect of intervention methods is a far more complex matter and elicits different results in terms of domestic violence. Research reveals

that although mandatory arrest and police intervention were proven to be an effective method of limiting future recidivism, it is unclear the current results still reflect the former (Buzawa 87). New questions are raised to re-evaluate the continual validity of mandatory arrest as an effective method to prevent recidivism.

The Prosecution Mandate and “No-Drop” follow a similar outline and trajectory. Mandatory prosecution removes the accountability and burden from the victim to prosecute their abuser or batterer. This act inadvertently removes the victim’s verdict and control over the direct decision to press charges and prosecute. As a direct opposite to “drop-permitted” cases and “victim-driven” approaches, the prosecution mandates inexplicitly ties in the “No-Drop” policy when mandation is permitted (Mills 308). The no-drop is a procedure that is prevalent within prosecution policy and occurs in the “filing” process of the Criminal Justice System. With this legislation, the district attorney has jurisdiction over whether or not to pursue the case, as the crime is a crime conducted against the state and not of the individual(s). A victim’s or prosecutor’s voice is therefore superseded by that of an attorney’s as subordinated by legislation and policy. Through these adjustments within criminal justice policies, there are no direct provisions that grant victims the right to drop charges within the legislation of Domestic Violence Laws. Thus, possibly limiting the autonomy and prerogative of civilians.

Although the no-drop rule is intended to strengthen police enforcement intervention and accountability of the federal state to combat the influx of domestic violence incidents, the individual autonomy of the victim is in question. These jurisdictions protect the victims from possible difficulties that come with the decision to prosecute or the possible revictimization inflicted by their abuser. However, the efficacy of such remains unclear as research on the matter is limited. As the tradeoff between autonomy and protection is reiterated, the “proper”

response to government intervention is a continual issue that criminal justice researchers continue to evaluate.

Violence Against Women Act of 1994

On September 13, 1994, The United States Congress passed the federal law to what is known as The Violence Against Women Act of 1994 or VAWA '94, and as indicated in Title IV of the Violent Crime Control and Law Enforcement Act of 1994 (Modi 254). As the first national discussion and proposition to combat domestic violence and violence against women, the primary purpose of the original act was to foster awareness of domestic violence through the promotion of a change in attitude and improvement towards services offered.

Through the VAWA '94 act, issues involving domestic violence, dating violence, intimate partner violence, sexual assault, stalking, etc. are brought to light and addressed. This act also addressed Congress's concerns regarding the implications of the prevalent and widespread issue of domestic violence and its imposition on the local, state, and federal government procedures and operations (Sacco 407). According to the Congressional Research Service, these adjustments elicited positive responses from the Criminal Justice System through improvements and provisions of service to improve a victim's overall experience and equitable rights. By raising awareness to these issues, a heavier emphasis on the development of communal support and care fostered through the Criminal Justice System among law enforcement, prosecutors, victim services, and attorneys has been placed. Not only does this act provide funding and grants toward support systems and programs towards victim services, but also "the 1994 act provided \$1.6 billion over 6 years toward investigation and prosecution of violent crimes against women and imposed automatic and mandatory restitution for those convicted. Through the STOP (Services Training Officers and Prosecutors) Formula Grant Program, from 1995 to 2000, an excess of \$440 million was awarded to support 9,000 projects that address intimate partner violence" (Modi 254). This

initiative is placed to provide funding for projects that help alleviate the pressures that are brought by being involved with the Criminal Justice System, as well as services to help aid individual experiences is demonstrated through the amount of money that was being offered.

Furthermore, as the VAWA legislation is viewed as a dynamic bill, it “needs to be reauthorized every 5 years. VAWA was reauthorized by Congress in 2000, and again in December 2005. On February 12, 2013, the Senate passed a new VAWA bill with a roll call (yea or nay) vote of 78 to 22, which added the following amendments: provisions targeting human trafficking, provisions ensuring that child victims of sex trafficking are eligible for grant assistance, provisions for lesbian, gay, bisexual, transgender, and queer (LGBTQ) individuals, and provisions for Native Americans living on reservations” (Modi 255). As the act continues to generate new provisions and reauthorizations to provide full coverage for victims in need nation-wide, the most up-to-date provision was enacted in 2022 through the Biden-Harris administration. Hence, the continual updates within provisions and dynamic policies further demonstrate the fluidity of domestic violence and abuse legislation, which alleviates stress from the fear of stagnation within policymaking and the policy gaps.

