

a series of briefs on

## **CRIMINAL JUSTICE ISSUES FOR ARIZONA**

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Issue 5

### **RISK MANAGEMENT: ASSESSING DOMESTIC VIOLENCE SUSPECTS ARRESTED IN PHOENIX**

#### **INTRODUCTION**

Domestic violence (DV) is a major social problem in Arizona and one of the state's most frequently reported violent crimes.<sup>1</sup> The Phoenix Police Department, for example, cites DV as its most common violence-related 911 call. Many Arizona misdemeanor<sup>2</sup> prosecutors and judges (the vast majority of DV cases are misdemeanors) describe themselves as overwhelmed by the volume of DV cases. It's an offense that endangers many Arizonans, degrades quality of life for many others, disrupts families, traumatizes children, and places heavy demands upon criminal justice and social service agencies.

Yet significant gaps remain in our knowledge of the frequency of DV incidents, the types of offenses, the characteristics of offenders, and other key factors. In addition, practitioners and researchers continue to refine risk-assessment techniques that will enable them to better predict which DV offenders pose greater risks of repeating their crimes or committing more serious ones. This report touches on both of these issues.

Phoenix Municipal Court is Arizona's largest limited-jurisdiction court and is among the top 10 busiest municipal courts in the nation. It handles cases ranging from minor traffic violations to class 1 misdemeanors carrying a maximum penalty of six months in jail and a \$2,500 fine. Phoenix Municipal Court processes the vast majority of DV cases occurring in Phoenix. A key decision point in that process is determining the conditions under which an arrested individual—still presumed innocent—may be released from jail pending the next stage in his/her case. To assist judges and other court staff in making this decision, the court<sup>3</sup> in 2005 began administering a 12-point questionnaire designed to help predict each offender's risk of reoffending after pre-trial release. From May 2005 until December 2008<sup>4</sup> court staff applied the questionnaire to individuals arrested in Phoenix for misdemeanor DV, and assigned each a "risk score."

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<sup>1</sup> Domestic violence is not a separate crime in Arizona (except for aggravated domestic violence), but refers to any of nearly two dozen crimes when committed between people related by blood, marriage, household residence or a child in common. See A.R.S. 13-3601.

<sup>2</sup> A felony is typically a crime punishable by a year or more in prison. A misdemeanor is a lesser offense punishable by up to a year in jail.

<sup>3</sup> The screening was done by the Maricopa County Adult Probation Pretrial Services Division on contract with Phoenix Municipal Court.

<sup>4</sup> The screening and supervision of misdemeanor DV offenders were discontinued for financial reasons.

The resulting dataset, obtained from the Pre-trial Services Division of the Maricopa County Adult Probation Department, consists of 6,842 risk assessments of DV suspects interviewed between July 2006 and June 2008. As such, it provides demographic and offense-related information on a large group of arrested misdemeanor DV offenders and offenses processed over two years in a metropolitan municipal court. It also shows what percentages of offenders were rated as high, medium, low and lowest risk for reoffending based upon a widely used risk-assessment questionnaire. These data should be useful in advancing our knowledge about DV offenses and offenders.

## THE RISK-ASSESSMENT INSTRUMENT

The screening questionnaire used by the court was the Domestic Violence Screening Instrument (DVSI), a widely used risk-assessment instrument that has been validated<sup>5</sup> by more than one study. The DVSI<sup>6</sup> consists of 12 questions asked of DV suspects covering such issues as prior criminal history, past drug/alcohol treatment, and employment status, as well as details about the current offense. The suspect’s resulting score is used to classify him/her as lowest, low, medium, or high risk. This assessment, together with the police report on the current offense and a criminal history check, are used to recommend to court hearing officers what, if any, conditions should be set for the release of the suspect pending trial. The hearing officers may then follow, modify, or disregard the recommendation.

**Table 1. Questionnaire Scoring Protocol and Release Options**

Score	Default Release Option
0	Release on “own recognizance” (OR); no bond
1-8	Release under supervision; no bond
9-10	Release under supervision with bond
11 and higher	Bond alone*

\*Bond alone was recommended for highest-risk suspects who were considered ineligible for supervision; it was expected that the bond would be a high one.  
Source: Morrison Institute for Public Policy, Arizona State University, 2009.

