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Minding the Gaps: How Intimate Partner Violence Legislation Is Failing to Address Coercive Control

Sydney Koehler†

Introduction

It has been thirty years since Congress first passed the Violence Against Women Act (VAWA), the first federal legislative initiative to address intimate partner violence (IPV).¹ VAWA cemented on a national scale the piecemeal efforts taking place in local legislatures and law enforcement agencies to counter intimate partner violence through state action.² In the three decades since VAWA's enactment, the United States has pledged more federal funds, and expended more law enforcement and judicial resources, to address the social and criminal costs of IPV than ever before.³ Yet IPV remains the “single largest cause of injury to women in the United States”⁴ and accounts for 15% of all reported violent crime in the U.S.,⁵ with law enforcement studies estimating the actual incidence of IPV is likely four times the reported amount.⁶

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1. Violence Against Women Act, 42 U.S.C. §§ 13925–14045d (1994).

2. *See infra* Part II.A.

3. *United States v. Morrison*, 529 U.S. 598, 632 (2000) (Souter, J., dissenting) (“[E]stimates suggest that we spend \$5 to \$10 billion a year on health care, criminal justice, and other social costs of domestic violence.”) (quoting S. REP. NO. 101-545, at 41); Carolyn N. Ko, *Civil Restraining Orders for Domestic Violence: The Unresolved Question of “Efficacy”*, 11 S. CAL. INTERDISC. L.J. 361, 361–62 (2002).

4. *Morrison*, 529 U.S. at 632 (Souter, J., dissenting); *see also* David M. Zlotnick, *Empowering the Battered Woman: The Use of Criminal Contempt Sanctions to Enforce Civil Protection Orders*, 56 OHIO ST. L.J. 1153, 1158 (1995) (“Domestic violence remains the greatest cause of serious injury to American women, accounting for more injurious episodes than rape, auto accidents, and mugging combined.”).

5. JENNIFER L. TRUMAN & RACHEL E. MORGAN, *NONFATAL DOMESTIC VIOLENCE, 2003–2012* 1 (Vanessa Curto & Jill Thomas, eds., 2014), <https://www.govinfo.gov/app/details/GOVPUB-J29-PURL-gpo118103> [<https://perma.cc/T7AK-YMMX>].

6. Zlotnick, *supra* note 4, at 1159 (explaining that for each reported domestic

This Note suggests the problem of IPV has persisted in the United States, despite increased efforts to counteract it, because the primary legal framework through which IPV is addressed—the criminal protective order—is unfit to confront the dynamics of coercive control that occur in intimate relationships. Part I tracks the gradual criminalization of IPV over time and highlights ways criminal protective orders are ill-suited to respond to IPV. Part II proposes changes to improve the legal response to IPV. First, Part II argues statutory definitions of abuse⁷ must be amended to encompass all forms of abuse that occur in intimate relationships, regardless of their criminality. Secondly, and relatedly, Part II suggests IPV should be addressed through a dual protective order framework that offers criminal and civil remedies to victims.

I. Background

A. *The Historical Progression of IPV Law from Nonintervention to Criminalization*

For much of American history, IPV was explicitly or implicitly sanctioned by existing social and legal systems. In the early United States, the law of coverture explicitly authorized IPV by classifying women as the property of their husbands, thus subjecting women to physical, sexual, and financial subjugation.⁸ Even after coverture laws were repealed and many state and local governments adopted legislation banning “wife beating,”⁹ the legal system continued to implicitly sanction IPV through an emphasis on “marital privacy.”¹⁰

crime, three go unreported); TRUMAN & MORGAN, *supra* note 5, at 10 (indicating that between 2003 and 2012, only 24% of victims of intimate partner violence received assistance from a victim service agency).

7. This Note discusses statutory definitions of “abuse” for the sake of consistency, recognizing statutes differ in the verbiage they use to describe IPV. Many states use the terms “domestic violence” or “domestic abuse,” which encompass not just IPV but also other abusive relationships within a shared household.

8. Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?*, 29 CARDOZO L. REV. 1487, 1494–547 (2008); Dana Harrington Conner, *Financial Freedom: Women, Money, and Domestic Abuse*, 20 WM. & MARY J. WOMEN & L. 339, 343 (2014).

9. See generally Elizabeth Pleck, *Criminal Approaches to Family Violence, 1640–1980*, 11 CRIME & JUST. 19, 22 (1989) (providing an overview of the historical development of domestic violence laws from the colonial period to the twentieth century).

10. Jeannie Suk, *Criminal Law Comes Home*, 116 YALE L.J. 2, 11–12 (2006) (explaining that even as coverture laws were repealed and the “chastisement prerogative” for domestic violence disappeared, “a judicial discourse of marital privacy emerged and continued to legitimate wife beating under a revised rhetorical and ideological framework. The protective boundary of the home continued to shield DV from criminal prosecution for another century.”); Pleck, *supra* note 9, at 28

Courts largely avoided intervening in family law matters,¹¹ viewing the private activities of the domicile to be largely immune to the reach of criminal law.¹²

Frustrated by underenforcement of existing domestic violence laws, feminist advocates in the early twentieth century began calling for a civil legal response to IPV.¹³ In the 1970s, states began passing legislation making civil protective orders available to victims of IPV, allowing victims to obtain court orders enjoining future conduct constituting abuse under applicable state statutes,¹⁴ and providing victims recourse to address violations of these orders through contempt proceedings in civil court.¹⁵ These civil protective orders were designed to be victim-initiated and victim-driven, in an effort to counteract the widespread underenforcement of criminal IPV laws by law enforcement agents and prosecutors.¹⁶ Civil orders quickly became the primary legal response to IPV, and by the early 1990s all 50 states and the District of Columbia had passed civil protective order legislation.¹⁷

Civil protective orders provided an effective, empowering legal remedy for victims of IPV. Victims who receive civil protective orders report high levels of satisfaction with the orders.¹⁸ Victims also report increased safety¹⁹ and well-being²⁰ after being issued

(discussing the distinction drawn by eighteenth-century legal theorists such as William Blackstone between public mischievous behavior, which was a crime, and private behavior, which was a vice not suited for criminal intervention, to justify the doctrine of marital privacy).

11. Pleck, *supra* note 9, at 33 (citing case law from the nineteenth century including the 1868 case *State v. Rhodes*, in which the North Carolina Supreme Court held it would “not interfere with family government in trifling cases”).

12. *Id.* at 20; Suk, *supra* note 10, at 5 (“The idea that criminal law may not reach into this quintessentially private space has been rightly criticized for enabling the state’s acquiescence in violence against women.”).

13. Suk, *supra* note 10, at 15; Naomi Cahn, *Policing Women: Moral Arguments and the Dilemmas of Criminalization*, 49 DEPAUL L. REV. 817, 820 (2000).

14. Suk, *supra* note 10, at 15.

15. *Id.* at 7; Conner, *supra* note 8, at 378–79.

16. Goldfarb, *supra* note 8, at 1508.

17. Ko, *supra* note 3, at 361–62.

18. Goldfarb, *supra* note 8, at 1510 (explaining that 86% of victims in a Wisconsin study reported satisfaction with the order they received, and 94% of victims “felt that their decision to obtain a protection order was a good one”).

19. *Id.* (describing various studies in which over 70% of participants reported feeling safer after receiving a protective order); TK Logan & Robert Walker, *Civil Protective Order Outcomes: Violations and Perceptions of Effectiveness*, 24 J. INTERPERSONAL VIOLENCE 675, 682–83 (2009) (indicating 77% of victims involved in the study felt “extremely safe” or “fairly safe” after receiving a protective order, and 78% felt the protective order was “effective”).

20. Ko, *supra* note 3, at 369 (highlighting a study in which 90% of victims reported increased emotional well-being six months after receiving a protective

civil protective orders.²¹ At the end of the day, however, civil protective orders were just pieces of paper, and their effectiveness in preventing future incidence of IPV depended on legal and judicial enforcement.²² In response to the significant underenforcement of domestic violence laws,²³ the “tough on crime” movement²⁴ and the feminist movement²⁵ united behind an increasingly criminalized strategy to address IPV toward the end of the twentieth century. Police departments throughout the nation began adopting mandatory arrest policies, requiring officers to arrest upon finding probable cause of battery.²⁶ Prosecutor’s offices implemented no-drop prosecution policies to prevent prosecutors or victims from dismissing domestic violence charges.²⁷ State legislators adopted

order); Goldfarb, *supra* note 8, at 1510 (discussing a study by the National Center for State Courts which found 85% of victims felt their lives had improved within six months of receiving a protective order).

21. Ko, *supra* note 3, at 371 (theorizing victims’ high levels of satisfaction with civil protective orders can be better attributed to the psychological benefits the orders can provide to victims than to the practical effectiveness of the orders themselves).

22. NICOLA SHARP-JEFFS, A REVIEW OF RESEARCH AND POLICY ON FINANCIAL ABUSE WITHIN INTIMATE PARTNER RELATIONSHIPS 15 (2015), <https://repository.londonmet.ac.uk/1482/1/Review-of-Research-and-Policy-on-Financial-Abuse.pdf> [<https://perma.cc/8DRD-YQ9Q>] (explaining that for victims whose partners fail to comply with civil protective orders, the only available redress is “going back to court” because courts have not adopted oversight measures). Goldfarb, *supra* note 8, at 1516 (“[P]oor enforcement may be largely responsible for the results of studies showing high rates of non-compliance with protection orders.”).

23. Jane K. Stoeber, *Freedom From Violence: Using the Stages of Change Model to Realize the Promise of Civil Protection Orders*, 72 OHIO ST. L.J. 303, 314 (2011) (“Even after instituting laws to criminalize domestic violence, police and prosecutorial conduct remained largely unchanged, so legislatures eventually instituted mandatory policies to ensure vigorous responses to domestic violence.”); Ko, *supra* note 3, at 380; Zlotnick, *supra* note 4, at 1172; see generally Janell D. Schmidt & Lawrence W. Sherman, *Does Arrest Deter Domestic Violence?*, 36 AM. BEHAV. SCIENTIST 601, 602 (1993) (finding that police officers do not consistently adhere to the mandatory arrest policies set by local police departments).