However, it is important to explore how the reforms of domestic violence policies and legislation relieved the victim experience while impacted by the Criminal Justice System? How have these reforms impacted the mandatory arrest, mandatory prosecution, and no-drop processes?

PART TWO: NO-DROP POLICY OUTLINED

Preliminary Outline of Criminal Justice System

Aforementioned, a main focal point of the Criminal Justice System when creating policies and governmental action for domestic violence cases is highlighted through the evolution of legislation as shown within Mandatory Arrest, Mandatory Prosecution, No-Drop

Policies, the VAWA, and victim services. By specifically outlining the No-Drop Policy in simpler terms, this examination of the policy's definition and impact will help to facilitate thorough comprehension of the policy. Subsequently, the No-Drop Policy requires further defining and scrutinizing as it is not a widely recognized concept, process, and/or procedure that is currently operative within the criminal system. As a process implemented alongside mandatory arrest and prosecution policies, the no-drop is more discrete and implicitly adhered to. This section of the article discusses not only California's policies but also the national and federal policy goals that influence the trajectory of the policy. When discussing the specifics of the No-Drop Policy, this article will examine California's Domestic Violence Legislations. Furthermore, the likelihood of the development and adaptation of the policy is extremely probable, thus it is recommended to research current up-to-date details about the policy specifics in present-day.

A "no-drop" prosecution policy can be defined as a statement declaring that the specific state in which the crime was conducted in and against, will not permit the victim ability to "drop" or dismiss a domestic violence case regardless of victim nonparticipation and noncooperation, along with the practices and protocols that work to enforce the statement afterward (Corsilles 828). However, the solidity and foundation of this policy remain tentative, as there is no universally practiced code across the nation. The particular specifications and details outlining the policy may differ from state to state within the United States due to the pre-existing broad variation in their laws and legislation. Given that each state exercises its own set of laws, it is vital for the procedures and policies surrounding the prosecution of domestic violence cases to be self-evident. Thus, the No-Drop policy, within domestic violence and intimate partner violence, holds differently interstate, yet still maintains the integral definition that the prosecution of the case, in most situations, will

continue to proceed even if the victim expresses a desire to withdraw from or to drop the pressed charges.

A no-drop policy is set in place upon the commencement of any criminal case proceedings. The police are contacted and an initial arrest is made upon the occurrence of a criminal incident. As the policies were implemented together to prevent the lack of governmental action, mandatory arrest and prosecution policies coincide with this no-drop rule. The No-Drop policy is implicitly executed at the first step of the Criminal Justice System. However, to further audience perspectives on the basic overview of a criminal court case, its steps, and the role victims play within the entire process, information about the foregoing process will also be outlined. The subsequent procedures for a criminal case are as follows:

1. Initial Filing- Upon the arrest or citing from the police, a report is written to summarize all the relevant information that led up to that arrest or citation. This report is then sent out to the prosecution and defense lawyers for them to determine whether or not action should be taken. Upon this, the prosecutor or district attorney (DA) considers which charges to bring and whether to press any charges at all; if charged, the case gets filed as either a misdemeanor or criminal. At this stage, DAs will evaluate all the evidence and decide if there is sufficient evidence to continue with filing charges. Prosecutors and DAs have the ability to file as few charges to more charges beyond the filed report, in addition to the ability to submit charges outside of the filed report, as well as the capacity to also file as many or few counts as they see fit. These charging decisions are made based on the police report provided to them (“Criminal” 1). Once the prosecutor or district attorney decides any charges as fit to pursue, the case will no longer be held under the jurisdiction of the

victim, defendant, or any other party involved. At this stage of the Criminal Justice process, the case is classified as an instance of “State Vs. Defendant”, meaning the criminal violation is not of an individual victim, but a direct criminal violation against the state laws. This is done to ensure “a just disposition of the dispute before the court” (Goldstien 2). As the case is placed under governmental control from higher powers, the prosecution mandate of the No-Drop policy is procured.

