

Law Enforcement Response to Domestic Violence Post-Clarke Decision

November 2022

KEY FINDINGS

Post-Clarke DV Trends

5.4

Percentage point increase in proportion of DV incidents classified as aggravated assaults

14.6

Percentage point decrease in proportion of DV simple assault incidents cleared by arrest

28.5

Percentage point increase in proportion of DV simple assault arrestees that were cited rather than physically arrested

The Idaho Supreme Court’s ruling in *State of Idaho v. Clarke* (2019) fundamentally changed the way law enforcement responds to domestic violence (DV) incidents. The Court ruled that arresting an individual for a misdemeanor without a warrant is unconstitutional unless the officer witnessed the incident. Data from the Idaho Incident-Based Reporting System (IIBRS) shows that after the *Clarke* decision took effect, law enforcement agencies made adjustments to their handling of DV cases and offenders.

Definition of Domestic Violence

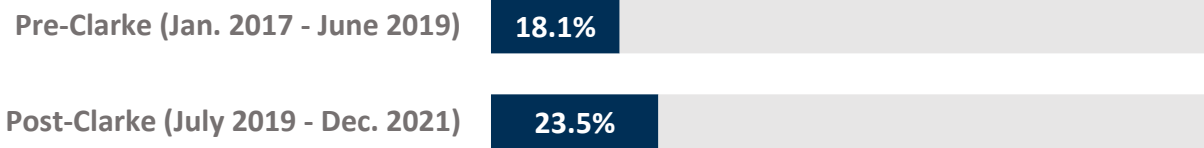
Idaho Code § 18-918 defines domestic violence (DV) as assault and/or battery against a “household member” (spouse, former spouse, cohabitating, or have a child in common). Most cases of DV are misdemeanors unless the victim sustained a traumatic injury (mirroring the definition of aggravated assault), the incident occurred in the presence of a child, or a conviction is the third within a 15-year span.

State and local law enforcement agencies report data on criminal incidents to IIBRS, housed at the Idaho State Police. However, IIBRS definitions are set by the FBI and IIBRS does not have an indicator for when an incident matches the state definition of DV. For this report, ISAC has defined DV incidents as those containing an aggravated or simple assault perpetrated by an intimate partner of the victim.

Domestic Violence Incidents

The total number of DV incidents reported to IIBRS remained relatively stable in the 10 quarters before and after the *Clarke* decision (averages of 583 and 555 incidents per quarter, respectively). However, the proportion of those incidents that were classified as aggravated assaults (which are felonies under Idaho law) rather than simple assaults (can be a misdemeanor or felony) rose substantially post-*Clarke*. Between July 2019 and December 2021, aggravated assault comprised nearly a quarter of all DV incidents (23.5%), compared to about 18% between January 2017 and June 2019 (an increase of 5.4 percentage points; see Figure 1).

Figure 1. Proportion of DV incidents classified as aggravated assaults.



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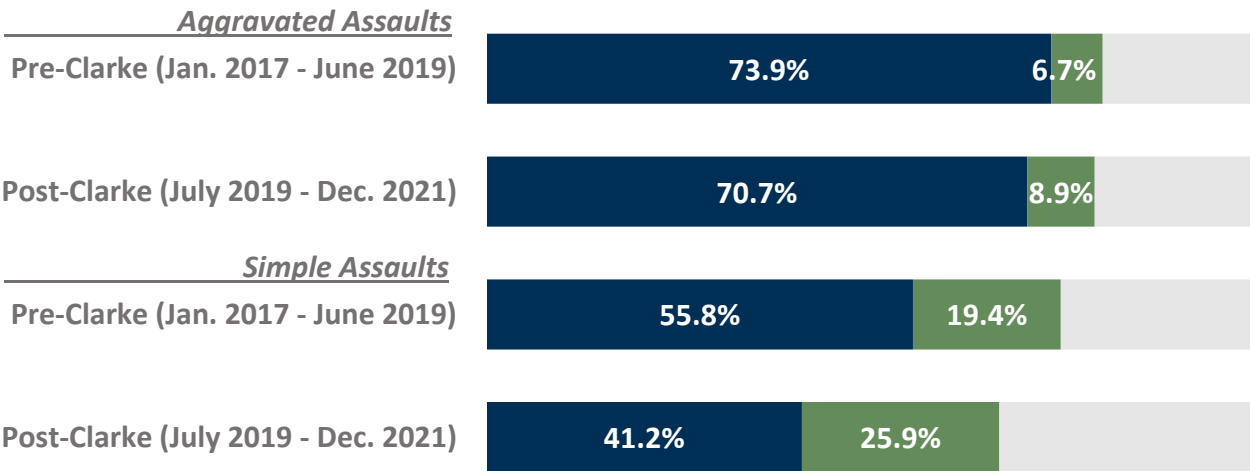


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The share of DV incidents cleared by arrest decreased post-Clarke, driven by a decrease in arrests for simple assault. More than half (56%) of DV simple assaults were cleared by arrest between January 2017 and June 2019, but that number decreased to 41% between July 2019 and December 2021 (a decrease of 14.6 percentage points; see Figure 2). During that same time, the rate of DV aggravated assaults cleared by arrest also decreased, but at a much lower rate (3.2 percentage points).