24. Shelly L. Jackson & Thomas L. Hafemeister, *Using the Criminal Law to Respond to the Financial Exploitation of Older Adults: The Statutory Evolution in the United States from 2000 to 2020*, 29 ELDER L.J. 315, 319 (2022).

25. Pleck, *supra* note 9, at 51; see generally Mimi Kim, *Dancing the Carceral Creep: The Anti-Domestic Violence Movement and the Paradoxical Pursuit of Criminalization, 1973–1986* (Inst. for Study of Societal Issues, Working Paper Series, 2015), <https://escholarship.org/uc/item/804227k6> [<https://perma.cc/AC72-FJ3A>] (critiquing “the paradoxical alignment of feminism with increasingly punitive carceral policies” and explaining the negative impacts of pursuing feminist social change through criminal policy).

26. Zlotnick, *supra* note 4, at 1172. States also passed legislation reinforcing the practice of mandatory arrest. Schmidt & Sherman, *supra* note 23, at 602 (“[W]ithin 8 years legislatures in 15 states . . . and the District of Columbia moved to enact laws requiring police to arrest in all probable cause incidents of domestic violence.”).

27. Suk, *supra* note 10, at 13.

criminal enforcement mechanisms for protective orders, such that violations were addressed through criminal misdemeanor charges rather than civil contempt sanctions.²⁸

The 1994 passage of VAWA solidified this criminalization strategy by declaring violence against women a federal crime²⁹ and providing states monetary incentives to arrest perpetrators of IPV.³⁰ While the move toward criminalization was, in many ways, a logical response to the underenforcement that plagued the civil protective order, the legal response to IPV is now marked by an overreliance on arrest as a remedy, with undesirable consequences for both victims and perpetrators of IPV.

B. The Failure of the Criminal Protective Order

Today, the criminalized protective order dominates the legal response to IPV.³¹ Criminal protective orders employ misdemeanor arrest as the primary, and sometimes exclusive, legal remedy for a protective order violation.³² Criminal protective orders typically enjoin the abuser from committing specified future acts of abuse or violence.³³ Criminal protective orders also frequently include stay-away provisions that prohibit an abuser from coming within a certain distance of the victim or the victim's place of residence or employment, and no-contact provisions that prohibit an abuser from contacting the victim, including through electronic communication.³⁴ Through an emphasis on stay-away provisions,³⁵ arrest, and incarceration, criminal protective orders aim to incapacitate abusers in order to mitigate IPV; however, incapacitation does not appear to be effective at deterring future violence within intimate relationships.

28. *Id.* at 16 (arguing protective orders have “been subsumed by the criminalization strategy” and are now “primarily enforced through criminal misdemeanor charges.”); Kim, *supra* note 25, at 1 (describing VAWA’s incorporation into the Violent Crime Control and Law Enforcement Act as “symbolically and materially cementing an already robust collaboration between one strand of a broader feminist social movement and the criminal justice system.”); *see infra* Part II.B (suggesting contempt sanctions may be a more effective legal response to protective order violations than misdemeanor arrest).

29. Kim, *supra* note 25, at 1.

30. *Id.*

31. *See* Suk, *supra* note 10, at 16; Kim, *supra* note 25, at 1.

32. For a state-by-state breakdown of the criminal penalties state legislatures attach to protective order violations, *see infra* note 99.

33. Suk, *supra* note 10, at 15.

34. *Id.* at 14.

35. *See id.* at 42 (discussing stay-away provisions as a mechanism of “state-imposed de facto divorce”).

Studies indicate abusers violate the provisions of criminal protective orders issued against them in approximately 50% of cases, despite the criminal consequences of a violation.³⁶ While the threat of arrest has a higher deterrent effect on some abusers than others,³⁷ by and large research indicates the presence of a criminal protective order has little to no impact on the likelihood an abuser will perpetrate future abuse in the relationship.³⁸ This may be in part because most arrests for IPV end in dismissed charges,³⁹ plea

36. Judith McFarlane, Ann Malecha, Julia Gist, Kathy Watson, Elizabeth Batten, Iva Hall & Sheila Smith, *Protection Orders and Intimate Partner Violence: An 18-Month Study of 150 Black, Hispanic, and White Women*, 94 AM. J. PUB. HEALTH 613, 616 (2004) (describing a study in which 44% of victims of interpersonal violence experienced one or more incidents of abuse in violation of their protective order within eighteen months of issuance); Durant Frantzen, Claudia San Miguel & Dae-Hoon Kwak, *Predicting Case Conviction and Domestic Violence Recidivism: Measuring the Deterrent Effects of Conviction and Protection Order Violations*, 26 VIOLENCE & VICTIMS 395, 401 (2011) (finding that 63% of abusers are charged with protective order violations); Logan & Walker, *supra* note 19, at 677 (identifying a 40% protective order violation rate across thirty-two studies); Ko, *supra* note 3, at 373 (discussing two studies, by Harrell and Smith and Grau, both identifying a 60% violation rate of protective orders).

37. Goldfarb, *supra* note 8, at 1513 (“[A]rrest had a stronger deterrent effect among men who were married and employed than among those who were unmarried, unemployed and lived in poor, high-crime neighborhoods Paradoxically, the abusers who are most likely to be deterred by protection orders—namely, ‘middle- or upper-class abusers who do not have prior [criminal] records’—are apparently underrepresented in protection order proceedings.”); Ko, *supra* note 3, at 375 (describing a study finding that temporary restraining orders were more likely to be violated by perpetrators who were unemployed or working part-time, and by those who had drug or alcohol problems); Zlotnick, *supra* note 4, at 1174 (arguing that for abusers with criminal histories and low social capital, “a short-term arrest will have little deterrent effect on their willingness to commit another act of domestic violence”); Schmidt & Sherman, *supra* note 23, at 606 (“Arrest reduces domestic violence among employed people but increases it among unemployed people.”).

38. Various studies suggest that a victim having a protective order has no effect on the level of future violence in an intimate relationship. *See* Ko, *supra* note 3, at 373; McFarlane et al., *supra* note 36, at 616. Even further, research suggests protective orders, like arrest, have a stronger deterrent effect for abusers who are white, middle-class, and employed than others. *See* Ko, *supra* note 3, at 375; Goldfarb, *supra* note 8, at 1540; *see also* Nina A. Kohn, *Elder (In)Justice: A Critique of the Criminalization of Elder Abuse*, 49 AM. CRIM. L. REV. 1, 18 (2012) (explaining that prosecuting domestic violence crimes could reduce instances of violence against white and middle-class women while increasing the violence experienced by other women).

39. Suk, *supra* note 10, at 47 n.196 (“More than half of all DV cases result in dismissal”); Charles L. Diviney, Asha Parekh & Lenora M. Olson, *Outcomes of Civil Protective Orders: Results from One State*, 24 J. INTERPERSONAL VIOLENCE 1209, 1213 (2009) (noting that of 279 protective order violation cases brought in Utah’s largest court district in 2002, 143—over half—were dismissed outright).

bargains,⁴⁰ not guilty verdicts,⁴¹ or reduced sentences.⁴² Thus many victims and abusers—especially those whose abuse frequently brings them in contact with the criminal justice system—are often acutely aware that the threat of arrest and subsequent criminal prosecution is a largely empty one.⁴³

Many police officers and prosecutors blame victims for the low rates of enforcement of criminal protective orders, citing victims' reluctance to report protective order violations or to testify against their abusers.⁴⁴ However, evidence suggests it is criminalization itself that has hampered the criminal justice response to IPV. Mandatory arrest and no-drop policies have crowded court dockets and strained judicial resources, making dismissals and plea bargains an administrative necessity.⁴⁵ Even when cases are not dismissed or pled out, the criminal process is often sympathetic to abusers in protective order violation cases, with juries being "more willing to find a reasonable doubt for what they perceive as a minor crime."⁴⁶ In the rare cases where prosecution of a protective order violation results in a guilty verdict for the defendant, the criminal process still fails most victims by handing down a low sentence.⁴⁷ The criminal protective order framework therefore forces victims to seek legal recourse from IPV through criminal prosecutions that are set up to fail them.

The criminalization of protective orders has transformed them into a vehicle to reinforce the power of the carceral state, rather than to empower victims of IPV and facilitate their safety.⁴⁸ The

40. Suk, *supra* note 10, at 55–56 (explaining that plea bargains are common due to "defendants' desire to resolve their cases quickly without much or any jail time and defense attorneys' need to manage large caseloads . . .").

41. Diviney et al., *supra* note 39, at 1213 (noting that of the 133 protective order violation cases brought in Utah's largest court district in 2002 that were not dismissed outright, 83% of defendants were found not guilty).

42. *Id.* at 1213 (noting that among the mere 8% of defendants in Utah's largest court district who were found guilty of protective order violations in 2002, nearly half had their charges reduced from felonies to misdemeanors); Cahn, *supra* note 13, at 828.

43. Cynthia G. Bowman, *The Arrest Experiments: A Feminist Critique*, 83 J. CRIM. L. & CRIMINOLOGY 201, 203 (1992) ("[A]busers and their victims cannot fail to notice that ninety-five percent of domestic violence cases are not subsequently prosecuted. Finally, even if convicted, very few abusers ever serve any time in prison.").

44. Zlotnick, *supra* note 4, at 1167; Suk, *supra* note 10, at 47.

45. Zlotnick, *supra* note 4, at 1210–11.

46. *Id.* at 1211.

47. Cahn, *supra* note 13, at 828 ("Prosecution rarely results in significant jailtime . . .").

48. Kim, *supra* note 25, at 22 ("[S]uccess against the state paradoxically transforms social movement victors into unwitting agents of the state. Each

violation of a criminal protective order is treated as a crime against the state first and a crime against the victim second.⁴⁹ Victims' priorities are given a backseat to the state's carceral aim to vindicate the public interest by incapacitating criminal offenders through stay-away provisions and mandatory arrests.⁵⁰ The criminal protective order framework thus revictimizes IPV victims by offering future protection from violence only to those who are willing to undergo the additional trauma of participating in criminal action against their abusers.⁵¹

The proliferation of stay-away provisions among criminal protective orders discourages many victims of IPV from seeking orders and deters many more who receive temporary orders from finalizing them.⁵² Many victims are unwilling to submit to stay-away provisions because they do not wish to end their relationship,⁵³ and many more are practically unable to abide by stay-away provisions on account of their financial dependence on, or shared child custody with, their abuser.⁵⁴ However, the criminal protective order promises safety to a victim "only if [they are] willing to leave [their] partner, thereby sacrificing [their] right of

successful demand for criminalization enhances the power of the criminal justice system through institutional transformations that change this constitution to the benefit of, and, hence, the relative power of law enforcement."); Kohn, *supra* note 38, at 22 (explaining that by overriding victims' wants and needs, the criminal approach to intimate partner violence "may reduce the victim's personal autonomy to such a degree that it creates a new form of victim oppression" by the state).