2. Arraignment- The Arraignment stage of the Criminal Justice System is typically signified as the first scheduled court date. At the court appearance, the defendant is informed of the charges against them and their legal rights as an accused person. As highlighted within the U.S. Constitution, Defendants’ rights at this stage include but are not limited to their constitutional rights, such as the right to remain silent, the right to a speedy trial, the right to be represented by a lawyer, and so on. The judge will also appoint an additional arraignment if the current one is unfulfilled or any other future court dates here as defendants have the right to timely trials (“Criminal” 1).¹ While the victim(s)’ attendance is not mandatory or required, if they choose to be present for the court appearance, support or victim services are also provided at this point of the process. Under the state government, the VSU has a sector that covers each level ranging from local city to federal government branches. If eligible, victim specialists or any representation from the Victim’s Services Unit (VSU) department will have contacted their clients prior to or during this court appearance to aid with navigation through the oftentimes complex

¹ On behalf of defendant rights, this paper provides limited analysis on the representation of defendants as the focal point serves to inform the public on the No-Drop Policy within the category of victims rights services.

judicial system. At this step, the unit enables victims to be thoroughly informed of details pertaining to their case; they are provided with assistance to properly interpret information granted through the courts databases and are able to check on the statuses of their case(s). With a heavy emphasis on victim notification and informant on the courts, law enforcement, and overall judicial system, victims are entitled to their victim rights under Marsy's Law.

Although the United States Constitution and the Bill of Rights specifically grants the accused with more than ten stated rights from the fifth amendment onward, there is no passage that does the same for victims or their families. Thus under Marsy's Rights, a light was finally shed on the opportunity to improve victim experience while within the Criminal Justice System. Marsy's Law, adopted into the Victims' Bill of Rights Act of 2008 after its approval within Proposition 9, is a measure to provide victims with an official outlet for all their unenumerated rights by aiding their experiences and needs ("Victims' Rights" 1).²

3. Criminal Trialing- Within the Judicial System within the United States of America, the pretrial procedure occurs after the arraignments and is as complex of a process as trialing. During this step the prosecutor, defense lawyer, and the judge all meet to discuss any necessary information pertaining to the criminal case at hand. The process of sharing case information and pieces of evidence is called the Discovery as it is required under law for both sides to be aware of any current or newly found prevalent information such as photographs, police reports, and other exculpatory evidence. The lawyers will also attempt to reach a settlement or plea agreement at the pretrial conference,

² Details covering the entire expanse of Marsy's will be highlighted in the section pertaining to Victims Rights.

which if both parties come to an agreement, exempts the case from being officially tried in court (“Criminal” 1). As a result, “in fiscal year 2022 only 290 of 71,954 defendants in federal criminal cases – about 0.4% – went to trial and were acquitted, according to a Pew Research Center analysis of the latest available statistics from the federal judiciary...the overwhelming majority of defendants in federal criminal cases that year did not go to trial at all. About nine-in-ten (89.5%) pleaded guilty, while another 8.2% had their case dismissed at some point in the judicial process, according to the data from the Administrative Office of the U.S. Courts” (Gramlich 1). Due to the constant changes within the pretrialing process, victim notification continues to be a priority with a heavy emphasis. Victims are able to stay informed about any agreements placed on the table as well as any court dates once they are set in place. Victim participation in the criminal process has not been a discussion within the limelight. Throughout history, the legal academy places emphasis on the logistical aspects of a court case; for instance, there is generally a focus on the state and governmental procedures over the direct people involved and impacted by the case. Thus the influx in cases perceived as more than the individual calls for an increased need for victim right’s advocacy, in other words, as more cases are viewed as a state crime instead of a direct attack on the victim, a heavier emphasis on victim’s rights is needed.

Victim Rights

As a present force of action within the Criminal Justice System, the Victim Service Unit or VSU, works to advocate for victims by providing services that are “client-centered, trauma-informed, and culturally sensitive services to all crime victims, including underserved, at-risk, underrepresented, and vulnerable populations” (“Victims’ Services” 1).

