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Batterers Beware: West Virginia Responds to Domestic Violence with the Probable Cause Warrantless Arrest Statute

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BATTERERS BEWARE: WEST VIRGINIA RESPONDS TO DOMESTIC VIOLENCE WITH THE PROBABLE CAUSE WARRANTLESS ARREST STATUTE

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I. INTRODUCTION

She had sought refuge at [a] domestic violence shelter, and had filed for a divorce. She had a court order directing her husband to stay away from her and their three children. But a warrant charging him with violating that order went unserved . . .

[A] . . . deputy went to the . . . home and served yet another warrant on [her husband], ordering him to leave the home. [He] left—but only long enough to get his shotgun from his parked truck.

Returning to the house, he killed his wife and two of their three children, wounding the third. Then he used the gun to end his own life . . .

[The deputy was still present when the murders occurred.]

As this tragic story indicates, incidents of domestic violence are not unknown in West Virginia. In recent years, West Virginia has experienced a "fifty-two percent increase in reported domestic violence cases," and women in West Virginia are "more likely to be assaulted, raped or killed by a male partner than by a stranger."

Despite these grim statistics, three-fourths of all domestic violence complaints in 1991 were treated as simple assaults, while arrests were made in only twelve percent of all domestic violence incidents reported.

In light of these vivid facts, state legislators have attempted to provide protection for victims of domestic violence. Current West

3. Id.
4. Id. (citing W. VA. DEP'T OF PUBLIC SAFETY, 1991 UNIFORM CRIME REPORT (n.d.)).
5. West Virginia defines domestic, or family, violence as:
Virginia law enables a victim to obtain a protective order, temporary order, or restraining order. These protective orders empower victims insofar as they prohibit the alleged abuser from assaulting the victim; contacting or harassing the victim; approaching the victim at the victim’s home, school, or work place; and attempting to contact the victim through contacting the victim’s family or relatives. Yet beyond these specific measures, protective orders afford the victim little protection from the alleged abuser.

The occurrence of one or more of the following acts between family or household members:

1. Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons;
2. Placing another in reasonable apprehension of physical harm;
3. Creating fear of physical harm by harassment, psychological abuse or threatening acts;
4. Committing either sexual assault or sexual abuse . . . ; and
5. Holding, confining, detaining or abducting another person against that person’s will.


9. W. VA. CODE §§ 48-2A-6(a)(6), 48-2A-6(a)(8) (Supp. 1994). The term “protective order” will be used to refer collectively to protective orders, temporary orders, and restraining orders. In situations in which a distinction among these three types of orders is required, the appropriate designation will be made.

10. Despite this article’s gender neutral language, the vast majority of domestic violence victims are women. See NAT’L WOMAN ABUSE PREVENTION PROJECT, DOMESTIC VIOLENCE FACT SHEETS: GENERAL FACTS ABOUT DOMESTIC VIOLENCE 1 (n.d.) [hereinafter NAT’L WOMAN ABUSE PREVENTION PROJECT] (“[a]pproximately 95% of the victims of domestic violence are women”); see also FAMILY VIOLENCE PREVENTION FUND, THERE’S NO EXCUSE FOR DOMESTIC VIOLENCE 1 (n.d.) (“95 percent of domestic violence incidents are perpetrated by men”).

Furthermore, in instances where the protection afforded to domestic violence victims is discussed, the protection granted extends not only to the victim, but also to the victim’s children, family, and other members of the victim’s household. See W. VA. CODE § 48-2A-2(b) (Supp. 1994).

11. The term “alleged abuser” has been chosen to represent those who are charged with committing domestic violence offenses or violating the various orders available to victims of domestic violence. They are “alleged” abusers because often their responsibility for the domestic violence incident is determined at a later hearing, subsequent to the issuance of
Until recently, a protective or temporary order could be enforced in West Virginia only by a law-enforcement officer’s direct observance of the violation or by a victim’s request for an arrest warrant. Similarly, in cases of restraining order violations, domestic violence victims had little protection: law-enforcement officers had no authority to arrest the alleged abuser unless the violation was committed in the officers’ presence.

However, West Virginia has attempted to remedy the inadequate protection of domestic violence victims. The penalty an alleged abuser faces for a violation of these orders is rather significant. An alleged abuser faces the possibility of a one-day to one-year jail sentence, with a mandatory twenty-four hour minimum confinement. Moreover, an alleged abuser is also required to pay a fine ranging from two hundred fifty to two thousand dollars for violating the order.

Additionally, on March 2, 1994, the West Virginia legislature enacted the probable cause warrantless arrest statute. Effective on May 31, 1994, this statute enables law-enforcement officers to exercise a broader arrest power over alleged abusers who commit domestic violence offenses or who violate protective orders.

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16. Id.
17. Id.
19. The probable cause warrantless arrest statute provides that:
[A] law-enforcement officer has authority to arrest the alleged perpetrator for said offense when:
(1) The law-enforcement officer has observed credible corroborative evidence that the offense has occurred; and
(2) The law-enforcement officer has received, from the victim or a witness, a verbal or written allegation of facts constituting a violation of [§ 61-2-28] of
West Virginia’s probable cause warrantless arrest statute is not a unique response to domestic violence. In fact, each of the other forty-nine states have previously enacted some form of probable cause warrantless arrest statute, enabling law-enforcement officers to respond more effectively to incidents of domestic violence and to violations of protective orders. These provisions permit officers to arrest the alleged abuser at the scene of the incident, or in the immediate vicinity thereof, provided that probable cause for the arrest exists.

Apart from the increased protection that these laws provide to domestic violence victims, an additional incentive exists for the passage of these statutes: the proposed $25 million federal grant competition for domestic violence programs. The eligibility criteria for this fund-

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this code [criminal penalties for domestic battery and domestic assault]; or
(3) The law-enforcement officer has observed credible evidence that the accused committed the offense.


21. See supra note 20. Probable cause for the arrest exists if the officer has “probable cause that a misdemeanor domestic violence offense has occurred.” Letter from Joan Zorza to Sue Julian & Diane Reese, supra note 20, at 2.

22. S. 11, 103d Cong., 1st Sess. § 121 (1993). See also Letter from Joseph R. Biden, Jr., U.S. Senator/Chairman, United States Senate Committee on the Judiciary, to Diane Reese and Sue Julian, Team Coordinators, West Virginia Coalition Against Domestic Violence 1
ing require states to enact probable cause warrantless arrest statutes, or comparable provisions, to demonstrate their commitment to combatting the national tragedy of domestic violence.\textsuperscript{23}

Thus, West Virginia, recognizing the grim realities of domestic violence in this state,\textsuperscript{24} and sorely in need of such funding to adequately train law-enforcement officials,\textsuperscript{25} has also enacted a probable cause warrantless arrest statute.