49. Kohn, *supra* note 38, at 22; Stoeber, *supra* note 23, at 315 (discussing the paternalism of criminalized IPV policies); Jane H. Aiken & Jane C. Murphy, *Evidence Issues in Domestic Violence Civil Cases*, 34 FAM. L.Q. 43, 44 (2000) (discussing the ways criminal proceedings often disempower, and inflict additional trauma upon, victims of abuse by pressuring or forcing them to testify or provide evidence against their abusers).

50. Goldfarb, *supra* note 8, at 1508 ("Criminal protection orders pose intrinsic difficulties for victims because the prosecutor controls the criminal process with the goal of advancing the interests of the general public.").

51. See Kim, *supra* note 25, at 22 (noting that the criminalization of domestic violence benefits the criminal system more than it benefits victims themselves); Kohn, *supra* note 38, at 22 (explaining that criminalization effectively re-victimizes victims of domestic violence by making their needs secondary to the goals of the criminal system).

52. Goldfarb, *supra* note 8, at 1522; Ko, *supra* note 3, at 373 (describing a study in which only 60% of victims who obtained temporary protective orders returned to court to receive a permanent protective order).

53. Goldfarb, *supra* note 8, at 1520 (arguing that stay-away orders force victims to end their relationship without guaranteeing an end to the violence they experience, which is "the exact opposite of what many [victims] seek").

54. *Id.* at 1519–21.

autonomy as expressed through [their] decision to stay in an intimate relationship.”⁵⁵

Similarly, overreliance on arrest also discourages many victims from seeking criminal protective orders because they do not wish to see their intimate partners incarcerated.⁵⁶ Given the disproportionate impact of criminal prosecution on Black, Latinx, Indigenous, and immigrant populations, victims of IPV who share these marginalized identities are often hesitant to seek protective orders that will expose their abusive partners to the carceral system.⁵⁷ Just as stay-away provisions are unrealistic for many victims of IPV, arrest is an unrealistic enforcement mechanism for many victims who depend upon their abusers for subsistence as a result of coercive control.⁵⁸ The prevalence of the arrest remedy therefore serves as a roadblock that prevents many victims of IPV from accessing protective orders in the first place.

C. *Coercive Control: The Missing Piece in the Legal Response to IPV*

An overcriminalized approach to IPV has resulted in protective orders that ignore the realities of coercive control underlying abusive relationships.⁵⁹ Abusers gain and maintain control of victims by engaging in behaviors designed to limit victims’ agency⁶⁰ and promote their dependence.⁶¹ While our societal

55. *Id.* at 1489.

56. Jackson & Hafemeister, *supra* note 24, at 369.

57. See WOMEN OF COLOR NETWORK, WOMEN OF COLOR NETWORK FACTS & STATS: DOMESTIC VIOLENCE IN COMMUNITIES OF COLOR, 2–6 (2006), https://womenofcolornetwork.org/docs/factsheets/fs_domestic-violence.pdf [<https://perma.cc/PNR6-D2NG>] (explaining that Black women are less likely to report an abusive partner to the police due to in part to “African American men’s vulnerability to police brutality,” and Native American and Alaskan Indian women are less likely to report abuse because their historical oppression has resulted in a “deep mistrust for white agencies and service providers”); Goldfarb, *supra* note 8, at 1508 (positing that women of color and immigrants may be particularly hesitant to expose their abusive partners to the criminal justice system); Cahn, *supra* note 13, at 819–20 (noting that Black and Latinx victims of IPV who report their abusers to the police may be viewed as betraying their communities); see also Frantzen et al., *supra* note 36, at 404 (finding the odds of a defendant’s conviction for a protective order violation increase by 58% if the defendant has a prior assault arrest, even outside the context of IPV).

58. See *infra* Part II.C.

59. EVAN STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE 513 (2nd ed. 2023), <https://academic.oup.com/book/55149?login=true> [<https://perma.cc/3PME-HYDW>].

60. Angela Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 CAL. L. REV. 951, 974 (2012).

61. Judy L. Postmus, Gretchen L. Hoge, Jan Breckenridge, Nicola Sharp-Jeffs &

conception of IPV places heavy emphasis on its physical and sexual components,⁶² abusers do not maintain control through force alone.⁶³ Victims of IPV are subject to overlapping tactics of physical, psychological, and economic abuse that reinforce the abuser's power and the victim's dependence within the relationship.⁶⁴ These psychological and economic tactics—which are largely overlooked in a criminalized approach to IPV—are at the root of coercive control and are often the driving force behind a victim's decision to remain in, or return to, an abusive relationship.

Psychological abuse involves an abuser intentionally lowering a victim's emotional well-being through tactics such as verbal abuse, intimidation, humiliation, degradation, exploitation, harassment, rejection, withholding, and isolation.⁶⁵ Psychological abuse is the most prevalent form of IPV, with nearly all victims reporting experiencing psychological abuse during their relationship.⁶⁶ Even further, psychological abuse plays a significant role in the perpetuation of cycles of abuse.⁶⁷ Abusers employ

Donna Chung, *Economic Abuse as an Invisible Form of Domestic Violence: A Multicountry Review*, 21 *TRAUMA, VIOLENCE, & ABUSE* 261, 262 (2018).

62. Marie Ericksson & Richard Ulmestig, *"It's Not All About Money": Toward a More Comprehensive Understanding of Financial Abuse in the Context of VAW*, 36 *J. INTERPERSONAL VIOLENCE* 1625, 1626 (2021) (arguing studies of violence against women typically minimize or fail to account for financial abuse, partly because this form of violence is "focused on sexuality and the body").

63. Conner, *supra* note 8, at 357 ("An individual whose power rests solely on physical acts of abuse and intimidation will likely have little success maintaining a lasting relationship with his intimate partner. Often, there are additional links that tie a woman to her abusive partner and draw her back again and again should she break free."); Kristy Candela, *Protecting the Invisible Victim: Incorporating Coercive Control in Domestic Violence Statutes*, 54 *FAM. CT. REV.* 112, 115 (2016) ("An increasing body of research suggests that coercive control may be a more accurate measure of conflict, distress, and danger to victims than the presence of physical violence.").

64. *See generally* Judy L. Postmus, Sara-Beth Plummer & Amanda M. Stylianou, *Measuring Economic Abuse in the Lives of Survivors: Revising the Scale of Economic Abuse*, 22 *VIOLENCE AGAINST WOMEN* 692, 693 (2016) (finding the vast majority of victims of IPV have experienced a combination of physical, psychological, and economic abuse).

65. AM. PSYCH. ASS'N, *APA DICTIONARY OF PSYCHOLOGY* 751 (Gary R. VandenBos ed., 1st ed. 2007) (defining psychological abuse, which references emotional abuse that "may involve verbal abuse, demeaning or shaming the victim, emotional control, or withholding of affection or financial support, or any combination of these").

66. Adrienne E. Adams, Cris M. Sullivan, Deborah Bybee & Megan R. Greeson, *Development of the Scale of Economic Abuse*, 14 *VIOLENCE AGAINST WOMEN* 563, 580 (2008) (describing a study in which 100% of participants had experienced psychological abuse in their abusive relationship); Postmus et al., *supra* note 61, at 701 (describing a study of 120 victims of intimate partner violence in which 95% reported experiencing psychological abuse in the preceding twelve months).

67. Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered*

psychologically manipulative tactics to socially isolate victims from friends, family, and community in order to reinforce their dependence on the abuser and limit their access to an external support system.⁶⁸ Considering the significant role psychological abuse plays in cultivating dynamics of coercive control in abusive relationships, psychological elements of abuse are vastly underrepresented in IPV legislation.⁶⁹

Through economic abuse, an abuser similarly restricts a victim's propensity for self-sufficiency by manipulating their ability to acquire and use financial capital.⁷⁰ Economic abuse is extremely common, with research suggesting its occurrence in 75% to 99% of abusive intimate relationships.⁷¹ Like psychological abuse,

Women: An Analysis of State Statutes and Case Law, 21 HOFSTRA L. REV. 801, 872 (1993) (suggesting emotional abuse may have a more significant impact on victims of IPV than physical abuse); Aiken & Murphy, *supra* note 49, at 46 ("Research reveals that a battered woman remains in her abusive relationship because her abuser convinces her that she cannot survive outside the relationship.").

68. Conner, *supra* note 8, at 368–69.

69. Only five states define abuse, for the purposes of a protective order, to include psychological abuse generally. MICH. COMP. LAWS SERV. § 400.1501 (West 2024) (defining abuse to include placing a victim in fear of "physical or mental harm"); N.M. STAT. ANN. § 40-13-2 (West 2019) (defining abuse to include causing "severe emotional distress"). See *infra* Part II.A.ii. (discussing four other states—California, Connecticut, Hawaii, and Massachusetts—that define abuse to include "coercive control," which involves aspects of psychological abuse). Various other states define abuse to include acts intended to harass, threaten, or intimidate as defined within the state's criminal code, precluding consideration of non-criminal aspects of psychological abuse. See, e.g., ALASKA STAT. § 18.66.990 (2023); N.J. STAT. ANN. § 2C:25-19 (West 2016).

70. Adams et al., *supra* note 66, at 564 ("Economic abuse involves behaviors that control a woman's ability to acquire, use, and maintain economic resources, thus threatening her economic security and potential for self-sufficiency."); Postmus et al., *supra* note 61, at 262 (defining economic abuse as involving "behaviors that control, exploit, or sabotage an individual's economic resources including employment"); Ericksson & Ulmestig, *supra* note 62, at 1626 ("Financial abuse is one important tool in exercising power and gaining control over a partner, depriving her of financial resources to fulfill her basic needs, diminish her ability to live independently and deter her from leaving or ending the relationship."); Sundari Anitha, *Understanding Economic Abuse Through an Intersectional Lens: Financial Abuse, Control, and Exploitation of Women's Productive and Reproductive Labor*, 25 VIOLENCE AGAINST WOMEN 1854, 1855 (2019) (describing "economic abuse" as involving behaviors through which an abuser controls "a woman's ability to acquire, use and maintain financial resources" including by exploiting women's productive and reproductive labor).