## THE DATABASE

Entries in the database were organized by criminal charges, which totaled 7,585. However, individual suspects can carry more than one charge. The data were thus stripped of multiple charges involving the same suspect—a total of 743 charges—leaving each suspect with one charge for a new total of 6,842 cases. In addition, 2,899 cases, or about 43% of the total, were dismissed immediately—or “scratched”—by prosecutors, usually because they felt the case was too weak to proceed with or because the necessary evidence (e.g., police reports) were not available; criminal suspects must be charged or released within 48 hours after arrest. In many instances, cases that are dismissed in this manner are taken up again later.<sup>7</sup> Removing the “scratched” cases left 3,943 suspects who were evaluated by risk-scoring for release on bond. It’s important to note that, because in fact some cases were “scratched” before the risk-assessment process and some after, the total cases (n) displayed in some of the following tables will vary.

**Table 2. Characteristics of the Database**

Total charges	7,585
Total suspects	6,842
Scratched suspects	2,899
Remaining suspects	3,943

Source: Morrison Institute for Public Policy, Arizona State University, 2009.

<sup>5</sup> A risk-assessment questionnaire is “validated” when a review of its predictions and of the actual outcomes of cases show that it has been sufficiently accurate in the past.

<sup>6</sup> A copy of the questionnaire is included in this report.

<sup>7</sup> The issue of “scratches” is discussed further on page 7.

## OFFENSE/OFFENDER INFORMATION

**Offense.** As noted above, Arizona statutes contain no separate crime of “domestic violence” except for the crime of “aggravated” (i.e., repeated) domestic violence. Instead, police and prosecutors add the domestic violence notation to crimes—ranging from assault to intimidation—that are alleged to have occurred between persons meeting the relationship requirements of the law.<sup>8</sup> The jail database lists assault as by far the most commonly charged offense, accounting for 71% of the suspects; this outcome is similar to that in other research. Next was criminal damage (defacing or destroying property) at 18%, followed by disorderly conduct at 5% and interference with a judicial proceeding (usually related to orders of protection) at 4%. The remaining 2% of the charges included endangerment, threatening and intimidating, unlawful imprisonment, and others.

**Gender.** Most people likely envision domestic violence in terms of male perpetrators and female victims, and the jail database shows that men (80%) far outnumber women as suspects. These findings are also similar to other research.

**Age.** Suspects’ ages ranged from 17 to 78, with an average of 32 and a median of 30. The majority fell between 20 and 40, which is roughly congruent with typical age ranges for other violent crimes.

### Suspects’ Responses and Scores

Table 6 presents a variety of “yes” answers because different questions offered different response options to the suspect. The data offer several points:

- Many DV suspects have criminal records; 41% had prior convictions for non-DV crimes, 42% had been arrested for a violent crime—25% two or more times—and 13% were on probation or parole at the time of the offense.
- One-fourth of suspects had reportedly separated from the victim within six months of the incident.
- Children were present during the DV offense in 42% of the cases.
- One of every five suspects had already been through a DV treatment program.
- Thirty percent of these suspects had undergone past drug/alcohol treatment.
- The use of a weapon was relatively rare, as it was reported in only 12% of cases. It should be noted, however, that use of a weapon in a crime usually results in a felony charge, not the misdemeanor offenses contained in this database.

Table 3. Charge at Arrest\*

Charge	Percent	Frequency
Assault	71%	3,672
Criminal damage	18%	957
Disorderly conduct	5%	264
Interference w/ judicial proceeding	4%	231
Other	2%	9

n=5,208

\* Only the first listed charge was selected for each suspect  
Source: Morrison Institute for Public Policy, Arizona State University, 2009.

Table 4. Gender of DV Defendants

Gender	Percent	Frequency
Male	80%	3,824
Female	20%	951

n=4,775

Source: Morrison Institute for Public Policy, Arizona State University, 2009.

Table 5. Age at Arrest

Age	Percent	Frequency
19 and younger	7%	473
20-29	40%	2,711
30-39	30%	2,013
40-49	18%	1,220
50 and older	6%	371

n=6,788

Source: Morrison Institute for Public Policy, Arizona State University, 2009.

<sup>8</sup> In June 2009, the Arizona Legislature passed a bill, later signed by Gov. Jan Brewer, expanding the qualifying relationships to include a current or previous romantic or sexual relationship.

**Table 6. Answers to Risk-Assessment Questionnaire**

Question	No & Unknown	Yes					
		Total Yes	One (once)	Two (twice) or more	Past Offense	Current Offense	Past & Current Offense
Was there an OP* against suspect at time of offense	94%	6%					
Had suspect violated past OPs	92%	8%			3%	4%	1%
Was an object used as weapon	89%	12%			8%	3%	1%
Was suspect on community supervision at time	87%	13%					
Had suspect had past DV OPs	84%	17%	14%	3%			
Had suspect had prior DV treatment	79%	21%	18%	3%			
Had suspect & victim separated w/i 6 months	76%	24%					
Had suspect had prior drug/ alcohol treatment	71%	29%	23%	6%			
Had suspect had prior non-DV convictions	59%	41%	21%	20%			
Had suspect had prior arrests for assault, harassment, or threatening.	58%	42%	17%	25%			
Were children present at DV incident	58%	42%			1%	40%	1%
Was suspect employed	34%	66%					

\* OP stands for order of protection  
 Source: Morrison Institute for Public Policy, Arizona State University, 2009.