The purpose of this article is to examine the basic features of probable cause warrantless arrest statutes and to provide a better understanding of West Virginia's own probable cause warrantless arrest statute. Part II will provide an overview of the probable cause warrantless arrest statutes of the forty-nine states that have enacted these statutes prior to West Virginia's passage of its probable cause warrantless arrest statute. In Part III, this Note will explore West Virginia's history of arrest authority in domestic violence situations, with special emphasis on its previous telephone authorization statute and its current probable cause warrantless arrest statute. Part IV will analyze the general features of probable cause warrantless arrest provisions in an attempt to explain the advantages and disadvantages of probable cause warrantless

(Dec. 10, 1993) (on file with author); Letter from Joseph R. Biden, Jr., U.S. Senator/Chairman, United States Senate Committee on the Judiciary, to Diane Reese and Sue Julian, Team Coordinators, West Virginia Coalition Against Domestic Violence 1 (Feb. 26, 1993) (on file with author); Letter from John D. Rockefeller, IV, U.S. Senator, United States Senate, to Diane Reese & Sue Julian, Team Coordinators, West Virginia Coalition Against Domestic Violence 1-2 (Feb. 2, 1993) (on file with author).

23. \textit{See supra} note 22.

24. \textit{See W. VA. CODE} § 48-2A-1(a)(3) (Supp. 1994) (stating that "[f]amily violence is a major health and law-enforcement problem in this state"); \textit{see also W. VA. FAMILY PROTECTION ADVISORY BOARD, DOMESTIC VIOLENCE: A MANUAL FOR POLICE PROFESSIONALS} 5, 7 (1993) [hereinafter \textit{W. VA. FAMILY PROTECTION ADVISORY BOARD}] (noting that "6,029 domestic violence complaints were filed in West Virginia in 1992" indicating "a 30% increase over 1990 complaints" and that 29% of all 1991 West Virginia homicides were related to domestic violence).

25. \textit{See W. VA. COALITION AGAINST DOMESTIC VIOLENCE, FAMILY VIOLENCE, supra} note 2, at 2 (noting that a probable cause warrantless arrest statute would "allow West Virginia access to federal funds . . . from the federal Violence Against Women Act for law[enforcement and judicial officer training"); \textit{see also W. VA. CODE} § 48-2A-1(a)(3) (Supp. 1994) (stating that "[f]amily violence is a major health and law-enforcement problem in this state").
arrests in domestic violence situations and to discern the suitability of this model in actual practice. Finally, in Part V, this Note will scrutinize the West Virginia probable cause warrantless arrest statute, with special regard for the advantages and disadvantages of such a statute in West Virginia and its likely results in providing additional protection to victims of domestic violence.

II. OVERVIEW OF PROBABLE CAUSE WARRANTLESS ARREST STATUTES IN THE UNITED STATES

Every state, including West Virginia, authorizes law-enforcement officers to arrest alleged abusers in response to domestic violence complaints without a warrant if the officer finds that probable cause exists to support the arrest. However, police officers have not always been so eager to assist victims of domestic violence. This policy change is the result of a long and arduous struggle by domestic violence victims to attain equality of justice and to convince law-enforcement authorities that they, like other victims, have been the targets of real and serious crimes.

In the 1970s, advocates called the nation’s attention to the grave injustices faced by victims of domestic violence when such victims sought police protection. Despite the fact that “an assault is a crime, regardless of the relationship of the parties” and that “[a] person beaten in the home is no less a victim than a person beaten on the sidewalk in front of the home,” many times the law “stop[ped] at

27. See supra note 21.
28. Traditional attitudes of law-enforcement officials in response to domestic violence complaints include a failure to take “the situation seriously” after learning that the victim is married to the alleged abuser and comments such as “lady, it’s his house, he can do what he wants.” U.S. ATT’Y GEN. TASK FORCE ON DOMESTIC VIOLENCE, FINAL REPORT: RECOMMENDATIONS FOR LAW ENFORCEMENT 19, 23 (1984) (victims’ statements).
30. Id. at 211 (quoting U.S. ATT’Y GEN. TASK FORCE ON DOMESTIC VIOLENCE, supra note 28).
31. Frisch, supra note 29, at 211.
the front door of the family home," thus providing little or no assistance to the domestic violence victim.

The changes sought by victims were far from radical; the pleas amounted to simple requests that "battered women be treated with fairness" and that they "be provided [with] an opportunity for justice." Advocates hoped that by treating the crime of domestic violence as a serious and legitimate offense, society would become less willing to ignore the problem and more willing to punish the alleged abusers. Thus, law-enforcement officers would be obligated to treat incidents of domestic violence as more than mere "minor offense[s]."

In response to this movement, which brought to the public's attention the secret tragedy of domestic violence, many states enacted probable cause warrantless arrest statutes. These provisions authorized law-enforcement officers to arrest an alleged abuser without a warrant if an officer had probable cause to believe that a domestic violence incident had occurred and that the alleged abuser was the perpetrator or responsible party. This increased arrest authority extended past the common law limitation, which had allowed probable cause arrest only for felonies, and permitted law-enforcement officials to make probable cause arrests for offenses that would normally be classified as misdemeanors. Therefore, officers obtained the authority to arrest the

32. Id.
33. Id. at 209.
34. Id.
36. LISA LERMAN, CENTER FOR WOMEN POL’Y STUD., RESPONSE TO VIOLENCE IN THE FAMILY, LEAFLET NO. 10, EXPANSION OF POLICE ARREST POWER: A KEY TO EFFECTIVE INTERVENTION 2 (1980) [hereinafter LERMAN].
37. See, e.g., Frisch, supra note 29, at 210 n.5 (discussing New York's statute). See also Letter from Joan Zorza to Sue Julian & Diane Reese, supra note 20, at 3.
38. See supra note 37.
39. At common law, officers have the authority to effectuate probable cause warrantless arrests in situations where a felony has been committed even if the officer did not observe the commission of the crime. NAT’L CENTER ON WOMEN AND FAM. L., supra note 13, at 2; Memorandum of Law from David B. McMahon, Attorney at Law, West Virginia Legal Services Plan, Inc. 2 (Dec. 8, 1992) [hereinafter Memorandum of Law from David B. McMahon] (on file with author).
40. LERMAN, supra note 36, at 2. Lerman notes that:
alleged abuser in typically misdemeanor situations, without a warrant, and without having observed the domestic violence incident.

In addition to a heightened societal awareness of domestic violence, victims themselves had a profound and direct impact upon the enactment of probable cause warrantless arrest statutes. Domestic violence victims, frustrated with law-enforcement officials' inadequate protection and reluctance to respond to domestic violence complaints, instituted numerous lawsuits against various police departments for following "arrest-avoidant practices." Common attitudes among law-enforcement officials were "we don't want to get involved" and the officers' failure to acknowledge the seriousness of domestic violence incidents. Victims' challenges to arbitrary and discretionary arrest procedures invalidated these "arrest-avoidant" practices under the Fourteenth Amendment's Equal Protection Clause. Thus, the courts' resolution of these suits resulted in assurances of the equal protection of domestic violence victims: law-enforcement officers were no longer free to arbitrarily use their discretion when making arrests, and they were required to fully appraise the extent of the situation before automatically refusing to arrest the alleged abuser.