71. Adams et al., *supra* note 66, at 580 (describing a study in which 99% of participants had experienced economic abuse in their abusive relationship); Postmus et al., *supra* note 61, at 701 (describing a study of 120 victims of intimate partner violence, in which 94% reported experiencing economic abuse in their relationship, 92% reported experiencing economic control, 88% reported experiencing employment sabotage, and 79% reported experiencing economic exploitation); SHARP-JEFFS, *supra* note 22, at 17 (describing studies finding financial abuse in 80% to 90% of abusive relationships); Ericksson & Ulmestig, *supra* note 62, at 1628 (finding that

economic abuse is strongly linked to other forms of IPV,⁷² serving to perpetuate cyclical violence by “creat[ing] the ultimate dependent relationship” and ensuring victims who attempt to leave will lack the resources to do so safely or successfully.⁷³

Abusers use a variety of tactics to strip victims of the financial resources to leave an abusive relationship. Most commonly, abusers overtly deny or limit victims’ access to money by requiring victims to turn over their paychecks to the abuser,⁷⁴ blocking victims’ access to joint bank accounts,⁷⁵ restricting victims to a set allowance for household spending,⁷⁶ hindering victims’ receipt of public assistance,⁷⁷ or preventing victims’ acquisition of real property and other meaningful assets.⁷⁸ Abusers also frequently deplete victims’

75% of victims of physical or psychological abuse had also experienced financial abuse, indicating “a strong correlation between financial abuse and other forms of abuse in analyses of VAW”); Littwin, *supra* note 60, at 972 (quoting an attorney who estimates 95% of her domestic violence cases involve elements of financial abuse); Eva PenzeyMoog & Danielle C. Slakoff, *As Technology Evolves, So Does Domestic Violence: Modern-Day Tech Abuse and Possible Solutions*, EMERALD INT’L HANDBOOK TECH.-FACILITATED VIOLENCE & ABUSE, 643, 645 (2021) (describing a study finding 94% of victims enrolled in a financial literacy program had experienced financial abuse).

72. SHARP-JEFFS, *supra* note 22, at 8 (“[E]conomic abuse is highly correlated with other forms of intimate partner violence.”); Postmus et al., *supra* note 61, at 791.

73. Conner, *supra* note 8, at 359.

74. SHARP-JEFFS, *supra* note 22, at 17 (explaining abusers deny money to victims in “more than half of all abusive relationships”); Littwin, *supra* note 60, at 982 (describing abusers often control victims’ finances by “requiring the victim to turn over to the abuser any income [they receive], and putting the victim on an allowance”); Adams et al., *supra* note 66, at 566 (stating abusers “control[] how resources are distributed and . . . monitor[] how they are used”); CYNTHIA K. SANDERS, DOMESTIC VIOLENCE, ECONOMIC ABUSE, AND IMPLICATIONS OF A PROGRAM FOR BUILDING ECONOMIC RESOURCES FOR LOW-INCOME WOMEN: FINDINGS FROM INTERVIEWS WITH PARTICIPANTS IN A WOMEN’S ECONOMIC ACTION PROGRAM 31 (2007),

https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1183&context=csd_research [<https://perma.cc/3XQG-7GZ8>] (identifying the strongest theme among victims of intimate partner abuse as “lack of access, or limited access to household financial resources and conversely the often complete control of money and financial decisions by abusers”).

75. Conner, *supra* note 8, at 363–65; Littwin, *supra* note 60, at 982; Adams et al., *supra* note 66, at 566.

76. Anitha, *supra* note 70, at 1856 (explaining that abusers provide an “inadequate allowance” to victims “as a control mechanism”); Littwin, *supra* note 60, at 984 (stating allowances often lead to the “two spouses in a marriage hav[ing] radically different standards of living”).

77. Adams et al., *supra* note 66, at 566 (describing how abusers prevent victims from acquiring independent funds “by interfering with the receipt of other forms of support, such as child support, public assistance, disability payments, and education-based financial aid”).

78. *Id.* (“[Abusers] prevent women from acquiring assets by refusing to put their names on the deeds to their houses and on the titles of their cars”); Conner,

existing financial resources, leaving them with inadequate funds to survive outside the relationship⁷⁹ and creating “coerced debt” that often sticks with victims long after abusive relationships end.⁸⁰

Abusers seek to lower victims’ financial and social capital, thereby reinforcing their dependence on the abuser and creating ties that repeatedly draw the victim back into the relationship.⁸¹ Economic abuse destroys victims’ credit,⁸² making it difficult for victims to find housing, employment, or insurance if they attempt to leave their abusers.⁸³ Many abusers also aim to keep their victims out of the workforce completely by sabotaging their attempts to gain or maintain education or employment.⁸⁴ By preventing victims from acquiring earning power, abusers are able to exert long-term control in intimate relationships.⁸⁵

Economic abuse is used to secure victims’ continued dependence and insecurity long after an abusive relationship has ended.⁸⁶ Financial reliance on abusers is one of the primary obstacles victims face in attempting to leave abusive

supra note 8, at 363 (explaining abusers often title property solely in their own name). *See* Littwin, *supra* note 60, at 1002 (noting that when abusers title property solely in their names, they prevent victims from building credit history).

79. Conner, *supra* note 8, at 365–66 (“Exploitation takes many forms: liquidating the bank accounts, charging items on the victim’s credit card, and taking, damaging, or destroying the victim’s property.”); Adams et al., *supra* note 66, at 567 (describing a study in which 38% of victims reported their abusive partner stole money from them).

80. *See generally* Littwin, *supra* note 60, (discussing the long-term impacts of coerced debt on victims of IPV).

81. *Economic Justice Policy*, NAT’L NETWORK TO END DOMESTIC VIOLENCE, <https://nnedv.org/content/economic-justice-policy/> [<https://perma.cc/B52Z-9CP2>] (“Even after a victim has left the abuser, the impact of ruined credit scores, sporadic employment histories, and legal issues caused by the violence may make it extremely difficult to pursue long-term economic security while staying safe.”).

82. Conner, *supra* note 8, at 366. *See generally* Littwin, *supra* note 60 (discussing the concept of “coerced debt,” whereby an abuser accumulates debt in their intimate partner’s name as a means of exerting control).

83. Conner, *supra* note 8, at 366; Littwin, *supra* note 60, at 1000 (describing good credit as “an essential tool for economic survival”).

84. Anitha, *supra* note 70, at 1856. *See* Adams et al., *supra* note 66, at 565 (explaining that abusers not only prevent victims from seeking education or employment, but also actively interfere with their education and employment, often through harassment at work or school); SANDERS, *supra* note 74, at 36 (“In some cases partners simply prohibited and threatened violence if women expressed a desire to work or gain further education. In other cases partners used tactics to disrupt employment or education. Tactics included initiating conflict just before women were leaving for a job interview or class, calling and harassing women at work or showing up at school or place of employment and causing a scene; in some cases causing women to lose their jobs.”).

85. Conner, *supra* note 8, at 362.

86. Ericksson & Ulmestig, *supra* note 62, at 1634.

relationships.⁸⁷ Victims of IPV leave abusive relationships with limited resources, substantial debts, and few places to turn for support.⁸⁸ Victims who leave their abusers have a 50% chance of falling below the poverty line.⁸⁹ Economic abuse, and subsequent economic insecurity, is therefore one of the main reasons many victims stay in, or return to, abusive relationships.⁹⁰

Victims who stay in, or return to, abusive relationships do so not just out of love, fidelity, or irrationality, but because their self-sufficiency has been constrained through a process of coercive control.⁹¹ Thus, while protective orders can be a potent remedy to IPV,⁹² they will remain ineffective at breaking the cycles of power and control that dominate abusive relationships—and thus fail to protect victims of IPV from future harm—unless they are reimagined to account for, and provide relief from, psychological and economic abuse.

87. Adams et al., *supra* note 66, at 568 (“[L]ow-income women with abusive partners report a lack of resources needed for day-to-day survival, such as money, housing, child care, and transportation.”).

88. Conner, *supra* note 8, at 391 (“[T]here is much to suggest that poverty is not the cause of intimate partner violence nor does its presence alone indicate that intimate partner violence is to be expected in a particular relationship. Instead, it is the batterer’s ability to restrict his victim’s access to financial and social capital that places her at a greater risk of experiencing poverty at the time of separation.”); SHARP-JEFFS, *supra* note 22, at 15 (“After leaving, women may lose their possessions, have no assets in their name and may face immediate homelessness. If their financial standing has also been destroyed by an abusive ex-partner, then it will be particularly difficult to access credit and mainstream financial services that would help enable them to become self-sufficient.”).

89. Njeri M. Rutledge, *Looking a Gift Horse in the Mouth—The Underutilization of Crime Victim Compensation Funds by Domestic Violence Victims*, 19 DUKE J. GENDER L. & POL’Y 223, 228 (2011); Conner, *supra* note 8, at 390; United States v. Morrison, 529 U.S. 598, 631 (2000) (Souter, J., dissenting) (quoting S. REP. NO. 101-545, at 37) (“As many as 50 percent of homeless women and children are fleeing domestic violence.”).

90. Conner, *supra* note 8, at 340 (“[F]inancial instability is one of the greatest reasons why, after gaining freedom, a woman who experiences battering has limited choices and may ultimately acquiesce to her partner’s attempts to reconcile.”).

91. See Goldfarb, *supra* note 8, at 1498 (“The cumulative effect of these reforms was a transformation of legal policy from the assumption that battered [women] should stay to the assumption that they should leave.”); see also Zlotnick, *supra* note 4, at 1186 (arguing the prevalence of separation assault indicates that “serious domestic violence is frequently the result of leaving, not the failure to leave” and therefore “explodes the myth that battered women are passive creatures who share the blame for their plight because they knowingly elect to remain in the path of violence”).

