

CIVIL RESTRAINING ORDERS FOR DOMESTIC VIOLENCE: THE UNRESOLVED QUESTION OF “EFFICACY”

CAROLYN N. KO*

*“Throughout my whole marriage, people would say to me, ‘that’s enough, you’ve just had enough.’ But when is enough enough? I never knew . . .”*¹

I. INTRODUCTION

Domestic violence remains a serious epidemic affecting many families in the American society. An estimated 1.3 million women are physically abused by their husbands, former spouses, or live-in partners each year.² Abuse from domestic violence results in more than 450,000 visits to the emergency room each year.³ Since 1976, nearly one-third of all female homicide victims have been killed by their intimate partners.⁴ In Los Angeles County, a woman “dies at the hands of her husband or boyfriend” every five days.⁵

Domestic violence affects many aspects of our society. It results in additional costs to law enforcement. Responding to domestic abuse calls takes up one-third of all police time and is the most frequent type of call to law enforcers.⁶ Domestic abuse also has a significant economic impact. Absenteeism of battered women and decreases in their work productivity cause employers to lose between three to thirteen billion dollars annually.⁷ An estimated fifty percent of all homeless women and children seeking

*J.D. candidate, University of Southern California Law School, 2002; B.A., 1998, University of California, Los Angeles. I would like to thank Professor Tom Lyon for all his help and guidance, Alana Bowman for her references, Barry Goldstein for the statistics, and the entire ILJ Board and staff for their hard work and commitment. This Note is dedicated to my family and friends for their constant love, support, and encouragement.

¹ Karla Fischer & Mary Rose, *When “Enough is Enough”: Battered Women’s Decision Making Around Court Orders of Protection*, 41 CRIME & DELINQ. 414, 414 (1995) (quoting a narrative of a battered woman).

² PATRICIA TJADEN & NANCY THOENNES, U.S. DEP’T OF JUSTICE, FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN 26 (2000).

³ PATRICIA TJADEN & NANCY THOENNES, U.S. DEP’T OF JUSTICE, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE 46 (2000).

⁴ CALLIE MARIE RENNISON & SARAH WELCHANS, U.S. DEP’T OF JUSTICE, INTIMATE PARTNER VIOLENCE (2000), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ipv.pdf> (on file with author).

⁵ L.A. COUNTY DEP’T OF HEALTH SERVS., VIOLENCE PREVENTION COALITION FACT SHEET, at <http://www.dhs.co.la.ca.us/phps/vpc/violac.htm> (last visited Feb. 11, 2001) (on file with author).

⁶ Joan Zorza, *Woman Battering: High Costs and the State of the Law*, 28 CLEARINGHOUSE REV. 383, 385 (1994).

⁷ *Id.*

shelter on the streets are the products of domestic violence.⁸ The result of this tragedy is that society must pay for the costs of shelters, counseling programs, and foster care programs to assist these women and children. Domestic abuse also causes psychosocial problems for women and children. Studies find that domestic violence often manifests itself in a tendency for an individual to become either a victim or a batterer.¹⁰ For instance, women experiencing abuse are 150 times more likely to abuse their children, and sons who witness domestic violence are ten times more likely to become abusers themselves.¹¹ Furthermore, children who witness domestic violence often fall prey to social incompetency and emotional problems.¹²

The American society has been attempting to address this social problem since the feminist movement in the late 1960s and 1970s brought the issue to the nation's agenda and encouraged government response.¹³ Realizing the inadequacies of legal remedies to properly assist battered women, many states enacted reforms on the statutory, procedural, and organizational levels to improve civil and criminal relief to victims. Some reform policies have included implementing mandatory arrests or proarrest police procedures, creating domestic violence units in prosecutors' offices, and setting up treatment programs for abusive spouses and relief programs for victims such as counseling.¹⁴ Many states took the approach of adopting civil restraining order legislation to provide a civil remedy for abused victims.¹⁵ Only two jurisdictions had civil restraining order legislation prior to the Pennsylvania Protection from Abuse Act of 1976,¹⁶ but by 1994, all fifty states had adopted some form of protective order legislation.¹⁷

Restraining orders continue to be the primary form of protection for victims of domestic violence. For instance, 11,623 restraining orders were issued in Los Angeles County for the year 2000.¹⁸ More than 10,000

⁸ Joan Zorza, *Woman Battering: A Major Cause of Homelessness*, 25 CLEARINGHOUSE REV. 421, 421 (1991).

