



# Emerging Issues in Victimization: The Impact of the *Clarke* Decision on Policing's Response to Victimization

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The Biennial Report on Victimization & Victim Services is a series of papers on the state of victimization, response to victimization, impacts of crime on victims, and victim services in Idaho. The project is funded by the Idaho Council on DV & Victim Assistance. For more information on the project, watch the introductory video at <https://www.boisestate.edu/sps-criminaljustice/victimization/> or contact Dr. Lisa Growette Bostaph at [lisabostaph@boisestate.edu](mailto:lisabostaph@boisestate.edu).



# Overview

Police response to domestic violence (DV) is an essential component to consider when assessing the effectiveness of interventions in DV, including addressing offender accountability and victim protection. The use of arrest in misdemeanor DV incidents has been a significant aspect of police response nationally and in Idaho for over 30 years and is part of The International Association of Chief of Police's 2019 Model Policy on DV (DV) response. Each policing agency (or in some cases state) sets their specific policies on police response to DV and the circumstances in which an arrest can be made. Various policies in place include mandatory arrest, preferred arrest, and arrest based on the officer's discretion (Hirschel, 2008).

The focus of most research on the use of warrantless arrest in DV has been on misdemeanor incidents likely due to the (1) majority of reported DV falls into this category, (2) felony level violence (which generally involves severe injury) does not require an officer to witness the event and thus arrest is more likely to occur, and (3) ethical concerns prevent experiments with randomized interventions in felony level violence. The Minneapolis DV Experiment was the first study to empirically assess the claim that arrest decreases the likelihood of subsequent violence in comparison to simple mediation and separation of parties. Only 13% of the arrested group committed repeat assaults compared to 26% of the suspects who were separated (Sherman & Berk, 1984). While a series of other studies conducted directly after the Minneapolis Experiment (the Spousal Abuse Replication Projects [SARP]) demonstrated conflicting results (e.g., Dunford et al., 1990), later, advanced analyses examining all of the data from these studies found an overall deterrent effect of arrest on future violence based on official sources (Garner & Maxwell, 2000). In addition, victims who received police intervention following their victimization by an intimate partner reported that arrest significantly reduced the frequency of new aggression by 30% (Maxwell et al., 2001). More recent secondary data analysis of two national crime victim surveys showed that the odds of revictimization for victims whose partners had been arrested were 43.2% less than those whose partners had not been arrested (Cho & Wilke, 2010). It is important to note, however, that the length of time for this deterrent effect has varied across studies (see Tauchen & Witte, 1995 & Miller, 2003). Yet, these studies demonstrate consistent, scientific evidence that arrest in misdemeanor DV incidents can significantly decrease future violence for some victims who choose to report and offers insight for its use as an effective policing strategy for DV.

On June 12, 2019, the Idaho Supreme Court issued a ruling in the *State of Idaho vs. Clarke* that the use of warrantless arrest in a misdemeanor battery (non-domestic) case was unconstitutional. In rendering its ruling, the Court determined that all uses of warrantless arrests in misdemeanor cases were unconstitutional, making Idaho the only state in the country unable to do so, and specifically noted its understanding of the effects of the ruling on DV incidents in Idaho. Thus, on that day, policing agencies in Idaho were immediately prevented from using arrest in these cases unless they either witnessed the crime or obtained a warrant, reversing decades of practice, standing policies in many policing agencies, as well as most POST academy training that officers and deputies had been provided. The loss of warrantless arrest also potentially posed problems for victim safety through both the removal of the suspect via arrest, the issuance of no contact orders prior to release, and the provision of victim services. Thus, as part of the Biennial Report on Victimization and Victim Services in Idaho, we sought to determine what, if any, effect *State v. Clarke* (2019) has had on policing and victim services response to DV in Idaho.

# The Study

The current study involves focus group interviews with policing leaders, officers, and victim services professionals in Idaho. Among other things, qualitative studies can capture stories about perspectives and experiences, help us understand how systems function and how they impact people, and identify unanticipated (and potentially anticipated) consequences (Patton, 2014). The first step in learning how agencies are impacted by, and responding to, a policy change is to ask them to describe their experiences.

In this document, 'agencies' refers to the primary agency being interviewed (policing or victim services); 'policing agency' refers to police departments and sheriffs' offices; and 'victim services' includes community-based victim advocacy organizations and victim witness units. We introduced the impending study at both the Idaho Chiefs of Police (ICOPA) and Idaho Sheriff Association state conferences in Fall 2019 and sent email announcements to victim service agencies through the Idaho Coalition Against Domestic & Sexual Violence and the Idaho Victim Witness Association. Emails were also sent to police chiefs, sheriffs, and victim services through their respective state associations asking for participants. Finally, upon indicating an interest in participating, one-on-one introductory emails were sent to individual chiefs, sheriffs, and victim services professionals.

Sixteen policing agencies (police departments or sheriffs' offices) and six victim service organizations (community-based or victim-witness) agreed to participate, totaling 22 separate interviews for this study (one interview per participating agency). Some victim service agencies were invited by the participating policing agency to join their interview; however they were not counted separately as a participating agency. When this occurred, victim service providers were specifically asked the questions regarding victim services, resulting in a higher total of victim service responses than there were participating victim service organizations. All of the interviews used a standard series of open-ended questions. Participants were asked to comment on (1) their DV policies pre- and post-*Clarke*, (2) how they were informed about the *Clarke* decision and their immediate reactions to it; (3) how they communicated this information to their officers; (4) how they addressed any DV calls that occurred at the time of, or just preceding, the ruling; (5) their current response to misdemeanor DV incidents; (6) challenges/barriers that have arisen due to this change in response; (7) what unanticipated positive outcomes for policing response, if any, have appeared due to this change in response; (8) if victim service response had changed post-*Clarke* and, if so, how it had changed; (9) challenges that have arisen due to this change in victim service response; (10) whether any new barriers for victims to receive services had appeared as a result of the changes in policing and/or victim service response; and (11) what, if any, positive outcomes for DV victims have occurred due to these changes.

Two researchers were both present for all group interview sessions and undertook the same roles for all interviews. One researcher led the interviews, while the other took detailed notes via a laptop of all responses (no audio recordings of interviews occurred), including quotations from participants. Those notes were reviewed for accuracy and all identifying information about the participants, their agencies, and locations were removed. We then conducted a content analysis across all 22 documented interviews to identify common themes in response to our interview questions and how frequently they appeared across interviews. These frequencies (the number of interviewees or agencies noting a specific response or category of response) are included with summaries of responses and direct quotes. Interviews were conducted on-site at each participating agency from December 2019 through March 2020. Due to the COVID pandemic, the last agency interview was conducted via Zoom. All participating agencies and individuals were given confidentiality in terms of their participation

and response, so agency and individual names were not attached to responses. Given the small number of policing and victim services agencies in some parts of Idaho, we will only be reporting aggregate level data. Comments shared in this document have been anonymized; direct quotes appear with double quotation marks, while paraphrases are notated with single quotation marks. The findings presented here are not representative of all agencies in the state, however they do present a wide range of views, experiences, and responses.