92. Many victims of IPV report satisfaction with protective orders despite high rates of recidivism. Scholars reconcile this by attributing victim satisfaction largely to the act of seeking a protective order, which is an exercise in self-determination and autonomy. See Ko, *supra* note 3, at 371; Goldfarb, *supra* note 8, at 1514–15; see also Aiken & Murphy, *supra* note 49, at 44.

II. Analysis

The criminalization of protective orders has hampered their effectiveness as a response to IPV, not only because victims are hesitant or unwilling to engage with the criminal justice system,⁹³ but because criminal protective orders are unfit to address the non-criminal aspects of abuse, such as economic abuse. An effective protective order must be accessible to victims of IPV and responsive to the factors that create and perpetuate IPV. To do the former, victims must be able to access protective orders by alleging physical, sexual, psychological, or economic abuse; Subpart II.A thus argues statutory definitions of abuse must be expanded to align with the realities of coercive control. To do the latter, protective orders must provide victims with a wide variety of remedies, beyond arrest, to counteract cyclical violence. Subpart II.B thus advocates for a dual framework of civil and criminal protective orders for victims of IPV.

A. *Improving Access to Protective Orders with Expansive Definitions of Abuse*

Many victims of IPV do not qualify for protective orders under a criminalized framework.⁹⁴ To qualify for a protective order, a victim must allege abuse as defined under an applicable state statute.⁹⁵ While states vary significantly in their definitions of abuse, the vast majority of states adopt a definition of abuse that is limited to physical violence, sexual violence, and various other enumerated criminal acts.⁹⁶ Only six states define abuse to include forms of non-criminal behavior.⁹⁷ This trend of narrow, crime-

93. See *supra* Part I.B. (discussing the varied reasons victims avoid seeking help from the criminal justice system when attempting to secure safety from IPV).

94. Candela, *supra* note 63, at 112 (“[T]he definition of abuse under these statutes is crucial, as it determines who qualifies as a victim of abuse and as a result is afforded legal protection.”).

95. *Id.*

96. Ten states define abuse extremely narrowly to include only physical violence, sexual violence, or threats or fear thereof. See ARK. CODE ANN. § 9-15-103 (2023); DEL. CODE ANN. tit. 13 § 703A (2023); IOWA CODE § 236.2 (2023); KAN. STAT. ANN. § 60-3102 (2017); § 1; NEB. REV. STAT. ANN. § 42-903 (LexisNexis 2023); N.C. GEN. STAT. § 50B-1 (2023); OHIO REV. CODE ANN. § 2919.25 (LexisNexis 2019); S.C. CODE ANN. § 20-4-20 (2023); TEX. FAM. CODE ANN. § 71.0021 (West 2023) (adopting a limited definition of abuse for the purposes of “dating violence”); WYO. STAT. ANN. § 35-21-102 (2024). In other states, the criminal acts commonly included in statutory definitions of abuse include harassment, stalking, kidnapping, and trespass. See, e.g., ARIZ. REV. STAT. ANN. § 13-3601 (2024); KY. REV. STAT. ANN. § 403.720 (LexisNexis 2023); MINN. STAT. ANN. § 518B.01 (West 2024).

97. Four states define abuse to include “coercive control.” CAL. FAM. CODE § 6320 (Deering 2024); CONN. GEN. STAT. § 46b-1 (2024); HAW. REV. STAT. § 586-1 (2024); MASS. ANN. LAWS ch. 209A, § 1 (2024). Notably, New York and Washington have also

centric definitions of abuse is largely attributable to the criminalization of protective orders.⁹⁸ Because the default law enforcement response to a protective order violation is mandatory arrest for a criminal misdemeanor,⁹⁹ states generally adopt

recently promulgated statutes establishing initiatives to investigate the impact of coercive control on victims of IPV. N.Y. EXEC. LAW § 576 (LexisNexis 2024); WASH. REV. CODE ANN. § 7.105.903 (LexisNexis 2024). Tennessee defines abuse to include “behavior that amounts to financial abuse.” TENN. CODE ANN. § 36-3-601(D) (2024). Michigan and New Mexico define abuse to include elements of psychological abuse. See *supra* text accompanying note 69.

98. See *supra* Part I.A.

99. In forty-three U.S. states, the penalty for an initial protective order violation is a criminal charge punishable by a term of incarceration, a fine, or both. Forty-one states classify a protective order violation as a misdemeanor offense. ALA. CODE § 13A-6-142(b) (2024); ALASKA STAT. § 11.56.740(b) (2024); ARIZ. REV. STAT. § 13-3602(m) (2024) (indicating that disobeying an order of protection constitutes interfering with judicial proceedings); ARIZ. REV. STAT. § 13-2810(b) (declaring interfering with judicial proceedings a class one misdemeanor); ARK. CODE ANN. § 5-53-134(b) (2024); CAL. PENAL CODE § 273.6(a) (Deering 2024); COLO. REV. STAT. § 18-6-803.5(2)(a) (2024); DEL. CODE ANN. tit. 11, § 1271A(b) (2024); FLA. STAT. ANN. § 784.047(1) (2024); GA. CODE ANN. § 16-5-95(e) (2024); HAW. REV. STAT. ANN. § 586-11(a) (2024); IDAHO CODE § 39-6312(1) (2024); 720 ILL. COMP. STAT. ANN. 5/12-3.4(d) (2024); IND. CODE ANN. § 35-46-1-15.1(a) (2024); KAN. STAT. ANN. § 21-5924(b)(1) (2024); KY. REV. STAT. § 403.763(4)(b) (2024); LA. REV. STAT. ANN. § 14:79(b) (2024) (“[T]he offender shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.”); LA. REV. STAT. ANN. § 14:2(a)(6) (2024) (defining a misdemeanor offense as “any crime other than a felony”); ME. REV. STAT. tit. 17-A, § 506-B(1) (2024) (classifying a protective order violation a Class D crime); ME. REV. STAT. tit. 17-A, § 1604(1)(d) (setting the maximum term of imprisonment for a Class D crime at one year); MD. CODE ANN. FAM. LAW § 4-509(b) (2024); MASS. ANN. LAWS ch. 209A, § 7 (2024) (“Any violation of . . . [a protection order issued in Massachusetts or another jurisdiction] shall be punishable by a fine of not more than five thousand dollars, or by imprisonment for not more than two and one-half years in a house of correction, or by both such fine and imprisonment.”); MASS. ANN. LAWS ch. 274, § 1 (2024) (defining a misdemeanor as any non-felony offense); MINN. STAT. § 518B.01 Subd. 14(b) (2024); MISS. CODE ANN. § 93-21-21(1) (2024); MO. REV. STAT. § 455.085(7) (2024); MONT. CODE ANN. § 45-5-626(3) (2023) (“An offender convicted of violation of an order of protection shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, for a first offense.”); MONT. CODE ANN. § 45-2-101(42) (2023) (defining a misdemeanor as an offense carrying a prison sentence in a state prison for a term of one year or less); NEB. REV. STAT. ANN. § 42-924(4) (2024); NEV. REV. STAT. ANN. § 33.100 (2024); N.H. REV. STAT. ANN. § 173-B:9(III) (2024); N.J. STAT. § 2C:29-9(a)(1) (2024); N.M. STAT. ANN. § 40-13-6 (2024); N.C. GEN. STAT. § 50B-4.1(a) (2024); N.D. CENT. CODE § 14-07.1-06 (2023); OHIO REV. CODE ANN. § 2919.27(b)(2) (LexisNexis 2024); OKLA. STAT. TIT. 22, § 60.6(a)(1) (2024); R.I. GEN. LAWS § 15-15-3(n)(1) (2024); S.C. CODE ANN. § 16-25-20(h) (2024); S.D. CODIFIED LAWS § 25-10-13 (2024); TEX. PENAL CODE § 25.07(g) (2023); UTAH CODE ANN. § 76-5-108(3) (2024); VT. STAT. ANN. tit. 13, § 1030(a) (2024) (“A person who intentionally commits an act prohibited by a court or who fails to perform an act ordered by a court, in violation of an abuse prevention order . . . shall be imprisoned not more than one year or fined not more than \$5,000.00, or both.”); VT. STAT. ANN. tit. 13, § 1 (defining a misdemeanor as any offense that carries a maximum term of imprisonment of less than two years); VA. CODE ANN. § 18.2-60.4 (2024); WASH. REV. CODE ANN. § 7.105.450(1)(a) (2024); W. VA. CODE § 48-27-903(a) (2024); WIS. STAT. § 813.12(8) (2024) (“Whoever knowingly violates a temporary

restrictive definitions of abuse that, while congruent with a criminal misdemeanor remedy, are completely divorced from the realities of coercive control.

i. The Benefits of an Expansive Definition of Abuse

Expansive statutory definitions of abuse that allow victims to qualify for protective orders on the basis of physical, sexual, psychological, or economic abuse would enable many more victims of IPV to access protective orders and related social services. The current restrictive, crime-centric definitions of abuse adopted in many states inhibit many at-risk victims of IPV from obtaining protection: for example, victims who lack sufficient evidence of physical or sexual violence to bring a viable claim,¹⁰⁰ victims who are unwilling to accuse their abuser of criminal behavior for personal or practical reasons,¹⁰¹ or victims experiencing coercive

restraining order or injunction issued under sub. (3) or (4) shall be fined not more than \$10,000 or imprisoned for not more than 9 months or both.”); WIS. STAT. § 939.51(3)(a) (2024) (attaching to a Class A misdemeanor a fine not to exceed \$10,000 or a prison term not to exceed 9 months, or both); WYO. STAT. § 6-4-404(a) (2024). In Connecticut, a protective order violation is a Class D or C felony. CONN. GEN. STAT. § 53a-223b (2024). The remaining seven states, including the District of Columbia, address initial protective order violations through contempt proceedings. D.C. CODE § 16-1005(f)(1) (2024) (indicating that a criminal contempt charge carries a fine, imprisonment for not more than 180 days, or both); IOWA CODE § 664A.7(1) (2024) (indicating that a protective order violation triggers summary contempt proceedings that involve the defendant being confined in county jail for a minimum of seven days); MICH. COMP. LAWS SERV. § 600.2950(11)(a)(i) (2024) (indicating an individual who violates a personal protective order will be subjected to “immediate arrest and the civil and criminal contempt powers of the court and, if he or she is found guilty of criminal contempt, imprisonment for not more than 93 days and a fine of not more than \$500.00”); N.Y. FAM. CT. ACT § 846-a (2024) (penalizing a protective order violation with a criminal contempt charge, for which the court “may commit the respondent to jail for a term not to exceed six months”); OR. REV. STAT. ANN. § 107.720(4) (indicating that an individual who allegedly violates a restraining order will be arrested pending a contempt hearing); 23 PA. CONS. STAT. ANN. § 6114(b)(1) (2024) (penalizing a protective order violation with a criminal contempt charge, the sentence for which may include “a fine of not less than \$300 nor more than \$1,000 and imprisonment up to six months; or . . . a fine of not less than \$300 nor more than \$1,000 and supervised probation not to exceed six months”); TENN. CODE ANN. § 36-3-610(a) (2024) (“Upon violation of the order of protection . . . the court may hold the defendant in civil or criminal contempt and punish the defendant in accordance with the law.”).