⁹ See Zorza, *supra* note 6, at 384.

¹⁰ See EVE BUZAWA & CARL BUZAWA, DOMESTIC VIOLENCE: THE CRIMINAL JUSTICE RESPONSE 12 (James A. Inciardi ed., 2d ed. 1996); Mary Ann Dutton & Edward W. Gondolf, *Wife Battering*, in CASE STUDIES IN FAMILY VIOLENCE 323, 334 (Robert T. Ammerman & Michel Hersen eds., 2d ed. 2000).

¹¹ BUZAWA & BUZAWA, *supra* note 10.

¹² *Id.*; Dutton & Gondolf, *supra* note 10, at 334 (discussing the consequences of domestic violence on children).

¹³ See JEFFERY FAGAN, U.S. DEP'T OF JUSTICE, THE CRIMINALIZATION OF DOMESTIC VIOLENCE: PROMISES AND LIMITS 6-10 (1996) (discussing the origins of legal intervention in family violence).

¹⁴ *Id.* at 9.

¹⁵ Prior to the late 1970s, a woman could only obtain a civil restraining order if she was simultaneously filing for divorce from her husband; although protective orders in criminal proceedings were available, they were weakly enforced and ineffective. See FAGAN, *supra* note 13, at 8.

¹⁶ Janice Grau, Jeffery Fagan, & Sandra Wexler, *Restraining Orders for Battered Women: Issues of Access and Efficacy*, in CRIMINAL JUSTICE POLITICS AND WOMEN: THE AFTERMATH OF A LEGALLY MANDATED CHANGE 13, 14 (Claudine SchWeber & Clarice Feinman eds., 1985).

¹⁷ Matthew J. Carlson, Susan D. Harris, & George W. Holden, *Protective Orders and Domestic Violence: Risk Factors for Re-Abuse*, 14 J. FAM. VIOLENCE 205, 206 (1999).

¹⁸ Telephone Interview with Barry Goldstein, Head of Statistics Unit, Los Angeles Superior Courts (March 19, 2001).

protection orders were filed in Philadelphia in 1996.¹⁹ In 1992, 46,515 restraining orders were issued against offenders in Massachusetts.²⁰ The pervasive issuance of restraining orders makes it imperative that they address abuse and adequately restrain offenders.

Civil restraining orders, in theory, work to provide immediate relief to victims by enjoining batterers from further violence. In many states, including California, a violation of an order constitutes a criminal offense, enabling the police to arrest and subsequently convict the batterer for violating the terms of the order.²¹ Restraining orders are an attractive and important alternative to criminal prosecution because of their immediate availability to qualifying victims and their broad range of protection.²² Many, however, criticize them for failing to adequately deter the re-abuse of victims.²³ As only a handful of studies have examined the issue of effectiveness, the deterrent effect of restraining orders remains inconclusive.

This Note will consider the effectiveness of restraining orders, particularly temporary restraining orders, by examining the results of available research. It will examine the issue through two approaches: (1) a subjective approach that determines efficacy from the victim's perspective on restraining orders, and (2) an objective approach that measures efficacy from the level of reduction in post-restraining order abuse. The analysis of current studies will reveal an inconclusive answer to the inquiry, suggesting that new research should be conducted to obtain a more definite answer.

Although the subjective impact of restraining orders appears to be positive, empirical findings about the deterrent effect on post-order abuse remains indeterminate due to methodological flaws. Critiquing and analyzing the methodologies of available studies will provide points of improvement for new studies. This Note will also explore the highlights of available research findings on the restraining order process and domestic violence victims, and provide some recommendations to address the implications. The discussion will focus on re-abuse factors such as race and ethnicity, socioeconomic status, and the presence of children. To the

¹⁹ Lori A. Zoellner, Norah C. Feeny, Jennifer Alvarez, Christina Watlington, Melanie O'Neill, Ruth Zager, & Edna B. Foa, *Factors Associated with Completion of the Restraining Order Process in Female Victim of Partner Violence*, 15 J. INTERPERSONAL VIOLENCE 1081, 1083 (2000).