As shown in Table 7, more than half of the suspects scored between one and 8 points on the risk-assessment questionnaire, which indicates a low risk of reoffending after release from jail. The second highest percentage, 26%, scored even lower, essentially registering no risk. However, 12% of the suspects, just more than one in 10, scored in the ranges that indicate medium or high risk.

Point Scores	Percent
0	26%
1-8	62%
9-10	6%
11 and up	6%

N=5,763  
 Source: Morrison Institute for Public Policy, Arizona State University, 2009.

Following completion of the questionnaire and checks into a suspect's community ties, work history, and educational and criminal history, the court interviewer arrives at a risk score and recommends that the suspect be granted one of four release conditions: release on his/her own recognizance (OR), supervised release without bond, bond alone, or bond and supervision. As shown in Table 8, most suspects were recommended for supervised release without bond (This option is no longer available, as the court's capacity to supervise misdemeanor suspects was reduced due to lack of funds). The second most common recommendation was OR. A supervisor reviews the initial recommendation and can override it if he/she feels the data call for another release option. This was an extremely rare event in this database, with very few differences between initial recommendations and overrides. Further changes to the release condition can be made by a magistrate at the suspect's Initial Appearance (in court).

Release Option	Recommendation
Supervised release	70%
OR	15%
Bond	8%
Bond & Supervised Release	7%

n=3,991  
 Source: Morrison Institute for Public Policy, Arizona State University, 2009.

## DISCUSSION

Examination of this large database of recent misdemeanor DV suspects tends to confirm findings of other research in several instances, including:

- assault was the most commonly alleged offense
- males made up 80% of suspects
- most suspects were in their 20s and 30s
- a large percentage of suspects had prior criminal records
- one-third of the suspects were unemployed

Data on suspects' educational achievement and income level were not available. However the findings on past criminal involvement and unemployment fit with the so-called “stake-in-conformity” thesis, which argues that individuals who do not participate fully in society or enjoy its benefits are less likely to be deterred from criminal activity by considerations of status or reputation.

In seeking to classify DV offenders, researchers sometimes distinguish “generally criminal” perpetrators from those with little or no criminal record beyond the DV case itself. The large percentage of suspects with prior records in this database suggests that many DV offenders fit into the former category.

The widely shared belief that the time a couple separates is an especially dangerous one seems to be supported here, as one in four suspects had separated from his/her alleged victim within six months before the incident.

The fact that more than four in 10 suspects allegedly committed DV in the presence of children underscores the need for law enforcement and social service professionals to address the trauma that child witnesses can suffer—and perhaps carry with them for years afterward.

Supervision, either alone or with bond, was recommended for 77% of the suspects whose cases were not immediately dismissed. With the demise of the risk and supervision program, this suggests that each year about 1,500 released Phoenix DV defendants are going without the supervision that a widely accepted risk-assessment process says they should be getting. It is hard to assess what level of threat to public safety this may pose, but it is likely not zero.

The issue of “scratches” merits further examination. According to the database, 43% of arrested suspects had their cases dismissed by prosecutors, either before or during their Initial Appearance in court. This seems a high number, and suggests several questions about the enforcement process. Police officers responding to DV calls can only make an arrest if they determine that the legal standard of “probable cause” exists. The prosecutor then reviews the case and decides whether there is sufficient evidence to support a formal charge. It is of course not surprising that prosecutors will dismiss some—even many—cases brought by police. Further, as noted above, some cases that are dismissed are referred back to police for further investigation and are charged later. But if prosecutors are dismissing close to half of DV arrests, one might reasonably question whether this process represents a good use of the system's time and resources. Are officers making too many questionable DV

arrests? Are prosecutors dismissing too many viable DV cases? Are there other factors at work? Further research is needed to answer these questions.