TABLE 1. AGENCIES/INTERVIEWS

Characteristic	N agencies	Characteristic	N Agencies
Judicial District <sup>1</sup>	21	Multiple agencies present	6
District 1	4	Other agencies present <sup>2</sup>	9
District 2	2	City attorney	2
District 3	4	Prosecuting attorney	2
District 4	5	Victim-witness unit	3
District 5	3	Other policing agency	1
District 6	2	Community DV services	1
District 7	1		
Agency Type <sup>3</sup>	22		
Police department	11		
Sheriff's office	4		
Statewide agency	1		
Victim witness unit <sup>4</sup>	1		
Community DV services	5		

## Participating Agencies

Our sample consisted of policing and victim services agencies across the state of Idaho (see Table 1). All judicial districts were represented by at least one agency. Half of those interviewed were police departments (50%) followed by community DV agencies (22.7%). A little more than half (59.1%) of the participating agencies were located outside of the Treasure

Valley. For police departments, 54.6% of agencies served populations of less than 50,000, while 25% of participating sheriffs' offices served less than 100,000 people. The 22 participating agencies were asked to include anyone from their agency (e.g., command staff, detectives, front line officers/deputies, victim witness units) that they believed would have information to share on how the Clarke decision affected response to DV incidents. These 22 interviews included representation from 31 different criminal justice and/or victim services agencies and 94 individuals as some policing agencies invited other stakeholders to their interviews with us (e.g., prosecutor, city attorney, or separate policing agency in their jurisdiction). While some interviews included multiple individuals and/or multiple agencies, all data were aggregated to the one policing or victim service agency with which we scheduled the focus group interview. Participating agencies invited stakeholders outside of their organization in only 27.3% of interviews and the most frequently included stakeholder was a city or prosecuting attorney (44%). The number of people in attendance ranged from 1 to 25, with an average of four people present. Most often, interviews involved two individuals from the participating agency but 54.5% of interviews included more than three people. The length of these interviews ranged from 45 minutes to two hours, depending on the number of individuals in attendance.

<sup>1</sup>One statewide agency participated

<sup>2</sup>Participated in primary agency interviews

<sup>3</sup>Primary agency interviews

<sup>4</sup> Three other victim witness units and one community DV agency participated in interviews but were invited by the primary policing agency. Their responses are included with the aggregated response for those interviews and the questions regarding victims and victim services from those interviews were specifically answered by them.

# The Results

## Immediate Response to the *Clarke* Decision

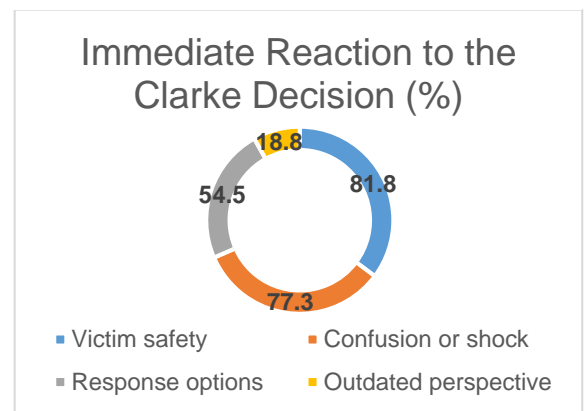
Participating agencies received news of the *Clarke* decision from a variety of sources. Most were informed by a city attorney (27.3%), prosecuting attorney (22.7%), or the news media (22.7%). Only three of all participating agencies indicated they had prior knowledge of the impending decision, and most appeared to be completely caught off guard ('It wasn't like anyone gave us a warning'; 'had no idea'). This lack of knowledge about *Clarke* as it made its way through the court system resulted in somewhat of a crisis upon hearing of the decision: "Everyone was in panic mode"; "When it hit, that whole day was crazy [hand gesture of bomb exploding]". Interviewees' immediate responses to the ruling were multi-faceted. Regardless of agency type, most expressed immediate concern for victims' safety (82%): "Made us think they forgot about the victims"; "This is not going to be helpful for victims"; and "Huge step back from protecting victims". Many (77%) reported feeling shocked and confused about the ruling: "When I read it, I didn't believe it. I had to read it 2 or 3 times to fully understand it"; "For other offenses it makes sense, but for DV, it doesn't"; and "Oh sh\*t". Others (55%) were worried about how policing agencies would be able to respond and spoke of it becoming more complicated or difficult, how warrantless arrest had been a significant tool for problem-solving in DV or in getting services to victims, and that the loss of it was "crippling": "Someone is going to get killed because we are losing a tool". A few agencies focused on the loss of warrantless arrest as a "huge step backwards", referring to what is generally considered a best practice in policing response to DV and has been for the past 30 years as discussed in the overview ("What year is it?").

As interviews occurred at least six months post-*Clarke*, over half of agencies were unsure whether or not there had been arrests the night preceding or the morning of the decision. For the 31% of policing agencies that had arrests during this time frame, chiefs/sheriffs reported apologizing to victims and prosecuting attorneys mentioned sending letters to defendants/defense attorneys notifying them of the decision. An attorney in one jurisdiction stated they had some suppression hearings due to the decision.

## Impact on DV Policies

See Figure 2 for the distribution of DV policies pre- and post-*Clarke* across all agencies. Policing agencies overwhelmingly (94%) mentioned arrest as the primary facet of their pre-*Clarke* DV response and taking the suspect into custody as the means of effecting an arrest. Phrases such as 'mandatory policy', 'physical arrest', and 'compelled to arrest' were often used as well as 'must takes', 'most cases', and 'rare case of no arrest' that established the frequency of arrest. And, 63% identified the need to establish probable cause ('if probable cause exists', 'if enough evidence'). About one-third reported officer discretion as part of their pre-*Clarke* policy ('everything was officer discretion', 'totality of circumstances') while 25% or less mentioned identifying a primary aggressor ('arrest primary aggressor', 'know who primary aggressor is') or connecting their policy to state code ('followed state law', 'crimes listed in state code').