²⁰ Andrew Klein, *Re-Abuse in a Population of Court-Restrained Male Batterers: Why Restraining Orders Don't Work*, in *DO ARRESTS AND RESTRAINING ORDERS WORK?* 192, 192 (Eve Buzawa & Carl Buzawa eds., 1996).

²¹ See CAL. PENAL CODE § 13701 (West Supp. 2002) (allowing arrest of domestic violence offenders if there is probable cause that a restraining order has been violated); Cecelia M. Espenosa, *No Relief for the Weary: VAWA Relief Denied for Battered Immigrants Lost in the Intersections*, 83 MARQ. L. REV. 163, 183 n.103 (1999) (discussing states with mandatory arrest statutes).

²² Protection from the batterer can include eviction from the shared residence, child support payments, limitations on child visitation rights, and mandatory counseling attendance. Peter Finn, *Statutory Authority in the Use and Enforcement of Civil Protection Orders Against Domestic Abuse*, 23 FAM. L.Q. 43, 43 (1989).

²³ See Robert C. Davis & Barbara Smith, *Domestic Violence Reforms: Empty Promises or Fulfilled Expectations?*, 41 CRIME AND DELINQ. 541, 548-49 (1995) (discussing unfavorable results of studies on restraining order efficacy); Angela Moe Wan, *Battered Women in the Restraining Order Process: Observations on a Court Advocacy Program*, 6 VIOLENCE AGAINST WOMEN 606, 607 (2000) (raising deficiencies of restraining orders).

extent that domestic violence is a very complex social problem, no adequate method may exist to protect every victim from re-abuse.

Part II of this Note reviews the legal background of restraining orders, with an emphasis on the process in California. Part III examines the research studies and discusses the methodological problems associated with the question of restraining order efficacy. Part IV considers the implications of current studies on re-abuse factors, and offers suggestions to improve the legal intervention process in light of these indications. Part V explores the idea of inevitability in domestic violence in that some offenders may never be adequately deterred.

II. THE LEGAL FRAMEWORK

A. RESTRAINING ORDERS AND RELEVANT PROCEDURES

Restraining orders can be obtained both in civil and criminal courts. Usually, they are referred to as “protective orders” or “stay-away orders” when issued in criminal courts, and “restraining orders” or “civil protective orders” when referred to in the context of civil proceedings.²⁴ States vary, however, on how restraining and protective orders are defined, and many use these terms interchangeably. The types and procedures involved in obtaining restraining orders also differ among states depending on their statutory provisions.

Protective orders are issued in a criminal proceeding, at the judge’s discretion, to a perpetrator who has been arrested for domestic violence. The order may be a condition for bail or pretrial release, requiring the batterer not to threaten, assault, or attack the victim during arraignment or sentencing.²⁵ In California, these injunctions are issued pursuant to California Penal Code section 136.2(g).²⁶ Generally, protective orders last only until the case ends and then the defendant is no longer under the court’s jurisdiction.²⁷ Judges, however, possess the discretion to modify the terms of the orders or terminate them any time before then.²⁸ An offender

²⁴ See CONTINUING CTR. FOR JUDICIAL EDUC. AND RESEARCH, CALIFORNIA JUDGES BENCHBOOK: DOMESTIC VIOLENCE CASES IN CRIMINAL COURT 31 (3d ed. 2000) [hereinafter CONTINUING CTR.]; Molly Chaudhuri & Kathleen Daly, *Do Restraining Orders Help? Battered Women’s Experience with Male Violence and Legal Process*, in DOMESTIC VIOLENCE: THE CHANGING CRIMINAL JUSTICE 227, 230–31 (Eve Buzawa & Carl Buzawa eds., 1992).

²⁵ CONTINUING CENTER, *supra* note 24, at 31–32; Chaudhuri & Daly, *supra* note 24, at 231; Finn, *supra* note 22, at 45.