100. See generally Aiken & Murphy, *supra* note 49 (arguing that traditional rules of evidence create barriers to relief for victims of intimate partner violence because victims are rarely able to provide sufficient, admissible evidence of abuse).

101. See *supra* Parts I.B–C (arguing that traditional rules of evidence create barriers to relief for victims of intimate partner violence because victims are rarely able to provide sufficient, admissible evidence of abuse).

control that has not yet escalated to the level of physical or sexual violence.¹⁰²

Defining abuse broadly also serves to empower victims of IPV. Expansive definitions of abuse will enable courts to issue comprehensive, flexible protective orders that recognize, and admonish, all forms of abuse that may manifest in an intimate relationship, regardless of whether the abuse constitutes criminal conduct.¹⁰³ Comprehensive orders provide victims an opportunity to declare what will and will not be tolerated within their relationship, and places “the force of law behind the individual [victim’s] choices.”¹⁰⁴ In particular, victims would benefit from access to protective orders that allow them to qualify for relief upon alleging psychological or economic abuse, rather than conditioning state protection on the occurrence or threat of violence.

ii. Expansive Definitions of Abuse in Practice

Legislation and scholarship have been slow to develop understandings of the role coercive control plays in intimate partner violence.¹⁰⁵ Only five states have amended their statutory definitions of abuse to include economic aspects of coercive control.¹⁰⁶ In 2020, Hawaii became the first state to explicitly

102. When victims must show physical or sexual abuse to qualify for a protective order, protective orders are confined to taking a reactive, rather than a proactive, response to IPV, because victims must wait until they have experienced sufficiently serious physical or sexual violence before they can approach the state for help. This process necessarily subjects victims to harm before providing them assistance. See SANDERS, *supra* note 74, at 35 (explaining conflicts often begin with financial issues and escalate into other physical, sexual, or psychological forms of abuse); Ericksson & Ulmestig, *supra* note 62, at 1628 (indicating financial issues are often “an impetus” to other forms of abuse in intimate relationships).

103. Goldfarb, *supra* note 8, at 1507 (footnotes omitted) (“[S]ome judges do not take advantage of the opportunity to customize the order by spelling out the relief granted in detail, and instead rely on the general provisions in the standard form. This lack of individualization and specificity impairs the order’s effectiveness.”). See Edward W. Gondolf, Joyce McWilliams, Barbara Hart & Jane Stuehling, *Court Response to Petitions for Civil Protection Orders*, 9 J. INTERPERSONAL VIOLENCE 503, 513 (1994).

104. Goldfarb, *supra* note 8, at 1490 (“By customizing each order to express the victim’s preferences for how much and what kinds of contact should be allowed, these orders can put the force of law behind the individual woman’s choices.”).

105. Anitha, *supra* note 70, at 1854 (“Compared with other forms of domestic violence such as physical, sexual, and emotional abuse and coercive and controlling behaviors, there is comparatively little—though growing—scholarship on economic aspects of abuse.”).

106. CAL. FAM. CODE § 6320 (Deering 2024); CONN. GEN. STAT. § 46b-1 (2024); HAW. REV. STAT. § 586-1 (2024); TENN. CODE ANN. § 36-3-601 (2024). In some other states, abuse is defined to include specific acts that are characteristic of coercive control or economic abuse. See 750 ILL. COMP. STAT. ANN. 60/103 (2024) (defining

identify “coercive control” as an aspect of abuse enjoined by a protective order.¹⁰⁷ Similar amendments were passed in California and Connecticut in 2021 and in Massachusetts in 2024.¹⁰⁸ Tennessee added “financial abuse” to its definition of abuse in 2023.¹⁰⁹ Because these amendments are relatively new and have generated little applicable case law, it is difficult to discern the impact an expansive definition of abuse will have on the accessibility and efficacy of protective orders. However, the available data suggests a definitional expansion, without additional changes to the protective order framework, is insufficient to address the IPV problem.

The sole reported protective order case in Hawaii involving a coercive control allegation was vacated and remanded on procedural grounds, with the appellate court finding the petitioner’s allegations of coercive control not credible.¹¹⁰ In Connecticut, allegations of coercive control, and in particular financial control, have been used as a basis for the irretrievable breakdown of the marital relationship in at least two divorce cases.¹¹¹ In Tennessee, the 2023 legislative amendment has yet to generate any applicable case law.¹¹²

California courts have generated considerably more case law on the subject of coercive control. Although California only explicitly amended its definition of abuse to include the phrase “coercive

abuse to include “interference with personal liberty or willful deprivation”); N.J. REV. STAT. §§ 2C:25-19, 2C:13-5(a)(7) (2024) (defining abuse to include “criminal coercion” which, as defined, includes aspects of coercive control); N.M. STAT. ANN. § 40-13-2 (2024) (defining abuse to include “repeatedly driving by residence or workplace”); N.Y. SOC. SERV. LAW § 459-a (LexisNexis 2024) (defining abuse to include “identity theft, grand larceny or coercion”); UTAH CODE ANN. § 77-36-1 (LexisNexis 2024) (defining abuse to include “robbery”). Various states define abuse to include aspects of property damage, which can fall under the ambit of economic abuse or coercive control. *See, e.g.*, ARIZ. REV. STAT. ANN. § 13-3601 (2024) (defining abuse to include “criminal damage”); 12 R.I. GEN. LAWS § 12-29-2 (2024); WIS. STAT. ANN. § 813.12 (2024).

107. HAW. REV. STAT. § 586-1 (2024).

108. CAL. FAM. CODE § 6320 (Deering 2024); CONN. GEN. STAT. § 46b-1 (2024); MASS. ANN. LAWS ch. 209A, § 1 (2024).

109. TENN. CODE ANN. § 36-3-601 (2024).

110. K.T. v. K.H., 539 P.3d 945 (Haw. Ct. App. 2023), *reconsideration denied*, No. CAAP-22-0000128, 2024 WL 75506 (Haw. Ct. App. Jan. 8, 2024).

111. Guimaraes v. Graziano, No. HHD-FA21-5070460-S, 2023 WL 7637452, at *6–7 (Conn. Super. Ct. Apr. 26, 2023), *Reconsideration denied sub. nom.* No. HHD-FA21-5070460-S, 2024 WL 3158496 (Conn. Super. Ct. June 18, 2024); Beatman v. Beatman, No. FST-FA-21-6051356-S, 2023 WL 8889726, at *9, *16 (Conn. Super. Ct. Dec. 21, 2023), *motion to reopen granted*, No. FST-FA-21-6051356-S, 2025 WL 251742 (Conn. Super. Ct. Jan. 16, 2025).

112. H.B. 0944, 113th Gen. Assemb., Reg. Sess. (Tenn. 2023); *see* TENN. CODE ANN. § 36-3-601 (2024).

control” in 2021, its definition has been relatively expansive since 1998, when it was amended to include, among other things, behavior “disturbing the peace of the other party” (a phrase which the California legislature has since defined to encompass coercive control).¹¹³ Because the amendment did not initially define behavior “disturbing the peace of the other party,” California courts applied practical guidance¹¹⁴ and tools of statutory construction¹¹⁵ to ascertain whether a victim’s allegations of abuse fell within its framework. This resulted in inconsistent judicial treatment of protective order applications, as many judges remained unwilling to grant protective orders on the basis of non-criminal allegations of violence, even if these allegations disturbed the peace of the victim.¹¹⁶

In 2009 the California Supreme Court clarified the issue by holding, consistent with many lower court conclusions, that behavior “disturbing the peace of the other party” necessarily encompasses non-physical or sexual acts of abuse.¹¹⁷ The California legislature reified this move in 2015 by amending its statutory definition of abuse to emphasize that abuse need not be physical or sexual.¹¹⁸ Despite this clarification, courts in California continued to treat protective order applications inconsistently, so in 2021 the California legislature again amended its statutory definition of abuse, this time emphasizing that “disturbing the peace of the other party” may include non-criminal acts:

113. CAL. FAM. CODE § 6320(a) (Deering 1998) (amended 2021) (“The court may issue an ex parte order enjoining a party from contacting, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, contacting repeatedly by mail with the intent to annoy or harass, or disturbing the peace of the other party . . .”). Notably, CAL. FAM. CODE § 6230 was first promulgated in 1993 using the “disturbing the peace” language, but this language was not made relevant to the CAL. FAM. CODE § 6203 definition of abuse for the purposes of a protective order until 1998, when CAL. FAM. CODE § 6203 was amended to include Subpart (d), which refers directly to CAL. FAM. CODE § 6320.

114. *Conness v. Satram*, 18 Cal. Rptr. 3d 577, 580 (Cal. Ct. App. 2004) (looking to practical guidance to interpret the phrase “disturbing the peace of the other party” and concluding this phrase indicates “the requisite abuse need not be actual infliction of physical injury or assault” for the purposes of a protective order).

115. *Cofield v. Brown*, No. A123113, 2009 WL 2106127, at *10–11 (Cal. Ct. App. July 17, 2009) (relying on methods of statutory interpretation, including dictionary definitions, to interpret the phrase “disturbing the peace of the other party”).