FIGURE 1. CLARKE REACTIONS

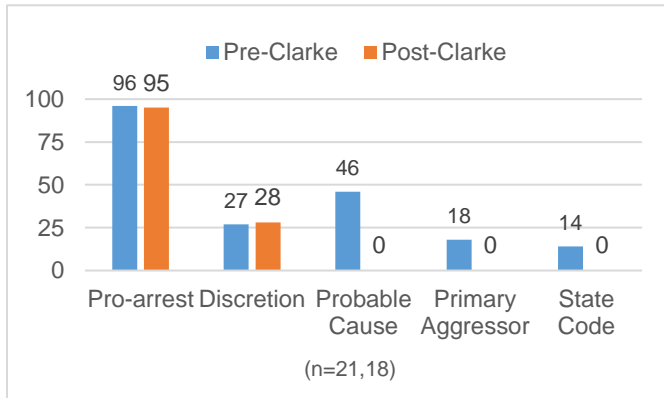




For those interviews where victim service agencies were the sole participants, we asked their perception of the pre-Clarke DV policy for the agency in their jurisdiction (which may or may not overlap with participating policing agencies). All of them reported a perceived singular focus on arrest pre-Clarke ('typically arrest'; 'encourage arrest'). Although, according to one-third of victim service agencies, that singular focus often resulted in victims or both parties being arrested (dual arrests): 'big problem with lack of identifying primary aggressor by officers'; 'usually someone got arrested'. This highlights that 67% of Treasure Valley policing agencies mentioned identifying primary aggressor as a focus of their pre-Clarke DV policies as opposed to none of the policing agencies from outside of the Treasure Valley.

However, post-Clarke, variation diminished in policing participants' perceptions of the new DV policies with most only mentioning arrest ('We weren't not going to take them to jail'; 'Don't release or make the victim unsafe') and officer discretion ("They want guidance"; 'Have a couple of options'). At the time of their interview, half of the policing agencies were using a directive with the rest working under an amended pre-Clarke or completely new formal policy. Approximately 44% had a directive or new policy in place that same day and 81% had something in place within a week. Sixty percent of agencies notified officers of the new directive/policy via

FIGURE 2. DV POLICIES PRE & POST CLARKE



email followed by roll call announcement (40%) with one agency each either holding a department-wide meeting or conducting one-on-one notifications. More than three-fourths of the agencies had conducted trainings on the new directive/policy with most using briefing or block trainings (80%) and a couple conducting department-wide trainings (20%). Only one-third of participating victim service agencies reported being aware of the post-Clarke DV policy in their service area.

Seventy-six percent of participating agencies (81% policing, 60% victim service) reported engaging in some kind of community education about the Clarke decision and/or their new directive/policy with a wide variety of methods used. This included stakeholder meetings (32%), followed by a press release (23%) and one-on-one meetings as needed (21%). Other methods included press releases or press conferences by the prosecutor, policing agency (14%) or together (reported by a single agency). Regardless of whether they proactively engaged in educating the community, all expressed conflicting perspectives on doing so. They acknowledged that proactive education offers an opportunity to reduce the likelihood of concerns or complaints, but recognized that in doing so they may also be educating people who are actively abusing their partners ("We have to be careful about what we are putting out [regarding suspects]") or that victims could misinterpret it and believe there was no reason to call for assistance ('need to tell victims we have other tools to help'). And, 48% of all participants reported receiving community reaction to the ruling. Of those, 60% mentioned that the community did not understand the effects of the Clarke decision on their response, while 30% characterized community reaction as "stunned" or "concerned" and one agency believed the community was simply not paying attention to the issue.

# Impact of *Clarke* on Current Policing Response

Interviewees were asked for their perspective on changes to policing responses to DV incidents since *Clarke* (Table 2). All participants identified some form of change in policing response. Over 60% of participating agencies reported perceived changes in both official and unofficial forms of police response with the most frequently mentioned changes being increases in citations, warrants, and felony arrests.

TABLE 2. PERCEIVED CHANGES IN POLICING RESPONSE

Official Response	% Agencies	Unofficial Response	% Agencies
Increased citations	40.9%	Increased victim services	27.3%
Increased warrants	36.4%	Increased discretion	27.3%
Increased felony arrests	36.4%	Decreased victim services	18.2%
Decreased misd. arrests	31.8%	Increased separation	9.1%
Increased prosecutor review	18.2%		
Increased citizen arrests	13.6%		
Decreased investigations	13.6%		
Decreased arrests	13.3%		
Decreased case follow up	9.1%		

Differences existed between the perceptions of policing agencies and victim services in two changes: decreased misdemeanor arrests and decreased victim services. 83% of victim service agencies mentioned a perceived decrease in arrests for misdemeanor DV compared to 13% of

policing agencies as well as a perceived decrease in officers' referrals to victim services (66.7% vs. 0%).

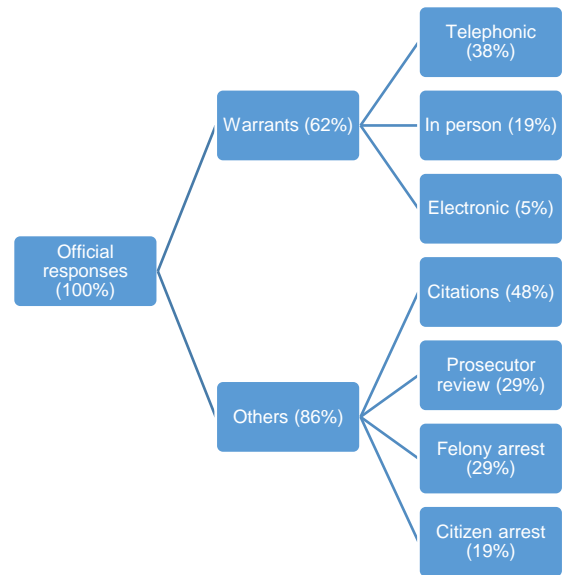
There may be several potential reasons for these significant differences. Only the six victim service agencies who had independent interviews were asked this question. Most of them are community-based, so they serve victims regardless of whether they report to policing agencies which could potentially lead to underestimating the prevalence of arrest that is occurring post-*Clarke*. Pre-*Clarke*, many of the victim service agencies we spoke with were contacted by policing agencies most often when an arrest had occurred; therefore, if they perceived a decrease in misdemeanor arrests for DV, they would likely also perceive a connected decrease in referrals from policing agencies. Policing agencies, on the other hand, may not perceive a change in victim service referrals if they are continuing to refer victims to victim witness units either in their agencies or prosecutors' offices, even if arrests decreased. One policing leader, weeks after our interview, received their arrest statistics and was shocked to see that misdemeanor arrests had drastically decreased from the previous year (the year prior to *Clarke*). Upon further digging, he realized that officers were not obtaining on-scene warrants as their directive had dictated. Thus, it is possible that the perceptions of command staff in our interviews may not have always aligned with on-scene officer response and, if arrests did decrease in locations where victim service agencies were more likely to receive referrals upon arrest in misdemeanor cases, their perception of a decrease in officer-initiated referrals could be accurate.