²⁶ The relevant section of the Penal Code states:

Upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders, including, but not limited to, the following:

....

(g) any order protecting victims of violent crimes from contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendants . . .

CAL. PENAL CODE § 136.2(g) (West Supp. 2002).

²⁷ CONTINUING CTR., *supra* note 24, at 34–35; Chaudhuri & Daly, *supra* note 24, at 231.

²⁸ Chaudhuri & Daly, *supra* note 24, at 231.

can be ordered back into court and can be imposed with heavier fines, and possibly incarceration, for violating the protective orders.²⁹ In California, a violation of a court order issued under Penal Code section 136.2 can be a misdemeanor or a felony.³⁰ Although protective orders are important to victims seeking criminal prosecution, they are often not considered an “independent vehicle for protecting victims,” as are civil restraining orders, and are viewed more as part of the “case-processing strategy” in criminal prosecution.³¹

Civil restraining orders are issued by a judge in a civil proceeding, and often involve a two-step process. In the first step, the victim files an application for a temporary restraining order (“TRO”), a short-term restraining order.³² In the application, the victim describes the nature of the situation in order to enable a judge to properly consider the case and grant a restraining order. In California, this type of order is referred to as an Ex Parte Domestic Violence Protective Order (“DVPO”)³³ and is issued only when “reasonable proof of a past act or acts of abuse” is demonstrated.³⁴ TROs are issued at the discretion of the presiding judge when “good cause” is shown.³⁵

The judge orders the offender not to attack, assault, threaten, harass, or call the victim, and may also include other provisions, including the exclusion of the batterer from the victim’s residence and awarding the victim temporary custody of the children.³⁶ Because TROs are issued to provide immediate protection to victims, they are granted without giving notice to the offender and do not provide the offender an opportunity to present his side of the case. To alleviate due process challenges, courts require that an evidentiary hearing promptly follow the TRO issuance.³⁷ A TRO is served upon the batterer by the sheriff, along with notice of the court hearing date.³⁸

The second step of the restraining order process involves obtaining a permanent restraining order. Permanent orders, as their names suggest, are of a lengthier nature and are granted only after notice and a hearing where both the victim and the offender are present to offer their testimonies.³⁹ The hearing is scheduled at the earliest available court day, generally

²⁹ See CONTINUING CTR., *supra* note 24, at 46–47.

³⁰ CAL. PENAL CODE §§ 136.1, 166, 273.6 (West Supp. 2002).

³¹ BUZAWA & BUZAWA, *supra* note 10, at 188–89.

³² See Chaudhuri & Daly, *supra* note 24, at 231; Cal. Courts Self-Help Ctr., *Applying for a Restraining Order*, at <http://www.courtinfo.ca.gov/selfhelp/eb/restraining/applying> (last visited Apr. 5, 2002) (discussing California’s application process for restraining orders) (on file with author).

³³ See CAL. FAM. CODE §§ 6320–6327 (West 2002); OFFICE OF THE ATTORNEY GEN., CAL. DEP’T OF JUSTICE, *Protective Orders That Can Be Obtained*, in WOMEN’S RIGHTS HANDBOOK, at <http://caag.state.ca.us/piu/womansrights/ch7.html#2a3> (last visited Jan. 27, 2001) [hereinafter WOMEN’S RIGHTS HANDBOOK] (on file with author).

³⁴ CAL. FAM. CODE § 6300 (West 2002).

³⁵ *Id.* § 6320.

³⁶ *Id.* §§ 6320–6325.

³⁷ Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 1039–40 (1993).

³⁸ CAL. FAM. CODE §§ 243, 6383 (West 2002); Chaudhuri & Daly, *supra* note 24, at 231.