Finally, many remaining states enacted probable cause warrantless arrest statutes in response to the discovery of the deterrent effect that these arrests have on abusers. In 1983, Lawrence Sherman and Rich-

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Police generally perceive family abuse as a minor offense, especially where there has been no serious injury or the injury is not visible. If mate abuse is perceived as a misdemeanor, and the law allows warrantless arrest only in felony cases, the police may not arrest because of a perceived need to obtain a warrant. *Id.* Thus, where probable cause warrantless arrest statutes are enacted, an officer is able to immediately arrest the alleged abuser without first having to obtain a warrant. *See also* Letter from Joan Zorza to Sue Julian & Diane Reese, *supra* note 20, at 2; NAT'L CENTER ON WOMEN AND FAM. L., *supra* note 13, at 2.


44. Watson v. City of Kansas City, 857 F.2d at 696; Thurman v. City of Torrington, 595 F. Supp. at 1527.

45. Frisch, *supra* note 29, at 211. *See also supra* note 41.

46. These states include Arizona, Connecticut, Hawaii, Iowa, Maine, Massachusetts,
ard Berk conducted an experiment in Minneapolis, Minnesota, to evaluate the effect that various law-enforcement responses—mediation, separation, and arrest—had on the recurrence of domestic violence incidents. The researchers concluded that, of all of the response methods studied, arrest proved to be the most efficient deterrent to domestic violence. Hence, many states responded to this new information by announcing their lack of tolerance of domestic violence and by implementing probable cause warrantless arrest statutes to deter the commission of these crimes.

To date, every state in the United States has some type of probable cause warrantless arrest statute. Warrantless arrest statutes vary in the amount and type of authority afforded to law-enforcement officers: mandatory arrests versus discretionary arrests, arrests in response to domestic violence incidents versus arrests in response to violations of protective orders, and pre-arrest requirements for consent from the victim to arrest the alleged abuser versus automatic arrest. However, each of these provisions has recognized the need to grant broader arrest authority to officers in order to effectively respond to domestic violence situations and to afford adequate protection to the victims involved.

The provisions of the state of Vermont deserve particular attention. While Vermont’s statutes do not specifically authorize probable cause warrantless arrests in domestic violence situations, the state has never-
theless granted this authority to law-enforcement officers. The court rules of criminal procedure in Vermont permit probable cause warrantless arrests in domestic violence cases "when the officer has probable cause to believe a person has committed a misdemeanor . . . which involves an assault against a family or household member." Thus, in the absence of statutory law, courts in Vermont have developed local rules in order to grant this extensive arrest power to law-enforcement officials.

With the recent adoption of West Virginia’s probable cause warrantless arrest statute, the states truly have become “united” in response to the pleas of domestic violence victims.

III. THE WEST VIRGINIA PROBABLE CAUSE WARRANTLESS ARREST STATUTE

Previously established West Virginia statutory and common law authorize law-enforcement officers to make arrests in response to domestic violence incidents via several distinct routes: (1) by common law, (2) in limited statutory areas, and (3) with victim self-help. Prior to the recent enactment of the probable cause warrantless arrest statute, which further extends this arrest authority, the predecessor telephone authorization statute attempted to grant additional authority to law-enforcement officials to arrest an alleged abuser. However, this statute required that the officers first receive telephone authorization from a magistrate in order to make such an arrest.

In response to numerous concerns regarding the feasibility of obtaining telephonic authorization in rural areas and the dangerous delays that would inevitably result from these procedural requirements, the
West Virginia legislature repealed the telephone authorization statute and replaced it with the probable cause warrantless arrest statute. Thus, West Virginia followed the forty-nine other states in permitting law-enforcement officials to make a probable cause warrantless arrest in response to domestic violence situations.

A. Established Arrest Authority

Before West Virginia enacted the probable cause warrantless arrest statute, law-enforcement officials derived their authority to make arrests in domestic violence situations from three distinct sources: (1) common law, (2) statutory authority, and (3) victim self-help remedies.

1. Common Law

At common law, an officer may arrest a perpetrator for a crime not committed in his/her presence if (1) the crime is a felony, (2) the officer has probable cause to believe that the crime was committed, and (3) the perpetrator committed the crime. However, when domestic violence incidents are regarded as misdemeanors and lesser offenses, this common law authority does not apply, and thus, officers are unable to arrest the alleged abuser. For example, three-fourths of all West Virginia domestic violence complaints in 1991 were treated as simple assaults; because these incidents were regarded as fairly minor offenses, law-enforcement officials were, for the most part, unable to arrest the alleged abusers without a warrant.

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The Facts About Probable Cause Arrest 1 (n.d.) [hereinafter W. Va. Coalition Against Domestic Violence, Probable Cause Arrest] (noting that the telephone authorization statute was “unworkable in situations when there is no telephone available, because a police officer cannot secure telephone authorization through a dispatcher”).

65. See supra text accompanying note 20.
66. See supra note 60.
68. See supra note 67.
69. W. Va. Coalition Against Domestic Violence, Family Violence, supra note
2. Statutory Authority

However, law-enforcement officials do have the statutory authority to arrest alleged abusers in limited domestic violence circumstances in which they classify the offense as a misdemeanor.\textsuperscript{70} If an officer sees an alleged abuser violating a protective order, the officer must arrest the alleged abuser at the scene.\textsuperscript{71} This authority to arrest is not discretionary; rather, the officer is required to arrest the alleged abuser.\textsuperscript{72}

3. Victim Self-Help Remedies

In two situations law-enforcement officials have the power to arrest the alleged abuser without having witnessed the domestic violence incident.\textsuperscript{73} However, this authority exists only after the victim has sufficiently completed a variety of self-help prerequisites.\textsuperscript{74} The first instance involves granting the officer permission to enter the victim’s residence, without a warrant, to arrest the alleged abuser for a violation of the protective order.\textsuperscript{75} In order to provide such authority, a victim is required to file an affidavit granting such permission to law-enforcement officials at the same time that the victim files the protective order.\textsuperscript{76} In the absence of this affidavit, an officer without a warrant may not enter the victim’s residence to arrest the alleged abuser.\textsuperscript{77}

The second instance requires the victim to apply for an arrest warrant in order that the protective order may be enforced.\textsuperscript{78} In this

\textsuperscript{2} at 1 (citing W. VA. DEP’T OF PUBLIC SAFETY, \textit{supra} note 4).
\textsuperscript{70} W. VA. CODE § 48-2A-10c(a) (Supp. 1994).
\textsuperscript{71} \textit{Id.}
\textsuperscript{72} The statutory language provides that “[w]hen a law-enforcement officer observes [a] knowing and willful violation of the terms of a temporary or final protective order . . . he or she shall immediately arrest the respondent.” W. VA. CODE § 48-2A-10c (a) (Supp. 1994) (emphasis added).
\textsuperscript{73} W. VA. CODE §§ 48-2A-10, 48-2A-10b(b) (Supp. 1994).
\textsuperscript{74} \textit{See supra} note 73.
\textsuperscript{75} W. VA. CODE § 48-2A-10 (Supp. 1994).
\textsuperscript{76} \textit{Id.}
\textsuperscript{77} \textit{See State v. Farmer,} 315 S.E.2d at 395.
\textsuperscript{78} W. VA. CODE § 48-2A-10b(b) (Supp. 1994).
situation, a victim must appear before a court and show, by probable cause, that the alleged abuser has violated the order.79 After the victim has completed these procedures, and if the court finds that the victim has shown probable cause, an arrest warrant will be issued for the alleged abuser.80