Since all agencies reported a perceived change in official forms of police response, we asked what method(s) were used to effect an official response to a DV incident. Figure 3 displays the distribution of official responses mentioned by all participating agencies. Agencies most frequently reported issuing citations for misdemeanor DV incidents which, while expeditious in on-scene response, presented a host of other problems. Interestingly, there was little overlap across the methods (e.g., agencies that used citations almost exclusively used citations). This included the use of warrants with agencies using electronic warrants also mentioning the use of in-person warrants (standard process). The largest overlap occurred



between agencies reporting the use of prosecutorial review and those using arrests under the felony statute with half of those using prosecutorial reviews also using felony arrests. A couple of significant differences emerged. Only 30% of policing agencies outside of the Treasure Valley mentioned the use of telephonic warrants (compared to 83% of those in the Treasure Valley) which corresponds to comments contending that these policing agencies do not have access to telephonic warrants through either their prosecutor or judge (see below in challenges). Similarly, none of the victim service agencies mentioned that policing agencies were using this method to effect arrests, even though half of these agencies were in locations within the Treasure Valley. In addition, given that victim service agencies are not generally on-scene at DV incidents with policing agencies and not contacted (if they are) until after an arrest has occurred, it is not surprising that they may be unaware of whether a warrant was used to effect the arrest.

FIGURE 3. OFFICIAL RESPONSES, ALL AGENCIES



As Figure 4 indicates, all of the participating agencies reported a number of different challenges for policing’s response to DV incidents post-Clarke with victim safety as the top concern: “puts people at greater risk”; ‘protection has been taken away from victims’; “Now we are waiting for it to turn more violent”. Concerns with felony arrests were wide-ranging from the definition of traumatic injury to focusing on under-identified felonies (e.g., attempted strangulations) to concerns about labeling someone a felon for a misdemeanor (“trying to fit a crime into what’s it’s not”; “there are major consequences for people with a felony arrest”). Over half of the agencies mentioned a problem with the responsiveness of either prosecutors or judges, typically around their inability to access them after hours (‘judge is adamant that he does not want to be woken up after hours’; ‘prosecutors don’t like being called’) or the length of time the prosecutor took to charge cases sent for review. Given the repetitive nature of DV, this can result in multiple cases with the same suspect waiting to be charged while the victim continues to be abused (‘had 10 violations by the time he appeared on charges’).

FIGURE 4. CHALLENGES TO POLICING RESPONSE

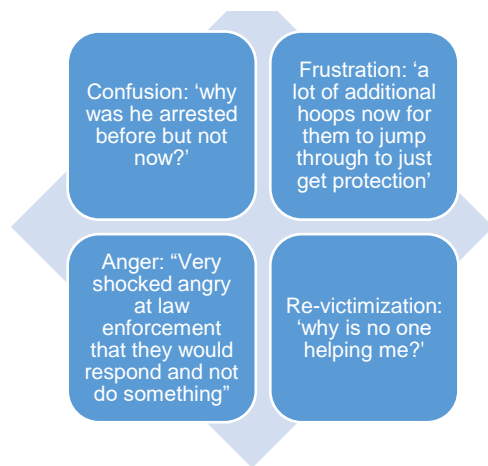
All agencies	Policing agencies	Victim service agencies
<ul style="list-style-type: none"> <li>• Victim safety 86%</li> <li>• Felony arrests 59%</li> <li>• CJS responsiveness 59%</li> <li>• Warrants 55%</li> <li>• Incident staffing 55%</li> <li>• (-) victim perception of policing 50%</li> <li>• Delayed consequences for suspect 41%</li> <li>• (-) negative community perception of policing 36%</li> <li>• Victim non-cooperation 36%</li> <li>• Detention during warrant process 32%</li> <li>• Officer liability 27%</li> <li>• Case processing 15%</li> </ul>	<ul style="list-style-type: none"> <li>• Victim safety 94%</li> <li>• Felony arrests 69%</li> <li>• Incident staffing 63%</li> <li>• CJS responsiveness 56%</li> <li>• (-) community perception of policing 50%</li> <li>• Warrants 50%</li> <li>• (-) victim perception of policing 44%</li> <li>• Detention during warrant process 44%</li> <li>• Officer liability 38%</li> <li>• Delayed consequence for suspect 38%</li> <li>• Victim non-cooperation 31%</li> <li>• Case processing 19%</li> </ul>	<ul style="list-style-type: none"> <li>• Victim safety 67%</li> <li>• CJS responsiveness 67%</li> <li>• Warrants 50%</li> <li>• Delayed consequence for suspect 50%</li> <li>• Victim non-cooperation 50%</li> <li>• Incident staffing 33%</li> </ul>

Challenges to policing response often interacted with each other, particularly for warrants where some agencies reported their judges would not do telephonic and/or electronic warrants on DV cases, would not find probable cause for a DV warrant, or that the process was so time-consuming that it resulted in staffing issues as officers needed to stay on scene to protect the victim while another officer worked on the warrant. On average, policing agencies reported an additional 45-90 minutes at DV incidents when attempting to obtain a

warrant. This lengthy process resulted in concerns surrounding what constitutes *detention*. Policing agencies using the warrant process reported a variety of practices including sitting in the house with the suspect and victim, putting the suspect in the squad car, and taking the suspect into headquarters under an investigative hold.

All of these challenges resulted in concerns about long term outcomes, primarily negative community and victim perception of policing agencies (“[Handing a citation] implies that we are not taking a decisive action in the interest of public safety.”), delayed consequences for suspects (reported time between citation issued and suspect appearance ranged from 24 hours to 2 months), and increased victim non-cooperation. Victim service agencies echoed these same concerns reporting that the changes to policing response are “hurting police-victim relationships” and that victims are refusing to call the police again as, without an arrest, victims are not protected by a no contact order and are left to face the ‘repercussions from the suspect for calling law enforcement’. Seventy percent of policing agencies outside the Treasure Valley reported concerns about negative community perceptions of policing compared to 17% inside the Treasure Valley, likely reflecting smaller, but more connected constituencies.