At the same time, there has been a post-Clarke rise in the share of DV incidents that were exceptionally cleared, another trend driven by simple assault incidents. Exceptional clearance occurs when law enforcement closes a case without making an arrest. The most common reason for exceptional clearances in DV cases is that the prosecutor declined to take the case (80% of all exceptionally cleared DV cases between 2017 and 2021 were cleared due to declined prosecutions). Post-Clarke, the share of DV aggravated assaults that were exceptionally cleared rose just 2.2 percentage points, while the share of DV simple assaults that were exceptionally cleared increased by 6.5 percentage points to account for more than a quarter (25.9%) of all DV simple assaults between July 2019 and December 2021.

Figure 2. Proportion of DV incidents cleared by arrest or exceptionally cleared.



Domestic Violence Arrests

IIBRS records data on three types of arrests. One type of arrest involves citing and releasing the offender. The other two are types of physical arrests; that is, the offender is taken to jail. This can occur after law enforcement obtains a warrant, or in some instances an arrest can be made without a warrant. In Clarke, the Idaho Supreme Court decided that warrantless arrests for misdemeanor crimes are unconstitutional in Idaho.

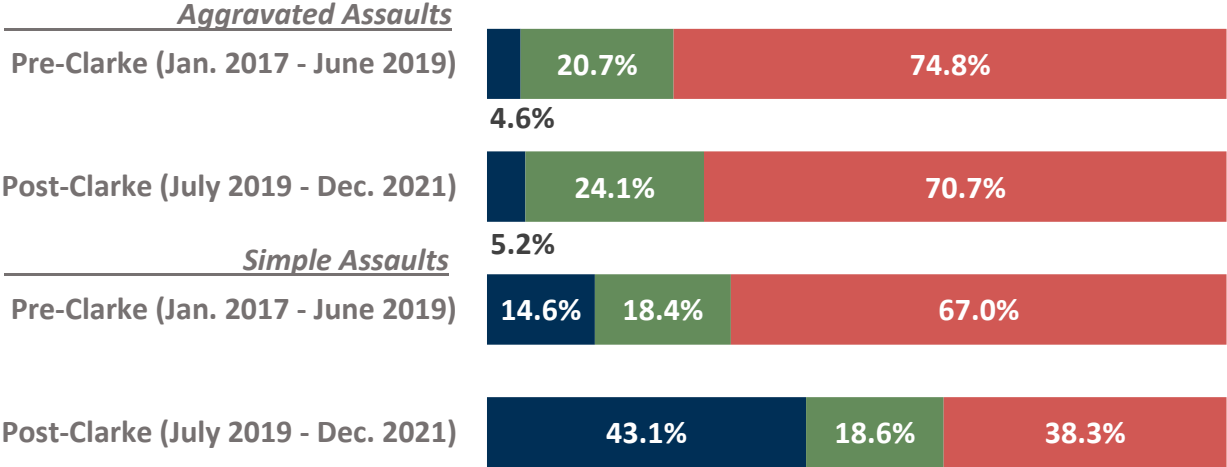
The effect of this decision can be clearly observed in IIBRS data. Post-Clarke, the use of citations to hold offenders accountable in DV simple assault incidents increased substantially, while the use of warrantless arrests plummeted. Between July 2019 and December 2021, the percentage of DV simple assault arrests that were citations was 43.1%, a 28.5 percentage point increase from pre-Clarke levels, while the percentage of warrantless arrests decreased 28.7 percentage points to 38.3% (see Figure 3). The use of citations in DV aggravated assault incidents was only slightly higher post-Clarke, rising less than one percentage point from pre-Clarke levels.

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Figure 3. Proportion of DV arrests that were citations, physical arrests pursuant to a warrant, or warrantless physical arrests.



Conclusion

While IIBRS definitions of DV do not match state code exactly, IIBRS data shows that law enforcement response to DV incidents has changed in the post-Clarke era. Although arresting the predominant aggressor is regarded as a best practice when responding to DV incidents, many DV incidents in Idaho are likely to be misdemeanors and thus subject to the ban on warrantless arrests set forth in Clarke. IIBRS data shows that, in the case of DV simple assault incidents, officers’ use of physical arrests has declined substantially, and fewer incidents are being cleared. More research is needed to better understand how these changes in law enforcement response to DV have affected survivor safety and confidence in the justice system, what the role of law enforcement in responding to DV incidents should be in an environment where their arrest powers have been limited, and whether there are other response options beyond arrest that promote survivor safety and public safety.

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Contact Us

Idaho Statistical Analysis Center
 Planning, Grants & Research
 Idaho State Police

isp.idaho.gov/pgr/sac

pgr@isp.idaho.gov

Thomas Strauss, MPA
 ISAC Director & Principal Research Analyst

(208) 884 – 7040