³⁹ See Grau et al., *supra* note 16, at 16.

between ten to twenty-one days after the issuance of the TRO.⁴⁰ In California, the court hearing is scheduled within twenty days, or if there is good cause shown to the court, twenty-five days after the TRO issuance.⁴¹ When the petitioner meets the burden of proving acts of abuse by the defendant, the judge issues a permanent restraining order, which can last up to three years in California and can be renewed without a showing of any further abuse after its issuance.⁴² Other available remedies after notice and a hearing include orders requiring restitution to the victim for loss of earnings and other related expenses, granting possession of the residence to the victim, ordering child support payments if the victim is granted custody of any children, and requiring the batterer to attend a treatment program.⁴³ In addition, the defendant is prohibited from possessing, purchasing, or receiving firearms while subject to a restraining order.⁴⁴ Any violation of this prohibition results in imprisonment or a fine, or both.⁴⁵

Many states also offer additional types of restraining orders. For example, an Emergency Protective Order (“EPO”) can be obtained when the court is not in session, such as nights and weekends, if the battered victim can demonstrate reasonable grounds for a judicial officer to believe that she or her children are in immediate and present danger of domestic violence.⁴⁶ In California, a victim can obtain an EPO directly from police officers authorized to telephone judges and obtain these orders.⁴⁷ Emergency orders can consist of any protective orders set forth in California Family Code section 6218,⁴⁸ and can be issued to provide temporary care and control of a child who is in immediate and present danger of abuse or of abduction.⁴⁹ Furthermore, emergency orders can be obtained to prevent the occurrence or reoccurrence of stalking.⁵⁰ In California, EPOs offer protection from the date of issuance until “the close of judicial business on the fifth court day” or “the seventh calendar day following the day of its issuance,” whichever occurs first.⁵¹ A person in California who does not have a domestic relationship with the batterer can seek civil antiharassment orders pursuant to Code of Civil Procedure section 527.6.⁵² Such orders are enforceable under California Penal Code sections 166 or 273.6.⁵³

⁴⁰ See Chaudhuri & Daly, *supra* note 24, at 231; Harrell & Smith, *Effects of Restraining Orders on Domestic Violence Victims*, in *DO ARRESTS AND RESTRAINING ORDERS WORK?*, *supra* note 20, at 214, 218; Zoellner et al., *supra* note 19, at 1083.

⁴¹ CAL. FAM. CODE § 242(a) (West 2002); WOMEN’S RIGHTS HANDBOOK, *supra* note 33.

⁴² CAL. FAM. CODE § 6345 (West 2002).

⁴³ *Id.* §§ 6340–6344.

⁴⁴ *Id.* § 6389.

⁴⁵ CAL. PENAL CODE § 12021(g) (West 2002).

⁴⁶ CAL. FAM. CODE §§ 6250–6257 (West 2002). See Finn, *supra* note 22, at 55.

⁴⁷ CAL. FAM. CODE §§ 6241, 6250.

⁴⁸ Orders include enjoining specific acts of abuse, excluding the person from a dwelling, and enjoining other specified behavior necessary to effectuate other orders. *Id.* § 6218.

⁴⁹ *Id.* § 6251.

⁵⁰ *Id.* § 6274.

⁵¹ *Id.* § 6256.

⁵² “A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an injunction prohibiting harassment as provided in this section.” CAL. CODE OF CIV. PROC. § 527.6(a) (West Supp. 2001).

Harassment is defined as:

The violation of a restraining order results in both civil and criminal contempt. In many states, fines and/or jail time are imposed.⁵⁴ In California, the violation of a protective order is a crime punishable by a fine of not more than \$1,000 or by imprisonment in a county jail for not more than a year, or both,⁵⁵ and the defendant can also be found in contempt under California Code of Civil Procedure section 1209.⁵⁶ Furthermore, almost every state has adopted warrantless arrest policies⁵⁷ pursuant to the encouragement from the federal Violence Against Women Act of 1994 to criminalize the violation of restraining orders.⁵⁸ For instance, in California, an officer can arrest an offender for violating a restraining order without a warrant.⁵⁹