B. Predecessor Statutory Authority: The Telephone Authorization Statute

The telephone authorization statute, the predecessor of the probable cause warrantless arrest statute, attempted to grant law-enforcement officials greater arrest authority to respond to domestic violence situations. However, this provision required law-enforcement officers to obtain a magistrate's telephonic approval prior to making the arrest.81 As a result of this conditional arrest authority, the telephone authorization statute proved to be an ineffectual means of protecting domestic violence victims.82

1. Legislative History of the Telephone Authorization Statute

The telephone authorization statute as it was originally proposed would have allowed officers much greater arrest authority with regard to domestic violence incidents.83 The statute's draft version84 included

79. Id.
80. Id. One further example of victim self-help should be noted. The victim may bring contempt charges against an alleged abuser who violates a protective order. W. VA. CODE § 48-2A-10a(a) (Supp. 1994). While this proceeding does not result in an immediate arrest, the court may require the alleged abuser to comply with the provisions of the protective order and to post a surety bond to personally guarantee that the alleged abuser will not violate the protective order in the future. W. VA. CODE § 48-2A-10a(c) (Supp. 1994). See supra Part I.
82. See infra Part III.B.3. See also W. VA. COALITION AGAINST DOMESTIC VIOLENCE, PROBABLE CAUSE ARREST, supra note 63, at 1 (noting that the telephone authorization statute is "unworkable in situations when there is no telephone available, because a police officer cannot secure telephone authorization through a dispatcher").
83. H.B. 2427; Letter from David B. McMahon, Attorney at Law, West Virginia Legal Services Plan, Inc., to Sue Julian & Diane Reese, Team Coordinators, West Virginia Coali-
limitations to ensure that there would be no abuse of discretion in these situations and closely resembled the current probable cause warrantless arrest statute.\textsuperscript{85} However, cautious legislative concerns about the draft provision’s constitutionality resulted in the approval of the telephone authorization statute.\textsuperscript{86}

In its original version, the telephone authorization statute closely resembled a probable cause warrantless arrest statute in that it would have authorized the officer to make an arrest in two instances: (1) “if the officer observes physical injuries to the victim and has some credible evidence that the accused did it”; and (2) “if there is a written or verbal statement that the abuse occurred and some corroborating physical evidence of the abuse, plus some credible evidence that the accused did it.”\textsuperscript{87} To prevent the officer from abusing this arrest authority and to ensure that the statute was constitutional, the bill “specifically [did] not authorize entry into premises or other search or seizure unless necessary to make the arrest.”\textsuperscript{88}

Despite these careful considerations, the West Virginia state legislature continued to be concerned about the constitutionality of a probable cause warrantless arrest statute.\textsuperscript{89} Various studies indicated that a probable cause warrantless arrest statute would most likely be constitutional under both the West Virginia and the United States Constitution.\textsuperscript{90} However, because the state legislature remained unpersuaded,
the telephone authorization statute was substituted for the originally proposed probable cause warrantless arrest version. Hence, West Virginia temporarily required a more rigid and complicated procedure before a law-enforcement officer could arrest an alleged abuser in a domestic violence situation. The end result suspended a victim's protection until the officer had satisfied all of the necessary pre-arrest requirements.91

2. Statutory Provisions of the Telephone Authorization Statute

The telephone authorization statute attempted to increase arrest authority by creating two additional situations in which law-enforcement officers would have the authority to arrest an alleged abuser in a domestic violence incident.92 In both of these circumstances, however, the officer’s arrest authority was substantially limited by numerous prerequisites to the arrest. An officer could arrest the alleged abuser if: (1) the officer had corroborative evidence that the offense occurred,93 (2) the officer obtained a signed statement from the victim or from a witness to the offense;94 and (3) the officer obtained authorization (telephonic or oral) from a magistrate to arrest the alleged abuser.95 The officer’s receipt of this authorization was conditioned upon the magistrate finding that “probable cause exist[ed] to believe that the offense was committed.”96

An officer could also arrest an alleged abuser where imminent "danger exist[ed] to the health and safety of the alleged victim, the

lence 1 (Sept. 11, 1992) [hereinafter Letter from Franklin D. Cleckley to Sue Julian & Diane Reese, Sept. 11, 1992] (on file with author); Letter from Joan Zorza to Sue Julian & Diane Reese, supra note 20, at 3; Memorandum of Law from David B. McMahon, supra note 39, at 1-6.

96. Id.
law-enforcement officer or another person. The officer could arrest the alleged abuser in this situation only after obtaining (1) corroborative evidence that the offense occurred; and (2) a written or verbal statement from either the victim or a witness to the offense, with the assurance that a signed, written statement would soon be executed. In this circumstance, the officer could arrest the alleged abuser before obtaining a magistrate’s authorization because the alleged abuser was perceived as posing a serious danger to the health and safety of those involved. Given the often violent nature of such incidents, it is difficult to imagine a situation in which there would not have been an imminent threat to the health or safety of the victim, law-enforcement officer, or another individual. However, the legislature determined that the officer’s authority to arrest, without having first completed all of the prerequisite steps, was limited only to this specific imminent danger situation.

3. Practical Assessment of the Telephone Authorization Statute

Implementation of the telephone authorization statute proved that the statute was an insufficient means of addressing the needs of domestic violence victims in West Virginia.

98. Id.
99. Id. However, if the magistrate, once contacted, refused to authorize the arrest, the arrest became invalid and the alleged abuser was immediately released. W. VA. CODE § 48-2A-14(c) (Supp. 1993)(repealed 1994); H.B. 2427. The arrest could also be invalidated if the victim or the witness refused to “execute the [signed] statement” as required by the statute. Id.

For example, domestic violence victims often experience abuse that results in serious physical injuries. One such woman described her ordeal as follows: “When the police knocked on the door he stopped choking me and let them in. [M]y face had already started to swell, my lip was bloody and I was gasping for air while laying on the floor.” W. VA. COALITION AGAINST DOMESTIC VIOLENCE, FAMILY VIOLENCE, supra note 2, at 1 (victim’s statement). See also W. VA. COALITION AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE IN THE NATION AND IN THE STATE OF WEST VIRGINIA 1 (n.d.) (“battering is the single largest cause of injury to women in the United States”).
102. Telephone Interview with Sue Julian, Team Coordinator, West Virginia Coalition
Even though the telephone authorization statute was in place for less than one year, its enforcement proved to be logistically impossible. In order for a telephone authorization statute to work effectively, law-enforcement officials must have access to telephones or mobile radios with which they can contact the dispatcher and the magistrate. Given the rural nature of West Virginia, though, many households simply do not have telephones. Certain rural areas are also too remote for public telephones to be readily available. While mobile radios are an option, not every police officer carries such a radio or has one available in the officer’s car; those officers that do have radios often cannot use them because the mountainous terrain blocks the signal transmission. Thus, many law-enforcement officials could not arrest an alleged abuser because they could not contact a magistrate to obtain authority for the arrest as required by the telephone authorization statute.