In 1983, Marsalee (Marsy) Ann Nicholas and her family were disproportionately affected by the Criminal Justice System and its response after Marsy was stalked and murdered by her ex-boyfriend. Upon the loss of their beloved, Marsy's family "having received no notification from the judicial system... had no idea [the defendant] had been released on bail mere days after Marsy's murder" ("About" 1). However, this anecdote is not a singular instance. Like Marsy's family, many family members of victims so typically endure similar impacts due to the fact that "the courts and law enforcement, though well-meaning, had no obligation to keep them informed. While those accused of crimes have more than 20 individual rights spelled out in the U.S. Constitution, the surviving family members of murder victims have none" ("About" 1). As a result, Victim's Services were developed and reformed as a part of Marsy's Law in November of 2008. Implemented in Proposition 9 of The California Victims' Bill of Rights Act of 2008, California's initiative to facilitate change in the Constitutional legal rights of victims commissioned "California at the forefront of the national victim's rights movement" ("About" 1). Serving as the bridge and direct connection between victims and criminal justice systems, the Victims Service Unit helps to alleviate the burdens and traumas that could result from victim and witness participation in the institutional systems. The unobtrusive nature of the Criminal Justice System and its procedures creates complications because victims' resources are likewise discreet and not immediately apparent and self-evident for those in need. Thus, Victim Services being a unit within criminal justice has its subliminal downsides and negative components as natural restrictions are employed, however the Marsy's Laws work to relieve these implications. With a cumulation of more than twelve explicit rights, these rights include but are limited to: "protection from the defendant; victim safety considerations in setting bail and release conditions; the prevention of the disclosure of confidential information; refusal to be interviewed by the defense; conference with prosecution and notice of pretrial disposition; notice of and presence at

public proceedings; information about conviction, sentence, incarceration, release, and escape; restitution; etc.” (“Victims’ Rights” 1). Through these rights, the victim’s experience in navigating the prosecution mandate and the no-drop policies become more admissible as information is available to victims. For example: victim service specialists and advocates are able to inform victims of their rights and clarity to address any confusion regarding the no-drop policy if any were to arise. Through professional informants, victims learn more about the no-drop policy and how it will affect their experiences through the criminal processes. On that account, although the victim service specialists are unable to dismiss cases after state processing, this sense of transparency elicits a more thorough understanding of the Criminal Justice System, consequently alleviating any ambiguity and anxiety.

Victims’ Experiences and Impact

Presently, the Criminal Justice System upholds legislation requiring the continual exercising of dynamic practices for maintaining Victim Rights through various laws and acts. However, as minimal changes or reformations have been implemented since the 21st century, it is crucial to advocate for a thorough policy re-evaluation. Through regular analysis and evaluation of these legislation and regulation, policy gaps are identified based on factors such as the experiences of victims, the unfulfilled requirements of individuals, the autonomy debate, etc. This section offers insight into personalized victim experiences with the justice system through the study of articles written based on anecdotal perspectives. By providing critical context on victims’ experiences, awareness towards the matter will be enhanced. Thus, the further understanding and research of the Criminal Justice System, along with its services and procedures, will contribute to practical improvements to cater the individual in comparison to the institution. A dissection of the Victim’s views on safety and justice found within the criminal justice system will begin the process of institutional reforms, while a later inspection of victims’ views on the No-Drop Policy, Prosecution Mandate, and other criminal

procedures will warrant an comprehension of the effectiveness of pre-existing policies and contribute to the promulgation of improved policies.

To preface, Californians for Safety and Justice conducted a statewide survey titled “California Crime Survivors Speak” to analyze crime victims’ views on safety and justice within the criminal justice system. To begin, these series of research surveys cover the scopes ranging from personal victim experiences within their criminal justice proceedings to victim opinion on criminal justice system reforms. These statistics guide this research paper to further understand the volume of victims’ participation within the Criminal Justice System. According to Californians for Safety and Justice, “contrary to what many would expect to be the position of victims of crime, strong majorities of California crime survivors support changes to the justice system that would increase rehabilitation and reduce mandated sentences. Survivors also support reduced spending on corrections in favor of increased spending on treatment” (“Californian” 2). It is also important to note that “the majority of crime survivors believe we rely too heavily on incarceration and want policymakers to invest in new safety priorities that better protect victims and help them recover from the crimes committed against them. A majority of California victims (56 percent) say the state should be more focused on rehabilitating people who commit crimes, versus punishing people who commit crimes (37 percent)” (“Californian” 6). Thus, “more than seven out of ten victims support reducing sentence lengths” and in turn a focus on investments toward resources to reduce crimes (“Californian” 10). Mandatory regulations are frequently opposed by victims who participate or have participated in the Criminal Justice System. Results from recent surveys state that “these mandatory laws, largely enacted by state legislatures across the country, have stripped judges and corrections experts of the ability to individual analyze each case and consider the circumstances of the crime, the individual, and the input of the victim in fashioning the most appropriate sentence to ensure accountability, reduce recidivism, and

repair the harm caused” (“Californian” 6-7). The general consensus on mandatory legislation is rarely supported by victims whether it regards procedures before or after sentences. As victims of crime hold strong sentiments towards the reduction of mandatory sentencing, an analogous attitude is held towards mandatory prosecution, mandatory no-drop policies, and other similar legislation.