FIGURE 5. VICTIMS' REACTIONS TO POLICING RESPONSES POST-CLARKE



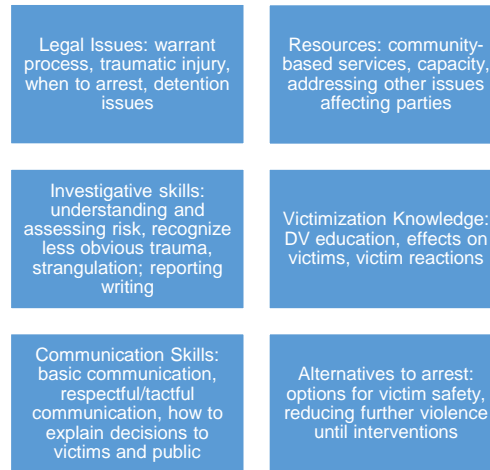
Over half of the policing focus groups reported information on suspects’ reactions: impatience with the lengthened response time (“[they] get agitated because they keep telling us ‘just take me to jail’”), acting emboldened (‘you can’t arrest me’), or surprise at not being arrested (‘assume jail, then it’s a bonus when they don’t’). More than 65% of all agencies reported hearing victims’ reactions to the changes and a greater variety of reactions (see Figure 5): confusion, frustration, anger, re-victimization by the system, the reinforcement of abusers’ frequent threats, and the effects of DV on victims (‘victims don’t question what we do’).

Change, while difficult, may also produce positive results. We asked participants if there were unexpected positive outcomes following the change in

policing response. Initially, most focus group participants scoffed at the notion of anything positive resulting from the *Clarke* decision; however, upon reflection, 77% were able to identify at least one positive outcome. These can be grouped into three categories: process-oriented, officer-oriented, and downstream-oriented. As a group, officer-oriented was the most frequently reported outcome category (71%) and included improvements in officers’ warrant skills, improvements in written reports/investigations, adaptability/flexibility, interest in DV training, and improved negotiation skills. But, more than 59% reported positive outcomes related to processes: a more efficient warrant process, improved relationship/coordination with other aspects of the criminal justice system, and/or a new/improved relationship/coordination with victim services. Downstream outcomes were less frequently reported (18%), appeared very location specific (given reporting by only one agency each), and included improved connection of victims to services, reduced jail overcrowding, and increased prosecutor case prep time due to fewer arrests.

Changing practices that have been standard for over two decades may result in an associated need for changes in officer training. Ninety-one percent of all participating agencies stated that POST academy and/or CEU training on DV should change post-Clarke with 43% mentioning both academy and CEU training and 33% only academy training. Multiple policing agencies mentioned that academy training has changed to address the loss of warrantless arrest, while others' comments included: "Any time you can give training to anything, it is critical to the community"; "[The] issue is untraining 20 years of experience"; and 'the decision is a game-changer

FIGURE 6. NECESSARY TRAINING TOPICS FOR POLICING AGENCIES

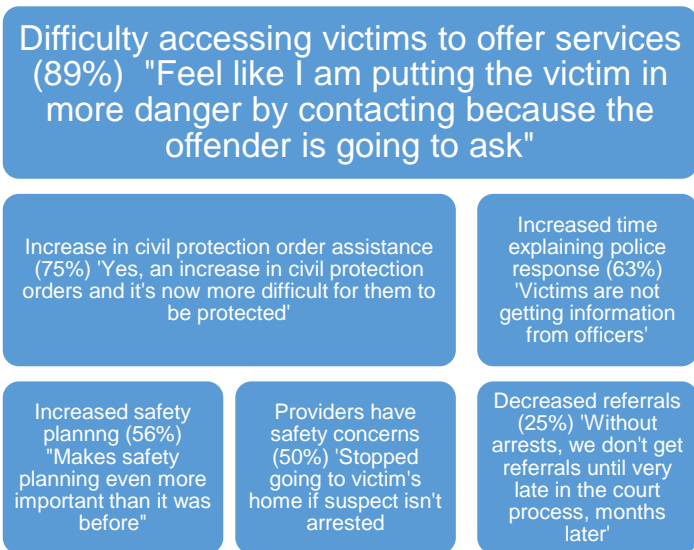


[in how police respond]'. Figure 6 lists the topical areas for training mentioned by participating agencies. Legal issues were the most frequently mentioned topical area for training (63%), followed by information on resources (53%), investigation skills (37%), knowledge of victimization and domestic and sexual violence (32%), communication skills (26%), and alternatives to arrest (21%). Here to, differences around training topics arose based on location with 50% of agencies outside of the Treasure Valley mentioning training on alternatives to arrest (compared to none of the Treasure Valley agencies) and knowledge of community-based resources (75% vs. 17%). Policing and victim services agencies differed with respect to the need for training on victimization and domestic and sexual violence with 80% of victim service agencies mentioning this training topic for officers (vs. 14% of policing agencies).

## Impact of Clarke on Current Victim Services Response

Participating victim services agencies included both community-based organizations and victim-witness units affiliated with policing agencies.

FIGURE 7. CHANGES IN VICTIM SERVICES RESPONSE



Policing agencies in our study fell into one of three groups: those with victim-witness units, those with community-based services in their jurisdiction, and those with no victim services at all. All victim service-related questions were asked in interviews where victim service agencies/units were present. Where appropriate, we offer insights from policing agencies without available victim services.

All victim service agencies reported changes to how they provide victim services due to the Clarke decision. Figure 7 displays the changes mentioned by community-based and

victim-witness services. The most drastic change for victim services post-*Clarke* involves gaining access to victims. Victim service agencies explained that, prior to *Clarke*, suspects were generally no longer present at victims' homes due to the use of warrantless arrest, thus providing an opportunity for victims to learn about available services that was safe for both victims (who are often threatened if they attempt to leave) and victim service providers (some of whom were responding directly to victims' homes). Post-*Clarke*, they stated that this is frequently not the case due to safety concerns for both the victim and the provider, resulting in limited access to services for victims in the aftermath of a DV incident or even in the subsequent days following an incident. Victim service providers outside of the Treasure Valley mentioned more concerns about their own safety than those working in the Treasure Valley (67% vs. 0%). In addition, compounding the difficulties in accessing victims, the decrease in misdemeanor DV arrests means delayed referrals from policing agencies or the court system for providers. Victim service providers in some parts of the state reported a decrease in shelter usage that they attributed to this lack of access and a substantial increase in the need for safety and/or exit planning with victims who cannot leave with significantly more community-based agencies reporting increased safety planning than victim witness units (83% vs. 0%). Where pre-*Clarke* the court would issue a no contact order prior to the suspect's release in order to protect the victim, post-*Clarke* that is no longer an option in many misdemeanor cases because no arrest is occurring. This has led to perceived increases in providing assistance in obtaining a protection order through the civil court system among our participating agencies. Victim service providers also mentioned increased time spent explaining the changes in policing response that victims are experiencing and why they now need to take additional steps to obtain protection and services.