While the officer could have arrested the alleged abuser if the situation presented imminent “danger . . . to the health and safety of the alleged victim, the law-enforcement officer[,] or another person,” this alternative was merely discretionary and likely to be

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Against Domestic Violence (Feb. 9, 1994) [hereinafter Telephone Interview with Sue Julian]; Telephone Interview with Reta K. Roberts, Assistant Professor of Criminal Justice, Marshall University (Sept. 30, 1993) [hereinafter Telephone Interview with Reta K. Roberts]. See also W. VA. COALITION AGAINST DOMESTIC VIOLENCE, PROBABLE CAUSE ARREST, supra note 63, at 1 (noting that the telephone authorization statute is “unworkable in situations when there is no telephone available, because a police officer cannot secure telephone authorization through a dispatcher”).


104. In 1990, 10.3% of all West Virginia households did not have a telephone. Only three states (Mississippi, New Mexico, and Arkansas) had fewer telephones per household than West Virginia. Barbara Vobejda, A Nation in Transition: Census Reveals Striking Stratification of U.S. Society, WASH. POST, May 29, 1992, at A1.

105. See Telephone Interview with Sue Julian, supra note 102; Telephone Interview with Reta K. Roberts, supra note 102.

106. See supra note 105.


ignored in light of the common perception of domestic violence incidents as relatively minor offenses. Hence the telephone authorization statute, in practice, provided virtually no protection for the victim of domestic violence.

C. Current Statutory Authority: The Probable Cause Warrantless Arrest Statute

West Virginia's most recent efforts to provide greater protection to the victims of domestic violence have resulted in the enactment of the probable cause warrantless arrest statute. With the adoption of this provision, West Virginia joins the other forty-nine states in granting law-enforcement officials broader arrest authority in response to domestic violence incidents.

1. Legislative History of the Probable Cause Warrantless Arrest Statute

As noted in Part III.B.1, the implementation of a probable cause warrantless arrest statute in West Virginia was not a novel objective. In fact, the current statute closely resembles the draft version of the telephone authorization statute; the current statute permits an arrest where a law-enforcement official "has observed credible corroborative evidence" that a domestic violence offense has occurred and either "has received, from the victim or a witness, a verbal or written allegation of facts constituting" a criminal domestic violence offense or "has observed credible evidence that the accused committed the offense."

110. See infra Part IV.A.
111. See infra Part III.C.1.
112. See supra text accompanying note 20.
113. See supra Part III.B.1.
While constitutional concerns prevented the adoption of the telephone authorization statute's draft version, repeated assurances about the constitutionality of a probable cause warrantless arrest statute in West Virginia reduced fears about the statute's potential unconstitutionality. Rather, the impetus to enact the current statute was fueled largely by persistent lobbying efforts that emphasized the ineffectiveness of the telephone authorization statute in adequately addressing the safety of domestic violence victims. Lobbyists also called attention to the fact that West Virginia, with its telephone authorization statute, remained ineligible for federal grants awarded to states with domestic violence-oriented probable cause warrantless arrest statutes.

2. Statutory Provisions of the Probable Cause Warrantless Arrest Statute

The current probable cause warrantless arrest statute significantly broadens a law-enforcement official's ability to arrest an alleged abuser in a domestic violence situation. The statute expands the officer's authority to make the arrest and enlarges the scope of the "credible
corroborative evidence" necessary to support the arrest of an alleged offender.\(^\text{122}\)

A law-enforcement official now has the authority to arrest a "family or household member [who] is alleged to have committed a violation of the provisions of [§ 61-2-28] against another family or household member"\(^\text{123}\) without first obtaining a warrant or telephonic authorization from a magistrate. An officer has this arrest authority when:

(1) The law-enforcement officer has observed credible corroborative evidence that the offense has occurred; and
(2) The law-enforcement officer has received, from the victim or a witness, a verbal or written allegation of facts constituting a violation of [§ 61-2-28]; or
(3) The law-enforcement officer has observed credible evidence that the accused committed the offense.\(^\text{124}\)

Thus, a law-enforcement official has the authority to effectuate a warrantless arrest based upon the probable cause supplied by "credible corroborative evidence" that the offense occurred and upon either a verbal or written allegation of facts or the official's own observation of "credible corroborative evidence" that the alleged abuser committed the offense.\(^\text{125}\)

Moreover, the expanded definition of "credible corroborative evidence" enables the law-enforcement officials to treat as evidence a variety of factors that would normally tend to indicate that an incident of domestic violence had occurred.\(^\text{126}\) For example, "credible corroborative evidence" may consist of rather obvious circumstances such as:

(1) Condition of the alleged victim. — One or more contusions, scratches, abrasions, swellings; missing hair; torn clothing or clothing

\(^{122}\) W. VA. CODE § 48-2A-14(b) (Supp. 1994).
\(^{124}\) See supra note 123.
\(^{125}\) W. VA. CODE § 48-2A-14(a) (Supp. 1994).
in disarray consistent with a struggle; observable difficulty in breathing or breathlessness consistent with the effects of choking or a body blow; observable difficulty in movement consistent with the effects of a body blow or other unlawful physical contact.

(2) Condition of the accused. — Physical injury or other conditions similar to those set out for the condition of the victim which are consistent with the alleged offense or alleged acts of self-defense by the victim.

(3) Condition of the scene. — Damaged premises or furnishings; disarray or misplaced objects consistent with the effects of a struggle.

(4) Other conditions. — Statements by the accused admitting one or more elements of the offense; threats made by the accused in the presence of an officer; audible evidence of a disturbance heard by the dispatcher or other agent receiving the request for police assistance; written statements by witnesses.  

“Credible corroborative evidence” also includes any other “evidence that is worthy of belief and corresponds with the allegations of one or more elements of the offense.”

Therefore, the probable cause warrantless arrest statute provides more protection to victims of domestic violence by granting law-enforcement officials increased authority to make an immediate arrest in response to an occurrence of domestic violence because it does not condition the officer’s ability upon the obtainment of a warrant or telephonic authorization from a magistrate. The statute also lends more credibility to a victim’s allegations of abuse through the broader definition of “credible corroborative evidence,” which permits the officer to arrest the alleged abuser.

3. Practical Assessment of the Probable Cause Warrantless Arrest Statute

Because the probable cause warrantless arrest statute is still relatively new, statistics as to the statute’s actual effectiveness are not yet

128. Id.
130. See W. VA. CODE § 48-2A-14(b) (Supp. 1994).
available. However, proponents of this statute suggest that it will vastly improve the plight of domestic violence victims in West Virginia.

First, and foremost, advocates predict that the probable cause warrantless arrest statute will allow law-enforcement officials to more efficiently intervene in domestic violence situations and facilitate the punishment of alleged abusers. These proponents suggest that, because the probable cause warrantless arrest statute operates to permit more immediate arrests of alleged abusers, the statute will “hold perpetrators accountable for their violent and abusive behavior.”