B. THE ADVANTAGES OF CIVIL RESTRAINING ORDERS OVER CRIMINAL PROSECUTION

Although civil restraining orders are not the only remedies available to battered women, they are probably the most attractive. These orders provide immediate relief by enjoining a batterer's conduct. Victims encounter great delays in criminal prosecutions due to overwhelming court dockets or other procedural burdens, whereas a civil preliminary hearing can be scheduled in one or two days after the filing of a complaint.⁶⁰ Civil restraining orders also protect against abuse that may not sufficiently constitute a criminal violation or that may lack sufficient evidence for prosecution in criminal courts.⁶¹ In a civil proceeding, the evidentiary standard that a plaintiff must meet is proof by a preponderance of the evidence, a more relaxed standard than the proof beyond a reasonable doubt standard used in criminal proceedings. In addition, civil restraining orders may reduce the fear of retaliation by perpetrators because the orders are prescribed to prevent future abuse and serve to remind the offender about future violations, whereas protective orders, issued simultaneously with a criminal prosecution, are more likely to remind batterers about punishment that is being inflicted and thus, invoke bitter emotions that can lead to reprisal.⁶² Furthermore, civil restraining orders can evict the

[U]nlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff.

Id. § 527.6(b).

⁵³ CAL. PENAL CODE §§ 166, 273.6 (West Supp. 2002).

⁵⁴ See Klein & Orloff, *supra* note 37, at 1095-99 (discussing the enforcement procedures for different states).

⁵⁵ CAL. FAM. CODE § 6388; CAL. PENAL CODE § 273.6.

⁵⁶ CAL. CODE OF CIV. PROC. § 1209.

⁵⁷ Linda G. Mills, Commentaries, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 558 (1999).

⁵⁸ BUZAWA & BUZAWA, *supra* note 10, at 189.

⁵⁹ CAL. PENAL CODE §§ 836(c)(1), 13701.

⁶⁰ BUZAWA & BUZAWA, *supra* note 10, at 192.

⁶¹ For instance, acts such as intimidation or harassment are hard to document.

⁶² BUZAWA & BUZAWA, *supra* note 10, at 192.

batterer from the victim's place of residence, whereas, unless a protective order is granted to the victim in a criminal proceeding, the defendant may be allowed to live with her while they await judgment.⁶³ This cohabitation increases the opportunity for the defendant to retaliate.

The primary goal of civil restraining orders is to prevent further physical abuse, not to punish batterers, and this objective often directly parallels the desired interest of the victims.⁶⁴ Because battered women are frequently financially dependent upon the offenders, criminal prosecution and incarceration of abusers may lead to the deprivation of the victim's only source of income.⁶⁵ Civil restraining orders provide victims with a broader range of protection than simply preventing physical abuse. Judges in civil restraining order hearings can award custody of the children to the woman, stipulate the payment of child support, and evict the batterer from the shared residence.⁶⁶ Thus, victims receive a greater variety of remedies that are tailored to their specific circumstances. In addition, hearings for restraining orders are less time consuming than criminal prosecutions and less burdensome for victims who have children or are employed.⁶⁷

III. THE IMPLICATIONS OF AVAILABLE RESEARCH STUDIES ON THE ISSUE OF RESTRAINING ORDER EFFICACY

Restraining orders became more prevalent in the 1980s when legislative reforms in many states made them a civil remedy following the enactment of the Pennsylvania Protection from Abuse Act of 1976.⁶⁸ The primary goals of restraining order legislation are to provide domestic violence victims with an alternative to criminal prosecutions and to minimize the violence of offenders.⁶⁹ Despite the prevalent issuance of restraining orders, few studies have properly analyzed their effectiveness in deterring violence. Available studies on restraining orders consider the efficacy issue through one of two approaches. The first approach measures effectiveness from the victim's standpoint—a psychological and subjective approach. The other, more objective approach, measures efficacy in terms of the amount of abuse that restraining orders statistically reduce.

A. EFFICACY FROM A SUBJECTIVE STANDPOINT: VICTIM SATISFACTION

Domestic violence noticeably involves physical abuse, but it is also a form of psychological and emotional abuse. Battered victims experience severe psychological trauma, often termed posttraumatic stress disorder ("PTSD"), which results from repetitive physical violence. Victims suffering PTSD experience a variety of symptoms including "paralyzing

⁶³ See Finn, *supra* note 22, at 44.

⁶⁴ See *id.*

⁶⁵ BUZAWA & BUZAWA, *supra* note 10, at 192.

⁶⁶ Finn, *supra* note 22, at 43.

⁶⁷ See Barbara Hart, *Battered Women and the Criminal Justice System, in DO ARRESTS AND RESTRAINING ORDERS WORK?*, *supra* note 20, at 98, 102.