Victim services providers reported numerous barriers to victims accessing services in the wake of *Clarke* as did policing agencies without victim-witness units present at the interviews or victim services at all in their jurisdictions. Figure 8 provides the frequency of mentioning each listed barrier by group. 82% of participating agencies were asked about barriers to victims receiving services post-*Clarke* and 94% of those identified at least one barrier. While similar themes appeared across all interviews, the frequency with which they were mentioned differed by agency type. Victim services organizations most frequently mentioned the increased safety risks faced by victims who attempt to access services. Pre-*Clarke*, the 24 hours after police intervention was often the safest and most expedient period of time for victims to access services due to the suspect's arrest and the court's imposition of a no contact order. This is likely why suspect interference with service provision was the second most frequently mentioned barrier for victims. These risks have increased post-*Clarke* as suspects in misdemeanor DV incidents are now less likely to be arrested and more likely to remain in the home with victims or be able to gain access to them after police intervention. Post-*Clarke*, as participants explained, the suspect's continued unfettered access to the victim, either in the home or the community, allows a continuation of the coercive control, intimidation, and threats inherent in DV. This, at a minimum, makes it harder for victims to obtain services and at the most completely prevents it. In turn, all of the barriers (including child care, transportation, and financial) that previously made it difficult for victims to access services when the suspect had been arrested and/or a no contact order was in place are now exacerbated because of the suspect's continued presence.

FIGURE 8. BARRIERS TO VICTIM SERVICES

All agencies	Policing agencies w/o victim services present	All victim services agencies present
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Suspect interference	<input type="checkbox"/> Not enough victim services staffing	<input type="checkbox"/> Increased safety risks for victims*
<input type="checkbox"/> Increased safety risks for victims	<input type="checkbox"/> Suspect interference	<input type="checkbox"/> Suspect interference
<input type="checkbox"/> Not enough victim services staffing	<input type="checkbox"/> Lack/Not enough victim services resources	<input type="checkbox"/> Exacerbates existing barriers*
<input type="checkbox"/> Delayed response to victims	<input type="checkbox"/> Delayed response Disproportionately impacting marginalized victims	<input type="checkbox"/> Delayed response to victims
<input type="checkbox"/> Exacerbates existing barriers		<input type="checkbox"/> Ineffectiveness of CPOs*
<input type="checkbox"/> Lack/Not enough victim services resources		<input type="checkbox"/> Officers not providing resources to victims
<input type="checkbox"/> Ineffectiveness of CPOs		<input type="checkbox"/> Not enough victim services staffing
<input type="checkbox"/> Officers not providing resources to victims		<input type="checkbox"/> Lack/Not enough victim services resources
<input type="checkbox"/> Lack of coordination across agencies		<input type="checkbox"/> Lack of coordination across agencies

\*DIFFERENCE FROM POLICING AGENCIES

As previously mentioned, for many victim services providers, the arrest of a DV suspect often resulted in their notification that a victim was in need of services. Half of the victim service organizations interviewed reported that, as arrests have declined due to *Clarke*, so has their notification about the need for victim services, resulting in extended delays in time to victim contact.

FIGURE 9. VICTIM SERVICES NEEDS

<p>"It's horrifying. They are not going to get a no contact order now"</p> <p>~Victim-witness coordinator</p>	<p>"With all that's going on for victims to add another level of burden without giving them more help is indescribable"</p> <p>~Community-based advocate</p>
<p>"Where is the validity of the [civil] protection order now?"</p> <p>~Community-based advocate</p>	<p>"We don't have the shelter space that the Treasure Valley has."~Police chief</p> <p>"Only have one victim-witness coordinator in the whole county"~Police chief</p>

Even if victims are able, in the wake of trauma, to overcome these barriers and obtain a civil protection order, both victim services and policing agencies commented that *Clarke* has rendered it somewhat moot as the violation of the order is a misdemeanor and, unless the violation occurs in the presence of an officer, an arrest cannot be made. At best, an officer is able to issue a citation, but the wait time for court appearances averaged 14 days from the issuance. At worst, the officer can send the case to the prosecutor for charging, but some policing agencies reported wait times for court appearances of up to two months.

This means the suspect is in the community and able to continue to violate the order (and receive multiple citations) for 14-60 days, placing the victim at increased risk of harm and again impacting the delivery of victim services. Figure 9 provides some of the comments offered by victim service providers about these challenges, barriers, and needs.

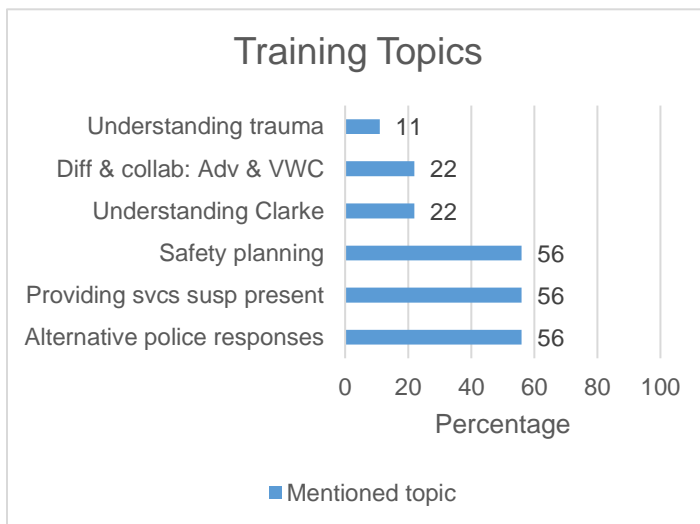
For policing agencies without victim-witness units present at the interview or those without victim services at all, it is not surprising that the most frequently mentioned barriers concerned victim services staffing and a lack of victim services resources in their jurisdictions. Most of these agencies reported only one victim-witness coordinator for the entire county who was most likely to be located within the prosecutors' office and unavailable at the time of the incident, resulting in a delayed response to the victim. These agencies also recognized the difficulty that suspects' continued presence, post-*Clarke*, presents for victims to receive services



and the disproportionate impact on marginalized victims (refugees, undocumented, or people in poverty) who often have limited to no means of leaving without assistance.

Only 30% of victim services agencies identified at least one positive outcome for victims or victim services in the wake of the *Clarke* decision which were fairly specific to their location. Two agencies reported a better collaborative effort with the court system with one of these agencies also reporting an improved relationship with patrol officers (“bonding with officers because they feel powerless but our hands have always been tied”). One agency mentioned that more victims were using shelter services than pre-*Clarke*, while another agency commented on the increase in victims seeking civil protection orders, even though the violation of such orders is a misdemeanor and therefore falls under the *Clarke* ruling preventing arrest.