Additionally, “six in ten victims did not report the crime to law enforcement. National data indicates that victims frequently do not report crime to the authorities: about half of violent crimes go unreported (54 percent)...Among those who haven’t always reported a crime, nearly half say they have not reported the crime because they didn’t think the police or courts would help (48 percent)” (“California” 5). Through this lack of support and resolution victims of crime feel from the Criminal Justice System, they abstain from reporting the crime altogether. As a crime is not reported, the harm from the crimes proliferates. As maintained in the operation of the federal and state criminal justice systems, “protecting victims of crime and promoting public safety is the most important function [and] it is therefore essential to consider the experiences and perspectives of crime survivors when determining safety and justice policy [in order] to fill the gap in knowledge of victims’ experiences and needs, Californians for Safety and Justice conducted the first-ever research survey of California crime victims in 2013” (“Californian” 1). California Crime Survivors Speak found that crime victims do not always report crimes to police even as they have been a victim of a crime; thus, victims lack the support from the criminal justice system and their services to navigate through any harm imposed. On the other hand, most victims who do participate in the justice system also lack the same access to victim services to overcome the negative impacts of the crime; “despite the immediate and long-lasting impact of trauma on crime victims’ lives, the survey found that most victims in California do not receive the help or the support they need to recover...about one in three Californians have been a victim of a crime in the last ten

years. Of those victims, less than one in five report receiving financial assistance, counseling, medical assistance, and other types of healing services that can help someone recover from the trauma of a crime and stabilize” (“Californian” 2). Policy gaps not only prevent individual victims from receiving proper handling of their case or cases, but also any sort of assistance to navigate through the court systems and life after the impact. As it has not been stated in this specific survey the explanation as to why victims refrain from reporting a criminal act, other sources may suggest it is attributed by the court proceedings and policies.

PART THREE: PUBLIC PERCEPTION

Legitimacy

Upon understanding the perspective of a victim’s experiences within the Criminal Justice System and the proceedings of prosecution mandate, the next step is to evaluate these policies on a broader level. When conducting legal research, it is important to thoroughly analyze each aspect and perspective of the law before coming to any possible conclusions due to the intricacies within any stage of the legislation process. As a result of the complexities that concern several groups behind the process and the enactment of the law, learning political theory as well as public policy is vital in comprehending any legislation to its entirety. This will commence a deeper dive on the institutional level and different forms of how the legitimacy theory is exercised by the government.

In political science and legal studies, “legitimacy is a psychological property of an authority, institution, or social arrangement that leads those connected to it to believe that it is appropriate, proper, and just. Because of legitimacy, people feel that they ought to defer to decisions and rules, following them voluntarily out of obligation rather than out of fear of punishment or anticipation of reward” (Tyler 375). Legitimacy is defined as the “right” and accreditation of an authority. This means that governing figures or persons of power are

essentially authorized to be in the position of power; they are granted the “right” to this sense of authority. Within the government sphere, legitimacy refers to the justification of an exercised power; “when it exists in the thinking of people within groups, organizations, or societies, it leads them to feel personally obligated to defer to those authorities, institutions, and social arrangements” (Tyler 376). This concept is founded on the assumption that individuals will voluntarily abide by any rule that is established by systems or institutions due to obligation. Although there are many branches and sectors of legitimacy, the one most applicable to legislation, especially prosecution mandate proceedings, within the Criminal Justice System, would be the practice of governmental or democratic legitimacy. There are many possible considerations with the intersection of legitimation and legislation, for example: are the legislation regarding domestic violence legitimate? Are people complicit to the legislation due to legitimacy or due to lack of knowledge/information? The understanding of legitimacy along with victims’ perspectives through the reflection of anecdotal experiences, both normative and specialized, will offer a plethora of information that is crucial in discussing potential future steps.

Normative Reasoning

The employment of mandatory arrest and no-drop prosecution policies have garnered both positive and negative outlooks from participants, specialists, and other agencies. This active debate on the effectiveness of these policies in reducing recidivism and servicing victims further assesses the legislation. Although information about participant knowledge on the prosecution process and victim services is elusive (there has been limited studies conducted on whether victims possess information about the no-drop rule), it remains important to evaluate how this contributes and impacts the legitimacy of the rule. Through normative reasoning, analysis regarding the arguments in favor or against the rule also work to determine the efficacy of this legislation.