Asked about this issue, an assistant Phoenix prosecutor said he did not consider the 43% level to be much higher than the dismissal rate for other crimes, and said the agency was, if anything, less likely to dismiss a DV case than a non-DV case. However, several veteran Phoenix police officers and a non-Phoenix Valley prosecutor said they did consider 43% an unusually high rate. They offered three (not mutually exclusive) possible explanations:

- The Phoenix Police Department’s strong “pro-arrest” policy in DV cases prompts officers responding to make an arrest at the lowest possible threshold of probable cause.
- Officers often make “dual arrests” when they can’t determine which individual at a DV scene is the “predominant aggressor.” Prosecutors usually consider dual arrest cases difficult or impossible to prosecute successfully.
- Many officers, skeptical about system’s capacity to follow through on DV cases, feel that making an arrest—even if it’s later dismissed—defuses a volatile DV scene, ensures at least temporary safety for the victim, and gives him/her an opportunity to decide what to do next.<sup>9</sup> Making an arrest also means the officer will not have to return to the same household on that shift.

In any case, the 43% dismissal rate warrants further examination. Even if the above suggestions are true, it seems that a more efficient and cost-effective process could be established. And while removing a suspected batterer by arrest might indeed ensure victim safety for one night, it doesn’t serve the goal of offender accountability and could in fact embolden offenders (and discourage victims) if no sanction for DV exists other than a few hours in jail. This is particularly true when one considers that an even higher dismissal rate is not uncommon for DV cases even after they are charged and set for trial.



For further information

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<sup>9</sup> The belief that the most they can reliably do is ensure a DV victim’s safety “for at least that night” by arresting the suspected batterer was voiced frequently by Arizona police officers and sheriff’s deputies in a 2005 Morrison Institute report, *Layers of Meaning, Domestic Violence and Law Enforcement Attitudes in Arizona*.

Pretrial Services Domestic Violence Assessment  
Phoenix Municipal Court - Initial Appearance Court

**Return to PSA**

Last Name \_\_\_\_\_

First Name \_\_\_\_\_

DOB (format: xx/xx/xxxx) \_\_\_\_\_

Case No. \_\_\_\_\_

Judge \_\_\_\_\_

Offense Date (format: xx/xx/xxxx) \_\_\_\_\_

Current Offense \_\_\_\_\_

Screener Name         CAC        

Date Completed (format: xx/xx/xxxx) \_\_\_\_\_

Outcome

OR

Bond

Sup. Rel.

- 1.) Prior non-domestic violence convictions? (CHOICES: U(0), N(0), 2(1), 3(2)) \_\_\_\_\_
- 2.) Prior arrests for assault, harassment or menacing?  
(CHOICES: U(0), N(0), 1(1), 2(2)) \_\_\_\_\_
- 3.) Prior domestic violence treatment?  
(CHOICES: U(0), N(0), 1(1), 2(2)) \_\_\_\_\_
- 4.) Prior drug or alcohol treatment?  
(CHOICES: U(0), N(0), 1(1), 2(2)) \_\_\_\_\_
- 5.) Any history of domestic violence related restraining orders?  
(CHOICES: U(0), N(0), 1(1), 2(3)) \_\_\_\_\_
- 6.) Any history of violation(s) of domestic violence restraining orders?  
(CHOICES: U(0), N(0), A(1), C(2), B(3)) \_\_\_\_\_
- 7.) Any evidence of object used a weapon in commission of a crime?  
(CHOICES: U(0), N(0), P(1), C(2), B(3)) \_\_\_\_\_
- 8.) Were children present during the domestic violence incident?  
(CHOICES: U(0), N(0), P(1), C(2), B(3)) \_\_\_\_\_
- 9.) Current employment status. (CHOICES: U(0), E(0), N(2)) \_\_\_\_\_
- 10.) Has victim separated from defendant within last 6 months? (CHOICES: U(0), N(0), Y(2)) \_\_\_\_\_
- 11.) Did victim have a restraining order in place against defendant at time of offense?  
(CHOICES: U(0), N(0), Y(3)) \_\_\_\_\_
- 12.) Was defendant under any form of community supervision at time of offense? (CHOICES: U(0), N(0), Y(3)) \_\_\_\_\_

**Comments/Spec. Circumstances:**

**Total Points**     0    

DEFENDANT VIOL ORDER OF PROTECTION AND STATED THAT THE POLICE ARE THE ONLY ONE WHO WANT HIM AWAY FROM HIS PARENTS AND SHOULD BE ALLOWED TO RETURN. DEF MOTHER HAS ORDER OF PROTECTION AGAINST THE DEFENDANT.

**LETTERS KEY:**

A=IN THE PAST    B=PAST AND CURRENT    C=CURRENT OFFENSE    E=EMPLOYED    N=NONE/NO/NOT EMPLOYED  
P=PRIOR OFFENSE    U=UNKNOWN/UNEMPLOYED    Y=YES

**Recommendation:** \_\_\_\_\_