FIGURE 10. VICTIM SERVICE TRAINING



As with policing agencies, we asked victim services organizations if they believed additional training was needed in light of the problems due to *Clarke*. All of the victim services organizations agreed that additional training was needed and offered a variety of topical areas (see Figure 10). Safety planning, how to provide services to victims when suspects are still present in the home, and the alternative responses available to policing agencies were all mentioned by over half of the victim service agencies. Community-based victim services (who serve victims regardless of their reporting to the police) more often mentioned the need for training

on how to safely and effectively provide services to victims when the suspect is present (80% vs. 0%) and safety/exit planning with victims who are still residing with or in a relationship with the suspect than victim-witness coordinators (who serve victims who report to the police, 80% vs. 0%). Twenty-two percent of victim service agencies suggested training in understanding the *Clarke* decision and its effects as well as the differences between and how to collaborate across community-based advocates and victim-witness coordinators. Given their location within policing agencies, victim-witness coordinators more frequently mentioned training specific to the effects of the *Clarke* decision on police response (67% vs. 0%).

## Study Recommendations

After reviewing all of the data from our focus group interviews, we formulated several recommendations for improving policing and victim service response to DV incidents and victims post-*Clarke*. Our recommendations are grouped as follows: victim services response, policing response, and cross-agency response.

### Recommendations for Victim Service Response

Based upon our focus group interviews, the primary issue emanating from the loss of warrantless arrest in misdemeanor DV by the *Clarke* decision is the safety of victims. However,



at the same time, we must acknowledge that not all victims seek assistance through policing agencies for a variety of reasons. While reporting levels in Idaho are unknown, nationally, the reporting rate for DV in 2018 was at 45% for incidents involving intimate partners or former intimate partners. In order to adequately address safety for DV victims who come in contact with police, we must address safety for all DV victims.

**Recommendation #1:** Invest in community-based victim services statewide to include new resources in areas without victim services and increased staffing, emergency housing and financial assistance (to include child care, transportation, and other financial needs), counseling, and legal assistance (among others needed resources).

**Recommendation #2:** Invest in victim-witness units within policing agencies to include new units in jurisdictions without them as well as increased staffing in existing units to allow for on-scene response with officers on DV calls.

**Recommendation #3:** In locations where population numbers and/or prevalence rates do not justify funding both community-based victim services and victim-witness units, funding priority should be given to community-based agencies who provide services to victims regardless of contact with the criminal justice system.

**Recommendation #4:** When victims have contact with the criminal justice system (either through their own reporting of an incident or separate party reporting), on-scene response by victim services should be considered the standard practice of care.

**Recommendation #5:** Invest in twice yearly basic victim services trainings that include safely accessing and providing services to victims when suspect presence and/or interference is likely. Trainings should be held at different locations across the state as well as remotely to broaden access and reduce travel costs for victim services agencies statewide as well as standardized basic training for all victim services professionals.

This group of five recommendations addresses multiple challenges and barriers to victims receiving services that were reported in our interviews with both policing and victim services agencies across the state. Community-based victim advocates and policing-based victim-witness coordinators each serve important functions in responding to DV. Victim-witness coordinators are specifically trained in the functions of the criminal justice system, guide victims whose cases have been reported to police through the system as their case progresses, and serve as the point person to ensure that victims' constitutional rights are afforded to them until their case concludes. Community-based advocates serve all DV victims, regardless of reporting to police, provide them access to and/or assistance with non-criminal justice related needs such as civil protection orders, emergency housing, and counseling, and do so for as long as needed. Victims of crime deserve access to both forms of victim services, given the variability in reporting rates to policing agencies as well as in criminal justice outcomes when they do report.

Almost all of the dedicated funding for victim services statewide comes from federal sources. This necessary investment in victim services will require dedicated state funding from the legislature. This is not a new need or problem; it was highlighted in multiple recommendations in the 2015 crime victims' needs assessment in Idaho (Bostaph et al., 2015), of which numerous references have been made in legislative discussions surrounding victims' needs and rights. That same assessment found that, although victims have rights in Idaho, the provision of those rights depends on where they reside in the state, resulting in inequitable access to what are constitutional rights in this state. As of 2020, no such dedicated line item of state funding has been provided for victim services in Idaho.

# Recommendations for Policing Response

Policing agencies reported a variety of efforts to address the loss of warrantless arrest brought about by the *Clarke* decision. Based upon what appeared to be working well, to the extent possible, and the challenges mentioned by participating agencies, we make the following eight recommendations concerning police response to DV incidents.

**Recommendation #6:** Pass a constitutional amendment to reinstate the option of warrantless arrest for select crimes, based on their propensity for future physical harm.

**Recommendation #7:** The use of on-scene assessment tools which provide information on possible level of dangerousness and/or lethality predictors should be used to assist in determining the appropriate police response and considered standard practice across all policing agencies.

**Recommendation #8:** Mandate telephonic and electronic warrant availability across state.

**Recommendation #9:** Institute a telephonic and electronic emergency civil protection order process for policing agencies.

**Recommendation #10:** When citations are issued for DV and/or related crimes, a 24-hour window of appearance should be considered standard practice.

**Recommendation #11:** When DV cases are referred to prosecutors for review, they should be triaged or prioritized to reduce delays in charging decisions.

**Recommendation #12:** Police response to DV incidents should include, as a standard of practice, connecting victims to services at the scene as opposed to handing out materials concerning available services.

**Recommendation #13:** Invest in mandatory POST and CEU training on DV to address the use of on-scene risk assessments, alternatives for police response, investigatory skills specific to DV, and trauma-focused approaches.

Based on our interviews with participating agencies from across the state, it became clear that there is still a demonstrated need for warrantless arrest in misdemeanor DV and violation of protection order cases. Scientific evidence has existed for decades and across multiple studies that arrest in misdemeanor DV cases reduces the likelihood of future DV (Garner & Maxwell, 2000). This loss has the potential to negatively impact the safety of victims who report and their families, decreasing their access to victim services, and eroding their fragile trust in the criminal justice system. Policing agencies have always exercised discretion in their response to DV cases and reinstating warrantless arrest does not equate to a mandatory arrest policy for all policing agencies in Idaho. Regardless of what efforts are taken to address *Clarke*, our data point to several other recommendations for policing practices.