In addition, the speedy arrests permitted by a probable cause warrantless arrest statute will benefit victims of domestic violence. The statute assures them that law-enforcement officials will be able to respond and react to domestic violence situations more efficiently. Advocates suggest that:

Probable cause arrest in domestic violence situations may empower a victim with the knowledge that police will respond effectively with the tools to take action in an effort to stop the violence immediately . . . . A victim is more likely to use the system in the future, knowing that the criminal justice system acted once in the past to support her.

Since victims know that they are more certain to receive the assistance that they need, they will be more likely to request such help.

Moreover, the probable cause warrantless arrest statute will positively affect society as a whole by actively condemning alleged abusers. Supporters propose that:

132. W. VA. COALITION AGAINST DOMESTIC VIOLENCE, QUESTIONS AND ANSWERS ON PROBABLE CAUSE ARREST IN DOMESTIC VIOLENCE CASES I (n.d.) [hereinafter W. VA. COALITION AGAINST DOMESTIC VIOLENCE, QUESTIONS AND ANSWERS] (suggesting that “[w]hen there is no arrest, no prosecution, and no significant consequences for domestic violence, abusers are free to flaunt to the victim the reality that society allows the abuse to occur or at least does nothing effective to intervene”).
133. Id.
134. Id. at 2.
The balance of benefits from an arrest must be assessed not only from the point of view of deterring continued abuse within one couple but also, and perhaps more importantly, from the point of view of the community’s critical interest in addressing the problem of domestic violence on a societal and long-term basis. Arresting and removing the abuser may thus be important, quite apart from any specific deterrent effect, because arrest delivers an empowering message to the victim and communicates society’s condemnation of the abusive behavior . . . 135

Because this statute permits an almost immediate arrest and, therefore, zealously condemns domestic violence, society as a whole will benefit from a greater sense of community disapproval of domestic violence.

Finally, with the adoption of the probable cause warrantless arrest statute, West Virginia will now be eligible to receive federal grants designed to help states improve their enforcement of domestic violence laws.136 Consequently, West Virginia will have more resources with which to educate law-enforcement officials about the nature of domestic violence and enforcement of newly enacted domestic violence statutes.137

Therefore, proponents of West Virginia’s probable cause warrantless arrest statute suggest that it will have a marked effect in providing additional protection to victims of domestic violence. However, until the true test of time has passed, no one can be absolutely certain that this statute will effectively combat domestic violence in West Virginia.

IV. COMPARATIVE ANALYSIS AND EVALUATION OF PROBABLE CAUSE WARRANTLESS ARREST STATUTES

States introduced probable cause warrantless arrest statutes in order to afford more safety and protection to victims of domestic violence.138 However, one must ask whether these statutes actually provide for the victim’s safety immediately after the violence has occurred

135. Id.
136. See supra note 22.
138. Frisch, supra note 29, at 209.
and whether these statutes provide for the long-term protection of the victims of such abuse.

A. Positive Benefits of Probable Cause Warrantless Arrest Statutes

Law-enforcement officers and victims' advocates have hailed the enactment of probable cause warrantless arrest statutes as a positive step towards protecting victims of domestic violence.\(^\text{139}\) Primarily, these statutes have been well-received because they increase awareness of domestic violence as a serious crime, and, in cases of mandatory arrest for violation of a protective order, they emphasize the seriousness of the court order.\(^\text{140}\) By raising public consciousness, these provisions ensure that domestic violence will be perceived and treated as a crime against "society as a whole,"\(^\text{141}\) rather than as merely an offense against the individual victim. The increase in police power granted under these provisions forces alleged abusers and victims alike to fully appreciate the seriousness of these offenses and to recognize that incidents of domestic violence will be treated with the same severity as other similarly violent crimes.\(^\text{142}\)

In addition, these statutes reflect an effort to recognize the grave danger that women often encounter in the home.\(^\text{143}\) For example, women face nine times more danger in the home than on the streets.\(^\text{144}\) Moreover, "[i]n the United States, a woman is more likely

\(^{139}\) LERMAN, supra note 36, at 1 (noting that "[a] policy of arrest, when the elements of the offense are present, promotes the well-being of the victim . . . . The officer who starts legal action may give the [victim] courage she needs to realistically face and correct the situation")


\(^{141}\) Thomas Suddes, Lawmaker Calls for Arrests in Domestic Violence Cases, PLAIN DEALER (Columbus, Ohio), June 15, 1993, at B8 [hereinafter Suddes].


\(^{144}\) New Police Guidelines for Domestic Violence, supra note 142, at Regional News.
to be assaulted, injured, raped, or killed by a male partner than by any other type of assailant."\textsuperscript{145} In response to these concerns, probable cause warrantless arrest statutes focus “on the victims as [their] top priority.”\textsuperscript{146} These provisions both recognize the traditional disparity in treatment between alleged abusers—in domestic violence cases—and other individuals accused of similar crimes and seek to remedy this discrepancy: “Physical assault of a stranger is a crime; it’s always been a crime, there’s never been any question about it. . . . [S]ociety should [not] tolerate [domestic violence] just because it happens between family members.”\textsuperscript{147}

Moreover, these statutes are praised for the efficiency that they afford to law-enforcement officers in the handling of domestic violence cases and for the various safeguards that they provide for victims of domestic violence. The quality of the law-enforcement response to domestic calls is enhanced where (1) officers may make arrests, rather


\textsuperscript{145} NAT’L WOMAN ABUSE PREVENTION PROJECT, supra note 10, at 1 (stating that “[t]he Federal Bureau of Investigation reports that 30% of female homicide victims are killed by their husbands or boyfriends”).

\textsuperscript{146} Biddle, supra note 42, at 1.

\textsuperscript{147} Id. at 1. \textit{See also New Police Guidelines for Domestic Violence, supra note 142, at Regional News. Spouse abuse has historically been treated as a private affair between husband and wife. John C. Lenderman, New Policies Aid Domestic Violence Victims, St. Petersburg Times} (St. Petersburg, Fla.), June 26, 1992, at 2 [hereinafter Lenderman]. For this reason, alleged abusers are often not prosecuted as severely as are perpetrators of other, comparatively minor, offenses. Kathy Barrett Carter, \textit{New Domestic Violence Law Sounds Great, But . . .}, N.J.L.J., Nov. 14, 1991, at 17. The de-emphasis of the severity of domestic violence is very apparent when shoplifters (whose theft was less than $250.00 worth of merchandise) received a harsher punishment (jail time and fines) than did batterers (no arrest, and consequently, no jail time and no fines). \textit{Id. at 17.} This anomaly may be explained by the fact that the few abusers who were arrested and sentenced to jail used a weapon in the commission of the offense; yet simply because the “unpenalized” batterers did not use a weapon to commit the abuse, their crime was relegated to a rather insignificant status as compared to shoplifting. \textit{Id. at 17.} Finally, however, this ludicrousness is being recognized and remedied:

\textit{Something is wrong when money interests hold greater sway over the criminal justice system than the lives of women and children. What argument could possibly be made to support the notion that a person who steals a few cartons of cigarettes is a greater threat than someone who is beating his wife? \textit{Id. at 17.}}
than attempt to mediate the dispute;\textsuperscript{148} (2) emergency protective orders may be obtained “after normal working hours”\textsuperscript{149} (3) the officer is authorized to seize any weapons used to commit the abuse;\textsuperscript{150} (4) extensive police training\textsuperscript{151} reduces the number of homicides resulting from domestic violence;\textsuperscript{152} and (5) law-enforcement officials are able to avoid liability for false arrests of alleged abusers and for denial of equal protection to domestic violence victims.\textsuperscript{153}

Finally, the victim may feel safer and more secure where (1) mandatory arrests of the alleged abuser permit the victim to escape further immediate danger;\textsuperscript{154} (2) protective orders are readily available and enforced;\textsuperscript{155} (3) “voluntary” reconciliations may not be legally enforced;\textsuperscript{156} (4) the abuser faces a minimum imprisonment for the second, and any additional, violation of a protective order;\textsuperscript{157} (5) advocates are available to help the victim complete forms and to inform the victim about available resources;\textsuperscript{158} (6) local law-enforcement detach-

\textsuperscript{148} Biddle, supra note 42, at 1.
\textsuperscript{149} Black, supra note 143, at 13. In addition, protective orders may often be obtained at night and on weekends and holidays. Id. at 13.
\textsuperscript{151} Cindy Hancock Finney, Deputies Train to Defuse Family Violence, ORLANDO SENTINEL TRIBUNE (Orlando, Fla.), Apr. 25, 1991, at II [hereinafter Finney].
\textsuperscript{152} Approximately one-third of all female murder victims are also victims of domestic violence. Lenderman, supra note 147, at 2. Where extensive law-enforcement training has been conducted, with regard to appropriate responses to domestic violence incidents, the “number of domestic abuse-related deaths dropped from eleven to four” in a two-year period. Finney, supra note 151, at II.
\textsuperscript{153} Finney, supra note 151, at II; New Police Guidelines for Domestic Violence, supra note 142, at Regional News.
\textsuperscript{154} New Court Decisions: Family Law, supra note 140, at 2223.
\textsuperscript{155} Black, supra note 143, at 13.
\textsuperscript{156} Spevak, Domestic Violence Law, supra note 150, at 11. Security is attained by the nonenforcement of “voluntary” reconciliations when victims have not voluntarily reconciled with their alleged abusers, but rather have been persuaded or coerced to enter into a “voluntary” reconciliation agreement. See Torres v. Lancellotti, 607 A.2d 1375, 1377-78 (N.J. Super. Ct. Ch. Div. 1992).
\textsuperscript{157} Spevak, Domestic Violence Law, supra note 150, at 11.
\textsuperscript{158} Eric C. Spevak, A New and Improved Domestic Violence Law, N.J.L.J., Feb. 10, 1992, at 6 [hereinafter Spevak, New and Improved Domestic Violence Law].
ments have adopted a "pro-arrest" policy;\textsuperscript{159} and (7) intervention programs inform victims of the services available to them.\textsuperscript{160}

Hence, probable cause warrantless arrest statutes provide law-enforcement officials with the authority needed to "make immediate arrests and [to] keep abusive spouses away from intended victims."\textsuperscript{161} The more gradual effect of these provisions, though, is to ensure that these victims will have a secure "Home Safe Home."\textsuperscript{162}

\section*{B. Criticisms of Probable Cause Warrantless Arrest Statutes}

While probable cause warrantless arrest statutes result in increased law-enforcement involvement in domestic violence disputes and more arrests of alleged abusers, opponents of these statutes argue that in reality these provisions do not adequately fulfill their purpose of protecting victims. Critics deem these statutes to be insufficient in providing for the victim's safety because they force police to intervene in these disputes;\textsuperscript{163} because the subsequent arrests escalate the potential for future, retaliatory abuse;\textsuperscript{164} and because victims themselves often become more victimized while the judicial system attempts to protect their safety.\textsuperscript{165}

Critics of these statutes argue that the law-enforcement intervention required by these provisions to ensure the victim's safety, in reality, poses a grave danger to the officers who respond to these calls.\textsuperscript{166} As a result, officers are unable to fully protect the victim.\textsuperscript{167} According to these critics, law-enforcement officials have good reason to treat
these incidents of domestic violence as "just a little family quarrel" because "the abuser may attack the officer." For example, in one year alone police in a single community responded to domestic violence incidents that resulted in 290 arrests. However, these same officers also suffered 397 injuries while making the arrests.

In addition, law-enforcement officers are often unable to effectively respond to the situation because of the victim's reaction to their presence at the scene.

> Frequently, deputies report seeing roles change in the victim's eyes when they arrive on the scene. The victim may see the deputy as the cause of the problem rather than the rescuer. The abusive husband or boyfriend is seen as the victim, and she sees herself as the rescuer. Sometimes the woman denies the abuse happened or refuses to press charges.

In these situations, "[t]he victim may be intimidated . . . and worried about how she will support herself and her family . . . ." Where the victim must press charges before the arrest can be made, officers cannot complete the arrest necessary to ensure the victim's safety. Thus, this argument contends that it is not feasible to expend so many man-hours to combat every domestic violence incident at the risk of injury and reduction in force, especially in circumstances where the victim sought to be "rescued" refuses to cooperate.

In response to these arguments, advocates demonstrate that statutes providing for mandatory arrest do not require the victim to press charges while the victim's abuser is present. This solution provides

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169. Finney, supra note 151, at II.
170. Lenderman, supra note 147, at 2.
171. Id. See also Finney, supra note 151, at II. It is important to note, however, that the report did not indicate the severity of the injuries or the frequency of comparable injuries that occurred in response to other types of crimes. See Lenderman, supra note 147, at 2.
172. Finney, supra note 151, at II.
173. Id. at II.
174. Finney, supra note 151, at II; Lenderman, supra note 147, at 2.
175. See, e.g., New Police Guidelines for Domestic Violence, supra note 142, at Regional News.
for "laws [that] require police officers to arrest batterers on the spot if there is probable cause. No longer must officers put the burden of accusation on an abused and frightened woman, asking her, in the presence of her batterer, 'Do you want to press charges?'" Thus, the victim's intimidation that creates the perceived "role reversal" may be alleviated to some extent by the enactment of mandatory arrest statutes.

A second criticism of these statutes questions their ability to prevent future attacks against victims. Recent studies have suggested that probable cause warrantless arrest statutes do not have a deterrent effect and may, in fact, accelerate the recurrence of domestic violence and encourage retaliatory abuse. The authors of the Minneapolis study, whose findings proclaimed that probable cause warrantless arrest statutes were in fact an adequate deterrent, have recently discovered that this is not always the case. In the short term, subsequent abuse is definitely deterred by an arrest: "if no arrest was made after apparent abuse, a domestic violence victim had a 7% chance of being battered again immediately after the police left the scene. If an arrest was made, the victim had only a 2% chance of being battered immediately when reunited with the offender."

Long-term deterrent effects are less often realized:

Just 60 days after the offense, the study found there is no difference between arrested and non-arrested offenders in their risk of repeat violence. And by the end of one year, arrests increased the rate of domestic violence by 44% among unemployed suspects and reduced it by 16% among employed suspects . . . . [The research concludes that] mandatory arrest laws favor people who are better off. Unemployed offenders, because of economic stresses, become more violent after arrest.

