

State v. Clarke: One year later

Practitioner Comment

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The Clarke decision has had a tremendous impact on domestic/intimate partner violence cases. In the vast majority of such calls, police encounter victims who are reporting violence, and there are injuries or other evidence sufficient for probable cause. However, for an officer to make an arrest and remove the accused from the scene, a warrant must first be obtained. In many parts of Idaho, law enforcement are on solo patrols. Remaining on the scene long enough to get a warrant, as well as keeping the parties separate during the time it takes to do so, poses significant safety and capacity issues for officers. In some areas, it is difficult to find a judge to issue a warrant. The result is that there is a great disparity in the response to DV calls across the state; if someone lives in an area with enough police capacity and an available judge, a warrant may be obtained and an arrest made. Victim services may also be available on scene to assist. If someone experiences domestic violence in a rural area, it may not be possible to obtain a warrant, and there may not be available victim services or shelter available. The victim may be left in an unsafe situation—which is a terrible situation not only for victims, but for law enforcement.

The reality is that arresting and removing offenders from partner intimate violence calls allowed an immediate diffusing of the situation and left the victim (and often, children) in the home while the offender was pulled away until arraignment. The Clarke decision has made arresting the offender at the scene impossible without a warrant, so the victim (and any children) need to be removed; this is very challenging given the limited number of available shelters and the scarcity of victim resources in much of Idaho. While victim service providers do their very best to make hotel vouchers available or otherwise assist with providing a safe shelter for victims, there are limitations posed by geography, funding, staffing and other logistics (language barriers, etc.).

The courts and law enforcement are struggling with the impact of the decision while also coping with an increase in intimate partner violence due to the pandemic. The true impact of the decision is that victims are often left in unsafe conditions—often with young children. An initial effort in 2020 to pass a constitutional amendment to allow warrantless arrests in certain circumstances failed; a bill was introduced in 2021 but did not even proceed to hearing. The issue has not received the attention it deserves; on a daily basis the effect of this decision is felt by victims of violence who are being told police cannot arrest and remove abusers—abusers are often emboldened as a result. If the Idaho Legislature does not want to allow warrantless arrests, it ought to consider funding for victim services. Currently less than 2% of funding for such programs comes from the State; the vast majority of victim services in Idaho are federally funded.