While the Idaho Supreme Court put in place procedures for obtaining telephonic and electronic warrants in misdemeanor DV incidents, use of these tools was rare across participating agencies some of which was reported to be due to barriers in accessing judges while others were due to the lengthy process. Agencies reported that the process to obtain a mental health hold on an individual (which likely does not involve an act of violence) was more streamlined and less arduous than the process to obtain a warrant to arrest someone alleged to have committed an act of violence. Either way, important options such as these should be available to any policing agency regardless of where they are in the state, otherwise their utility as a valid policing option is questionable.

Yet, if these issues were addressed, we see a different promise in the Court's telephonic and electronic warrant process that could have demonstrable impacts on victim safety for those

who report and arrest is not an option or the best option: a telephonic or electronic ex parte civil protection order. Ex parte civil protection orders require an affidavit by the victim about the abuse, review by a judge, go into effect upon service of the suspect, and generally are in effect for 14 days when a hearing for a permanent order is held. During the COVID pandemic, the Court allowed for remote submission of ex parte requests due to the inaccessibility of courthouses. We strongly recommend that the Court investigate the use of the remote warrant process combined with their remote CPO process for ex parte civil protection orders, initiated by a victim and assisted by officers from the scene of a DV incident, which would provide for the removal of the suspect, allow the victim and family to remain in the home, and give victims an opportunity for safer access to services.

While the issuance of a citation is a recommended practice from the Presidential Task Force on 21<sup>st</sup> Century Policing as a “least harm” response in “minor infractions”, it is only recommended for “nonviolent” misdemeanors (IACP, 2016). Domestic violence is not considered a nonviolent crime and we recommend that associated violations of civil protection orders should not be classified as nonviolent due to their propensity for future violence (see Kingsnorth, 2006 as a predictor of re-arrest for intimate partner violence). In addition, the use of citations in lieu of arrest has not yet been scientifically evaluated and, in and of itself, does not address the victim’s safety risk at the time of the incident. However, given the limited options posed by *Clarke*, one participating agency, in conjunction with their prosecutor, has put in place a response with citations that we believe has promise: 24 hour appearance citations and prioritized prosecutorial review of DV cases. The speedy appearance time does reduce the delay in the possible issuance of a no contact order by the criminal court as well as the delay in creating safer access to victim services. Triaging and prioritizing DV cases for charging has a similar effect: reducing what has been reported in some communities to be up to a two month delay in charging. This process could be especially helpful in violations of civil protection orders where expediency is of utmost importance to avoid some of the most troubling cases shared with us by policing agencies. We believe these two practices together could provide the foundations of a best practice in the use of citations and prosecutorial review and an opportunity to scientifically evaluate its effects.

Underpinning all of these recommendations concerning various needed options for police response is the use of available validated tools to assess dangerousness. On-scene tools to assess potential dangerousness in DV incidents have been used by many Idaho policing agencies for a number of years (e.g., Idaho Risk Assessment of Dangerousness). Consistent use of these tools can provide valuable information in deciding which form of police response may best fit the situation based on the perception of risk for dangerousness and/or lethality. Triaging police response by risk to the victim allows for a more efficient use of policing resources, saving the most formalized response (arrest or warrant) for those at the highest risk and opens up other avenues for police intervention, such as the on-scene ex parte civil protection order recommendation combined with the use of citations for elevated risk, and the use of prosecutorial review for standard level of risk (recognizing that there is no such thing as no risk or low risk in DV situations).

The U.S. Department of Justice (2015) identified officers’ connecting victims of DV to appropriate services as a best practice in policing response to DV (and sexual assault and stalking). Connecting victims to services involves putting the victim in direct contact with victim services on-scene as opposed to providing an information packet or pamphlet. Considering the majority of Idaho crime victims are made aware of the availability of services via interactions with the police (Bostaph et al., 2015), officers play a critical role in connecting victims to help and supportive services. Yet, in a recent study conducted in Idaho, over 90% of officers did not connect victims to services at that initial point of contact, other than to provide them with information on how to contact services (Bostaph et al., 2019). Given the many ways that DV

impacts a victim's life (and the lives of victims' children and family) as well as the threatening and coercive nature of this crime, connecting victims to supportive services, as well as culturally appropriate ones, in a timely manner is paramount to both the victim's safety and possibly to future victim cooperation.

Given the sea change in police response to DV in Idaho post-*Clarke*, a majority of participating agencies identified a need for changes and/or expansion of training at POST and in continuing education on policing response to DV. Given the breadth of the needed topical areas identified in our interviews (and our prior recommendations), this will require state financial investment in training for policing agencies in Idaho. Relegating the responsibility of increased funding to cities and/or counties will likely result in inequitable access to education and training for policing agencies due to vast differences across the state in population, budgets, and tax bases. This would undoubtedly maintain the current status quo of differential access to response options for policing agencies and the citizens they serve. To expect officers and deputies to provide efficient and effective services to Idahoans that prioritize victim and community safety as well as procedural justice without the necessary education and training underpinning those services is tantamount to accepting little to no real change to occur.

## Recommendations for Cross-Agency Response

Policing and victim service agencies made multiple comments concerning challenges and barriers to both policing and victim services responses involving the lack of or problematic collaborations or relationships with criminal justice system partners. Given this information, we have made one recommendation that we believe could address many of these issues.

**Recommendation #14:** Establish coordinated community response teams or task forces in all counties.

One clear observation from our interviews in and visits to cities and towns across Idaho is that locations with established relationships and coordination across all victim services (community-based and victim-witness) and the various components of the criminal justice system were better prepared to deal with the challenges that *Clarke* has posed for DV incidents. Coordinated community response (CCR) teams/task forces are not a new concept and have been in existence in Idaho for a number of years. However, over the past few years, some CCRs/task forces have ceased to function and there appears to be a decline in the implementation of new ones in Idaho. DV is a multi-faceted problem requiring a multi-faceted response which, in turn, necessitates established systems of coordination and collaboration; this is the exact purpose of CCRs/task forces. Based on the reports from both policing and victim service agencies of a lack of or problematic communication and collaborations across and within victim services and components of the criminal justice system, we recommend a renewed effort among counties to establish CCRs/task forces that bring together all victim services, social services, education, policing, courts, and corrections agencies.

## Study Conclusions

In June 2019, the Idaho Supreme Court ruled in *State of Idaho v. Clarke* that warrantless arrest in misdemeanor crimes was unconstitutional, effectively ending 30 years of practice in policing response to DV. As the only state in the country without this option of warrantless arrest for DV, there were few, if any, evidence-based practices to model. The results of our interviews with policing and victim service agencies demonstrate the impact, mostly negative, of that ruling. We

hope the recommendations emanating from this study provide some framework for improving victim safety, access to victim services, and police response.

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