178. See *supra* Part II.
To counter the argument that arresting attackers often does more harm than good for the victims of domestic violence, advocates of the statutes suggest that just because the arrests do not provide a perfect and infallible deterrent is no reason to decide that they do not work.

There's deterrent, but also punishment . . . . We don't have people calling for the repeal of burglary laws because they don't have a deterrent effect. Why not arrest someone who has committed a crime? A crime is a crime is a crime. It should be treated the same in a home as it is on the street.181

Thus, advocates suggest that the certain punitive nature of these laws greatly outweighs their limited effectiveness in deterring domestic violence.

Finally, critics of probable cause warrantless arrest statutes oppose the arrest provisions because victims often become exploited by the judicial system. These statutes can be problematic where police must make mandatory "dual arrests," arresting both the abuser and the victim, without first having to determine who was the primary aggressor and whether or not one of the parties acted in self-defense.182 In these circumstances, "'[w]hat happens . . . is the direct opposite of what's intended . . . It's a process that has victims going through a re-victimization process.'"183 However, this situation may be remedied by providing victims with a "right to relief when the victim uses reasonable force in self-defense."184 Thus, the victim would not be powerless against the abuser, and would not be subsequently punished for attempts at self-protection.

C. Analysis

While these statutes have been strongly criticized for the reasons stated above, legislators, law-enforcement officials, and victims' advo-

181. Id.
182. Ross, supra note 142, at 7; Hart, supra note 20, at 89, 102.
183. Ross, supra note 142, at 7.
184. Spevak, New and Improved Domestic Violence Law, supra note 158, at 6.
icates adamantly declare that the most effective and preferred method of combatting domestic violence is through the arrest of the alleged abuser. Efforts have been made to address these enumerated concerns and to remedy the inevitable deficiencies lurking in these provisions. Irrespective of the potential for future retaliatory acts of violence, the proponents of probable cause warrantless arrest statutes continue to argue that society can curb domestic violence only by treating it as the violent crime that it really is.

V. CONCLUSION

Probable cause warrantless arrest statutes afford much greater protection to victims of domestic violence than traditional approaches requiring an arrest warrant or a law-enforcement officer’s personal observation of the offense. However, even this model is not perfect in its attempts to safeguard victims of domestic violence. In particular, the aspects of West Virginia’s probable cause warrantless arrest statute that merit the greatest attention are the constitutionality of a probable cause warrantless arrest provision and the potential for non-deterrence.

The constitutionality of a probable cause warrantless arrest statute has continuously been of primary importance to the West Virginia state legislature. While courts in other states have upheld the validity of such provisions, West Virginia courts have not yet determined the statute’s constitutionality. Nevertheless, preliminary research suggests that any constitutional challenge to such a provision would fail.

185. LERMAN, supra note 36, at 1; Suddes, supra note 141, at B8; Hart, supra note 20, at 87.
186. See, e.g., Hart, supra note 20, at 101-04.
187. See supra note 152. See also supra note 142.
188. LERMAN, supra note 36, at 1-2; Letter from Joan Zorza to Sue Julian & Diane Reese, supra note 20, at 3. See LeBlanc v. State, 382 So. 2d 299, 300 (Fla. 1980); State ex rel. Williams v. Marsh, 626 S.W.2d 223, 232 (Mo. 1982).
189. See W. VA. COALITION AGAINST DOMESTIC VIOLENCE, PROBABLE CAUSE ARREST, supra note 63, at 1 (noting that “[j]ustice permitting warrantless arrest is not unconstitution in West Virginia” (emphasis in original)); Letter from Franklin D. Cleckley to Sue Julian & Diane Reese, Feb. 8, 1994, supra note 118, at 1 (stating, “I see no constitutional problem with the bill you have put together”). See also supra text accompanying note 90.
In addition, one must consider the potential for non-deterrence given West Virginia's high rate of unemployment. Recent studies indicate that probable cause warrantless arrest statutes have a questionable deterrent effect in the prevention of subsequent episodes of domestic violence, particularly in circumstances involving unemployed abusers. Research suggests that "[i]n places . . . with [a] high rate of unemployment, a mandatory arrest policy is like throwing oil on the flames." One must determine, therefore, whether the probable cause warrantless arrest statute is prudent in light of West Virginia's propensity for unemployment. In July 1994, statistics revealed that West Virginia had an 8.7% unemployment rate, one of the highest in the United States. Given that "[u]nemployed offenders, because of economic stresses, become more violent after arrest" and that, one year after the offender had been arrested, "the rate of domestic violence [increased] by 44% among unemployed suspects," a probable cause warrantless arrest statute in a state with a high unemployment rate may not necessarily be the surest way to safeguard victims of domestic violence.

Despite West Virginia's socioeconomic status, however, critics urging the "unemployment perspective" fail to consider the real-life dynamics of domestic violence. Steadfast proponents of the probable cause warrantless arrest statute suggest that:

When batterers assault their victims subsequent to an arrest it is a misconception to assume that the assault is a direct result of the arrest rather than the responsibility and choice of the offender. Battering is not a single incident but a pattern of controlling behavior that escalates in frequency and severity over time. Faulting the arrest as the cause of subsequent violence exempts the perpetrator from accepting responsibility to end the long-term expected progression of violence.

190. See supra Part IV.B.  
191. Toth, supra note 46, at A5.  
193. Toth, supra note 46, at A5.  
194. Id. at A5.  
195. W. VA. COALITION AGAINST DOMESTIC VIOLENCE, QUESTIONS AND ANSWERS, supra note 132, at 2 (emphasis in original). See also W. VA. FAMILY PROTECTION ADVISORY BOARD, supra note 24, at 22-26 (describing the cycle of domestic violence that occurs
Hence, the probable cause warrantless arrest statutes should not escalate or contribute to the incidence of violence in battering relationships because recurrent violence is characteristic of such relationships.

Because the West Virginia probable cause warrantless arrest statute has been in effect for less than one year,\textsuperscript{196} data as to its usefulness in ensuring the safety and protection of domestic violence victims is unavailable. It is evident, however, that this statute is a vast improvement over the previous telephone authorization statute in its practical contributions toward combatting domestic violence.\textsuperscript{197}

West Virginia claims that it has recognized that "battering is a crime that will no longer be excused or tolerated."\textsuperscript{198} In order to live up to its promise to keep victims of domestic violence "safe in their homes,"\textsuperscript{199} West Virginia must ensure that the current probable cause warrantless arrest statute will be actively enforced. Only then will victims of domestic violence truly have a "Home Safe Home."\textsuperscript{200}

\textit{Toni L. Harvey}

\textsuperscript{196} See H.B. 4013 ("[p]assed March 2, 1994; in effect ninety days from passage") (effective May 31, 1994); see also W. VA. CODE § 48-2A-14 (Supp. 1994).

\textsuperscript{197} See supra Part III.C.3.

\textsuperscript{198} W. VA. CODE § 48-2A-1(b)(5) (Supp. 1994).


\textsuperscript{200} Dealing with Domestic Violence, supra note 144, at 20.