116. *See, e.g., In re Marriage of Santos*, No. A109899, 2006 WL 172534 (Cal. Ct. App. Jan. 24, 2006) (affirming the denial of a protective order despite allegations of threats); *Nakamura v. Parker*, 67 Cal. Rptr. 3d 286 (Cal. Ct. App. 2007) (reversing the denial of a protective order on account of allegations of stalking).

117. *In re Marriage of Nadkarni*, 93 Cal. Rptr. 3d 723, 732 (Cal. Ct. App. 2009).

118. The 2014 amendment, which became effective January 1, 2015, added to the definition of abuse: “Abuse is not limited to the actual infliction of physical injury or assault.” Act of Sept. 26, 2014, ch. 635, 2014 Cal. A.B. 2089.

“Disturbing the peace of the other party” refers to conduct that, based on the totality of the circumstances, destroys the mental or emotional calm of the other party This conduct includes, but is not limited to, coercive control, which is a pattern of behavior that in purpose or effect unreasonably interferes with a person’s free will and personal liberty.¹¹⁹

The amendment provides a non-exhaustive list of examples of coercive control—including social isolation, control over the victim’s daily behavior, deprivation of basic necessities, and control over the victim’s access to financial and government resources¹²⁰—to assist courts in recognizing when aspects of psychological and economic abuse are present in a given case.¹²¹

Despite this clear statutory language, lower courts in California are still struggling to apply the framework of coercive control to protective order applications. Since the 2021 amendment, California appellate courts have already overturned numerous lower court decisions for abuse of discretion, reversing orders denying protective order requests to plaintiffs whose descriptions of abuse fall clearly within California’s statutory definition of coercive control—and therefore under California’s statutory definition of abuse.¹²² In one notable case, *Hatley v. Southard*, a lower court judge told a plaintiff her claim “does not rise to meeting the definition of domestic violence or abuse” despite the plaintiff having made, as noted on appeal, “allegations of a pattern of control and isolation by limiting her access to money, communication, and transportation” that constituted abuse as defined by California statute.¹²³ In another, *Vinson v. Kinsey*, a lower court denied a victim’s request for a protective order for herself and her three children, despite her allegations that her abuser repeatedly stalked

119. CAL. FAM. CODE § 6320 (Deering 2022).

120. CAL. FAM. CODE § 6320(c) (Deering 2022).

121. S.R. COMM., UNFINISHED BUSINESS S.B. 1141, at 6 (Cal. 2020) (“This bill sets forth a non-exhaustive list of examples of coercive control that should help courts recognize coercive control when hearing these cases and in no way limit what a court may consider coercive control to just these instances. Finally, this bill specifically states that it does not limit any remedies available under the DVPA or any other provision of law. This provision ensures that this bill builds on existing law and is not, in any way, meant to reduce the protections available under existing law to victims of domestic violence.”).

122. *See, e.g.*, *Hatley v. Southard*, 312 Cal. Rptr. 3d 370 (Cal. Ct. App. 2023); *Vinson v. Kinsey*, 311 Cal. Rptr. 3d 628 (Cal. Ct. App. 2023); *Jan F. v. Natalie F.*, 314 Cal. Rptr. 3d 369 (Cal. Ct. App. 2023); *In re Marriage of F.M. & M.M.*, 279 Cal. Rptr.3d 522 (Cal. Ct. App. 2021). *But see* *Parris J. v. Christopher U.*, 314 Cal. Rptr. 3d 225 (Cal. Ct. App. 2023); *R.C. v. I.K.*, No. C096596, 2023 WL 8481987 (Cal. Ct. App. Dec. 7, 2023); *Sophy v. Voss*, No. B323691, 2023 WL 9015196 (Cal. Ct. App. Dec. 29, 2023).

123. *Hatley*, 312 Cal. Rptr. 3d at 379 (“I understand that you’re upset, Ms. Hatley, but what you’re telling me does not rise to meeting the definition of domestic violence or abuse.”).

her and threatened to kill her, reasoning that the victim's continued contact with her abuser suggested she was "not particularly concerned" or threatened by her abuser's actions and therefore had not been abused.¹²⁴

Early data from these four states, and particularly from California, suggest solely expanding the definition of abuse will not improve outcomes for victims of IPV. Many of the abusive tactics that fall under the umbrella of coercive control are not acts that courts, or the public, deem fit for criminal action.¹²⁵ Thus, while expansive definitions of abuse better reflect the realities of IPV, they are at odds with and untenable under the criminalized protective order framework.

B. Aligning the IPV Response with the Realities of Coercive Control: Reinvigorating the Civil Protective Order

Expansive definitions of abuse make protective orders more accessible to victims in theory, but the criminal consequences associated with protective order violations make them inaccessible to many victims in practice. Victims of abuse are generally averse to seeking criminalized protective orders for various reasons.¹²⁶ Arrest is also generally ineffective at breaking the cycle of power and control that persists in abusive relationships.¹²⁷ Efforts to improve the efficacy of protective orders—such as by expanding statutory definitions of abuse—are therefore unlikely to succeed until protective orders are decoupled from the arrest remedy. It is imperative that victims of IPV be able to access civil as well as criminal protective orders, and civil as well as criminal relief, for protective orders to provide a comprehensive, long-term solution to IPV.

While civil protective orders have waned in popularity in recent years on account of the criminalization of IPV,¹²⁸ many states still authorize courts to issue them to victims of IPV.¹²⁹ Civil orders,

124. *Vinson*, 311 Cal. Rptr. 3d at 635.

125. Efforts to expand the reach of protective orders to non-criminal aspects of IPV are often criticized for enabling the use of protective orders for pretextual purposes. *See Suk*, *supra* note 10, at 18–21.

126. *See supra* Part I.B. The unwillingness of victims of abuse to engage with the criminal system is not unique to the context of IPV. One of the primary difficulties in enforcing elder abuse legislation is the unwillingness of victims to report their abusers, who are often friends or family members, on account of criminalization. *See, e.g., Jackson & Hafemeister*, *supra* note 24; *Kohn*, *supra* note 38.

127. *See supra* Part I.B.

128. *See supra* Part I.A.

129. *Suk*, *supra* note 10, at 15–16; *Zlotnick*, *supra* note 4, at 1189.

which are enforced by victims through contempt proceedings, provide a valuable mechanism for courts to restore agency to victims¹³⁰ and enjoin non-criminal acts of coercive control.¹³¹ Civil protective orders are a vastly underutilized remedy that, if made readily available, would empower victims to access protective orders and receive comprehensive relief.

i. Improving Access to Protective Orders Through the Civil Framework

For many victims of IPV, civil protective orders are an attractive alternative to the criminal process because they offer an increased degree of agency.¹³² Unlike criminal protective orders, which are often issued against victims' wishes,¹³³ civil protective orders are exclusively sought by victims and are therefore more likely to reflect victims' choices.¹³⁴ Further, civil protective orders are enforced by victims through contempt sanctions,¹³⁵ vesting victims with the agency to respond to protective order violations on their own terms, and placing the power of the court behind victims' actions.¹³⁶ Because civil protective orders allow victims to decide if and when their abuser should be penalized for continued abuse in violation of the order, they are a more effective remedy for many victims who—knowing their abusers better than law enforcement, prosecutors, or judges—are in a far better position to dictate productive paths to increasing their safety.¹³⁷

130. Zlotnick, *supra* note 4, at 1154, 1198.

131. *See supra* Part I.B. (suggesting criminal protective orders are unfit to enjoin non-criminal acts of abuse such as psychological and economic abuse).

132. Stoever, *supra* note 23, at 320 (“[A] civil protection order case is a survivor’s own case, not the government’s. The survivor defines the nature of the problem and chooses when to bring the case, which events to allege, and what relief to pursue in an attempt to meet her particular safety needs.”).

133. Protective orders can be sought by a victim themselves, or by a prosecutor on behalf of a victim who was involved in a domestic incident. An undesired law enforcement response to a domestic dispute can therefore lead to the issuance of a protective order to a victim who never intended to seek one. *See Suk, supra* note 10, at 59.

134. Goldfarb, *supra* note 8, at 1546; Candela, *supra* note 63, at 116.

135. Jurisdictions differ procedurally as to whether victims may personally file contempt motions to notify the court of abuse in violation of the protective order, or whether the victim must notify the prosecutor, who files the motion on the victim’s behalf. Regardless, the victim remains more involved in the process of enforcing the civil protective order, when compared with the enforcement of criminal protective orders. *See Zlotnick, supra* note 4, at 1197–98.

136. Stoever, *supra* note 23, at 321. *See generally* Zlotnick, *supra* note 4 (highlighting the importance of allowing victims to exercise autonomy through civil protective orders).

137. Goldfarb, *supra* note 8, at 1503 (“[E]mpowerment through decision-making

The availability of a civil protective option, enforced by contempt sanctions, will also improve the efficacy of protective orders in multiple ways. When a victim knows that reporting their abuser's violation of a protective order will not immediately lead to their abuser's arrest or incarceration, they may be more willing to seek a protective order in the first place, and once they have obtained the order, more willing to disclose, and enlist the court's help in addressing violations of the order.¹³⁸ The availability of civil protective orders is thus likely to improve the overall accessibility of protective order to victims of IPV.

Contempt sanctions may also be more effective than arrest at deterring further abuse in intimate relationships. Where the criminal prosecution of a protective order violation is a drawn-out process, contempt hearings are typically expedited, offering necessary resolution and continued safety to victims.¹³⁹ Compared to the slow criminal process, the expedited contempt process may have a greater deterrent effect on abusers because "deterrence is generally more potent when a quick punishment follows an infraction."¹⁴⁰ The contempt sanction, while less severe than arrest, is therefore an ideal initial response to a protective order violation because its decisiveness makes it a more reliable mechanism for victims to access security in the face of continued abuse.¹⁴¹

A dual protective order framework, through which victims can elect to pursue either civil or criminal protective orders, will empower victims to regain control in their intimate relationships in ways that make sense for them and their families.¹⁴² This will be particularly true if a dual protective order framework is coupled with an expansion of statutory definitions of abuse to encompass coercive control. While civil protective orders may not be a proper

is an important step in women's psychological recovery from the effects of domestic violence Although forcing every victim to make a clean break with her abuser might seem neater, safer, or easier, the complex realities of women's lives demand a more nuanced response.").

138. *See supra* Part I.B.