The general normative principles regarding the No-Drop Policies are contrasting and controversial. On one hand, the no-drop policy is administered to “[deny] the victim of domestic violence the ability to withdraw a criminal complaint once formal charges have been filed” and “also limits the prosecutor’s ability to drop a case based only on the victim’s refusal to cooperate”; on the other hand, it disables and limits a victim from full autonomy and jurisdiction over their own criminal proceedings (Booth 634). The duality of this policy complicates the results of its implementation. As “no-drop policies are instituted to combat the high percentages of domestic violence prosecutions that are withdrawn or abandoned by prosecutors. Proponents claim no-drop policies assert that domestic violence is a crime against the public order and not just the individual victim. It is also asserted [that] the policies reduce the harassment and intimidation of the victim because the batterer realizes the victim no longer controls the proceeding” (Booth 634). As a result, these ideas constitute the explanation that the policies are supposed to “serve the general state interest” and that “the sacrifice of individual victim interests [is] regarded by these proponents as necessary for overall societal change” (Han 182). By acting as a form of protection for both victim and defendant rights, the prosecution policies work to halt further criminalization through strict regulation and administrative jurisdiction. It protects the victims and defendants by giving courts and authorities the discretion to assess their requirements on a case-by-case basis.

While there are beneficial objectives following the implementation of the legislation, the disadvantages negate and contradict the former. The primary objective of the mandatory arrest policy is to ensure the safety of women and children, while stopping the violence. Other goals are geared toward holding the perpetrator accountable for their behavior and to divert the perpetrator through intervention, and toward the restoration and guiding of victims to recovery through the regaining of agency in the lives of the victims. However, despite the explicit goals the legislation is meant to achieve validity and legitimation are two factors that

need to be taken into consideration. The argument for public and victim safety is disputable as it is known that “prosecution ...is no guarantee that the violence will stop. A woman who opposes prosecution is taking a calculated risk, as is the woman who actively pursues prosecution. Neither she, nor the judge or the prosecutor, can know with certainty which action will result in less violence. The problem is not that the batterer’s coercion is not real, but rather that it is not always clear that the criminal justice system offers a better alternative” (Han 183). Additionally, non-advocates also claim that, “these policies may deter victims from reporting the crimes committed against them. Most victims do not have a full understanding of the legal system and would be frightened by their inability to discontinue a proceeding” (Booth 635). As direct support to the previous studies indicating the lack of criminal reportings, it is recognized that another contributing factor to this issue would be the lack of understanding victims have when entering the legal system. Therefore, the contradictory outcomes of the policies challenge the efficacy of the application to individuals who are impacted. The presumptive solution that coercive prosecution would mitigate issues involving and within the criminal justice system is false; the general public, along with people participants, hold either negative feelings towards the policy or assume compliance to the rules based on the reality that these policies are still law with normative reasons that function to keep them in place. However, although most people see the validity in the rule and legislation, legitimation is still in question. The legitimacy of the rule varies on a case-by-case basis. Generally, each normative reason has been refuted through rationales that work to dissemble these legislative means, but the rule is still set in place due to factors greater than the individual. Due to the fact that participants and victims have no choice but to comply, this involuntary loss of decision and power causes individuals to be complacent to the rule without genuine legitimacy. Despite the minority that is in favor of the no-drop

policies, legitimacy falters as a majority of participants would prefer individual autonomy and agency within the criminal justice process.

PART FOUR: CONCLUSIONS

Possible Conclusions

These research results criticize the mandate that comes with participating in the Criminal Justice System as a victim or defendant of domestic violence acts. While it is in the best interest of the state and country to promote public and victim safety, revision to the legislation is necessary. Analysis and evaluation of the findings reveal that while there are many benefits and validity to the no-drop policies and prosecution mandate, the detriments and illegitimacy call for future research to a new alternative that protects individuals without a loss of individualism. As rules and legislation remain mostly unevolved since the 1990s, contemporary and modern day issues necessitates a progression that promotes autonomy as well as safety. Although it is impossible to treat each case differently, assessing the volume of normative reasoning against the rule is important for change. Despite the fact that this research is inconclusive it is able to shed light on this contemporary social issue by creating a baseline for future proposals as well as the awareness that this information could provide. Proposition for further and future research in regards to the Prosecution Mandate and No-Drop Policy will promote legitimacy and satisfaction in the solution towards a fair governmental proceeding.

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