139. Zlotnick, *supra* note 4, at 1154, 1210.

140. *Id.* at 1201–02 ("A directive from a family court judge that he or she will lock up the batterer for contempt, which is then followed by a contempt hearing before the same judge, is therefore more effective than the general threat of criminal prosecution—especially since many batterers do not regard their behavior as criminal.").

141. *Id.* at 1214 (footnote omitted) ("[C]ontempt should be the preferred initial remedy because it can be faster and it offers a better chance of some sobering jail time before a sufficiently violent act yields the rare pretrial detention.").

142. *Id.* at 1198 (arguing that providing a contempt option above and beyond an arrest response "increases the flexibility of a battered woman's available remedies" and "[t]he very experience of having a choice can itself be empowering").

response in all cases of IPV—for example, when law enforcement responds to a domestic incident involving serious physical violence¹⁴³—they can fill a gaping hole in the contemporary legal response to IPV. Civil orders create a mechanism through which various non-criminal forms of IPV, such as psychological and economic abuse, can be enjoined.¹⁴⁴ Civil orders also offer an alternative form of support to victims of IPV who require state assistance to regain safety but are unable or unwilling to seek a criminal protective order against their abuser.¹⁴⁵ Allowing victims to choose between a civil and a criminal protective order could therefore “encourage more [victims] to come into contact with the legal system, and to do so sooner.”¹⁴⁶

ii. Offering Comprehensive Relief to Victims of IPV
Through the Civil Framework

The civil protective order can provide victims of IPV “relief well beyond the limitations of our criminal justice system.”¹⁴⁷ Many states already authorize courts to grant various forms of social and economic relief in conjunction with both civil and criminal protective orders, but judges rarely issue orders offering auxiliary relief to victims, perhaps on account of the criminalized focus of domestic violence proceedings.¹⁴⁸ Instead, most victims receive little to no state assistance to recover from their experience of abuse, aside from the temporary arrest and potential incarceration of their

143. *Id.* at 1214–15 (“For the most hard-core violent batterer, severe criminal penalties will still be the only solution On the other hand, in cases involving purely technical violations of specific provisions of a protection order such as a stay-away clause, criminal contempt sanctions alone should generally be sufficient and will offer the best chance for incarceration, if necessary.”); *see also* Suk, *supra* note 10, at 70 (suggesting state-imposed de facto divorce may still be an appropriate response to some cases of intimate partner violence that involve “serious physical injury”).

144. Gondolf et al., *supra* note 103, at 513–14; Candela, *supra* note 63, at 112.

145. For example, civil protective orders can include “no abuse” provisions that allow the victim and abuser to maintain contact and even a shared residence, while explicitly prohibiting the abuser from continuing to abuse the victim, whether by physical, sexual, psychological, or economic means. No abuse orders offer an appealing alternative to the stay-away order by setting clear, non-criminalized boundaries in the relationship that can be enforced through contempt proceedings. For an in-depth discussion of the promise of no abuse orders, as compared to stay-away orders, *see* Goldfarb, *supra* note 8, at 1523–50.

146. *Id.* at 1523.

147. Conner, *supra* note 8, at 373.

148. Stoeber, *supra* note 23, at 320–21, 363–64. *See generally* Gondolf et al., *supra* note 103 (explaining that judges can, but rarely do, grant auxiliary relief to victims of domestic violence).

abuser,¹⁴⁹ because the criminalized framework is ill-equipped to recognize and respond to the non-criminal psychological and economic challenges victims face when attempting to leave, or obtain safety within, an abusive intimate relationship.¹⁵⁰

A dual civil and criminal protective order framework will improve victims' access to non-carceral remedies to IPV, such as social and economic forms of relief, that can directly improve their independence.¹⁵¹ Reinvigorating the use of the civil protection order will therefore pave the way for courts to offer more comprehensive, flexible, and individualized protective orders, and to grant remedies in conjunction with these orders that respond to the practical constraints that allow cycles of IPV to perpetuate.¹⁵² Because economic insecurity so often prevents victims from leaving abusive relationships, providing financial support to victims is key to an effective legal response to IPV.¹⁵³ Financial support granted to victims through protective orders may include rent or food assistance,¹⁵⁴ transitional housing,¹⁵⁵ child support and

149. Stoever, *supra* note 23, at 320–21; Goldfarb, *supra* note 8, at 1507.

150. Cahn, *supra* note 13, at 828–29 (“Because criminalization does not address the emotional or financial obstacles faced by battered women, criminalization alone is insufficient. . . . [T]he criminal justice system must work with, must provide support to, and must be supported by a civil remedial system that pays attention to the needs of both victims and perpetrators.”).

151. Conner, *supra* note 8, at 341 (“[A]s long as she remains financially dependent upon her abuser it is exceedingly difficult for a woman who experiences intimate partner violence to put a stop to the batterer’s control over her. . . . [W]ithout ensuring that a survivor of domestic violence has food security, housing stability, healthcare, childcare, adequate transportation, as well as reasonable assurances of continuing resources or a guarantee of enforcement of any court ordered relief, a batterer will continue to maintain his power to abuse and control.”).

152. Gondolf et al., *supra* note 103, at 514 (“While protection orders appear to be readily attainable, provisions that might make orders more practical and more effective are less likely to be granted. The progress in legislative reform to strengthen the protection order statutes, and in court reform to improve access to relief, need to be matched by legislative and judicial efforts to expand the relief granted to abused women and their children, especially in the form of financial support and restricted child visitation. More comprehensive protection orders are likely to contribute to meeting the overall objective of enhancing the safety and autonomy of abused women.”); Goldfarb, *supra* note 8, at 1507; Stoever, *supra* note 23, at 353–54.

153. *Economic Justice Policy*, *supra* note 81 (“Many victims remain in abusive relationships or unsafe situations because they cannot afford to leave. When victims do flee, many do so without any financial resources. Addressing the basic financial needs and rights of survivors and their children significantly improve survivors’ ability to find safety, while building long-term security for themselves and their children.”); Stoever, *supra* note 23, at 370 (“[E]conomic dependence is the greatest predictor of a survivor’s inability to end an abusive relationship. . . .”); see Ko, *supra* note 3, at 386; Conner, *supra* note 8, at 370.

154. Ko, *supra* note 3, at 386; Conner, *supra* note 8, at 375.

155. Rutledge, *supra* note 89, at 227 (“Violence tends to increase when a victim separates herself from her abuser; consequently, one of her first and most crucial

childcare,¹⁵⁶ education and employment assistance,¹⁵⁷ or compensation for a victim's court costs or medical expenses resulting from the abuse.¹⁵⁸ As more states expand their statutory definitions of abuse to encompass aspects of coercive control, they may also consider creating additional statutory remedies to help victims obtain financial independence.¹⁵⁹

Decoupling the protective order regime from the carceral system will also increase overall contact between the legal system and victims of IPV.¹⁶⁰ When victims know they can rely on the legal system not only to incapacitate their abuser but also to support them in recovering from their abuse, they are far more likely to turn to the state for assistance.¹⁶¹ System contact—even a failed application for a protective order—can improve outcomes for victims by reducing the likelihood of re-abuse¹⁶² and improving victims' access to other social safety nets that can contribute to improved financial security.¹⁶³ A comprehensive system comprised

needs may be for safety. Actions to increase a victim's safety may include changing the locks or moving and finding a new place to live. Establishing a new residence often requires security and utility deposits, which can be difficult for victims of domestic violence to afford.”)

156. *Id.* at 228. *See generally Economic Justice Policy*, *supra* note 81 (explaining that victims of domestic violence benefit from having access to affordable childcare).

157. Ko, *supra* note 3, at 386.

158. Rutledge, *supra* note 89, at 228.

159. For example, California now provides victims of abuse a remedy, effective July 1, 2023, to relieve themselves of debt liability and have that liability reassigned to their abuser upon providing proof the debt was coerced. *See* CAL. CIV. CODE § 1798.97 (2023). Scholars have also suggested states improve the relief provided to victims of IPV through crime victim compensation funds. *See, e.g.,* Rutledge, *supra* note 89, at 232; Stoeber, *supra* note 23, at 373.

160. *See supra* Part II.B.i (arguing a civil protective order alternative improves victims' agency in addressing the abuse within their relationships); *see also* Goldfarb, *supra* note 8, at 1509 (“[C]ivil protection orders make it easier for victims to avail themselves of the criminal justice system later if they choose to do so, since police are often more willing to arrest a batterer for abuse if a protection order is in place.”).

161. Bowman, *supra* note 43, at 207 (describing a study in London, Ontario showing that “when the police pressed charges against abusers *and* the community provided a broad range of services, including shelters and therapy, for victims of abuse, there was a 25-fold increase in domestic violence filings, no reduction in the willingness of victims to request the help of the police, a higher level of satisfaction with the police, and a reduction in victim-reported incidents of violence”).

162. McFarlane et al., *supra* note 36, at 616 (explaining that victims from the study who sought assistance from the system experienced “significantly lower levels of violence . . . irrespective of the justice system outcome”).

163. *See* Goldfarb, *supra* note 8, at 1509 (“A major advantage of civil protection orders is that they bring the domestic violence victim into contact with the legal system, which in turn opens the door to other community resources, such as social services agencies and battered women's support groups.”); *see also Economic Justice Policy*, *supra* note 81 (“Access to social safety nets like TANF (including Family Violence Option waivers), SNAP, and SSDI are also critical in providing increased

of both civil and criminal relief for victims of IPV is therefore the most effective way to ensure victims can access protective orders and use them to secure long-term independence.

Conclusion

The criminal protective order has its place in the legal response to IPV, but it is far from a panacea. Overreliance on arrest and incarceration to address IPV runs counter to scholarly understandings of coercive control and ignores the practical ineffectiveness of arrest as a deterrent to future violence in intimate relationships. Most importantly, the overcriminalization of protective orders serves the interests of the carceral state at the expense of victims' safety.

A comprehensive, long-lasting legal response to IPV must shift its focus away from incapacitating abusers and toward returning agency to victims. Expanding statutory definitions of abuse to better capture the realities of coercive control, in addition to expanding the protective order framework to encompass both civil and criminal remedies, will improve victims' access to IPV remedies and allow victims to use these remedies to regain control and independence after experiencing abuse.