⁶⁸ See FAGAN, *supra* note 13, at 8–10.

⁶⁹ Grau et al., *supra* note 16, at 15.

terror, constant anxiety, apprehension, vigilance, and feelings of impending doom.”⁷⁰ As the abuse continues and even escalates, the victims become “fatigued, passive, and unable to act.”⁷¹ PTSD may also alter self-perception and the victim’s perception of the offender, including seeing the batterer as someone with complete power.⁷² Furthermore, other symptoms associated with PTSD may develop, including dissociation, depression, alcohol and substance abuse, and self-mutilation, which may recur even when the victimization ceases and the victim is safe.⁷³

Some studies define the effectiveness of restraining orders by considering their impact on the victim’s psychological well-being; that is, by measuring efficacy from the victim’s standpoint.⁷⁴ The nature of battering relationships involves a pattern of domination and control by the abuser. Over time, the abuser controls every aspect of the victim’s life—defining who she is, what she believes in, and what she needs.⁷⁵ In essence, the offender socially constructs the victim and becomes the puppeteer. Because battered women are often silenced in their struggle against violence as a result of the psychological effects of abuse and the inherent feeling of helplessness created by such relationships, the legal process is a way to give the victim her “voice” again.⁷⁶

Studies about victim satisfaction often indicate positive psychological effects from obtaining restraining orders. A study conducted by Susan Keilitz and her colleagues found that seventy-two percent of the women obtaining a restraining order reported improvements in their lives just one month after receiving the order.⁷⁷ After six months, eighty-five percent reported life improvements and more than ninety percent reported an increase in emotional well-being.⁷⁸ In addition, eighty percent reported an increased sense of security in the follow-up interview.⁷⁹ The study also found that women with partners having severe violent histories were more likely to believe that the orders improved their well-being, self-esteem, and feelings of security.⁸⁰ A study by Mary Fischer and Karla Rose found that ninety-one percent of the women felt that their decision to obtain a

⁷⁰ Amy H. Schwartz, Susan M. Andersen, Tracey J. Strasser, & Teresa Ramirez Boulette, *Psychological Maltreatment of Partners*, in *CASE STUDIES IN FAMILY VIOLENCE*, *supra* note 10, at 349, 366.

⁷¹ *Id.*

⁷² Julia M. Whealin, Nat’l Ctr. for PTSD, *Complex PTSD*, at http://www.ncptsd.org/facts/specific/fs_complex_ptsd.html (last visited Jan. 9, 2002) (on file with author).

⁷³ Dutton & Gondolf, *supra* note 10, at 341; Whealin, *supra* note 72.

⁷⁴ See, e.g., SUSAN KEILITZ, PAULA L. HANNAFORD, & HILLERY S. EFKEMAN, U.S. DEP’T OF JUSTICE, CIVIL PROTECTION ORDERS: THE BENEFITS AND LIMITATIONS FOR VICTIMS OF DOMESTIC VIOLENCE (1998), reprinted in 3 *DOMESTIC VIOLENCE: FROM A PRIVATE MATTER TO A FEDERAL OFFENSE: THE CIVIL JUSTICE SYSTEM’S RESPONSE TO DOMESTIC VIOLENCE*, at 49 (Paul Finkelman ed., 1998); Fischer & Rose, *supra* note 1, at 414.

⁷⁵ See Fischer & Rose, *supra* note 1, at 425.

⁷⁶ *Id.* at 424.

⁷⁷ KEILITZ ET AL., *supra* note 74, at 55. The study involved phone interviews with 285 women one month after receiving protection orders and a follow-up interview with 177 of the same women, six months later. *Id.* at 52.

⁷⁸ *Id.* at 55.

⁷⁹ *Id.*

⁸⁰ *Id.* at 60.

restraining order was a good one.⁸¹ Eighty-nine percent felt more in control of their relationships, and ninety-eight percent felt they had more control over their lives.⁸² Eighty-six percent of the victims surveyed in a Wisconsin study by Anne Horton and her colleagues were satisfied with the results of restraining orders, and ninety-four percent felt good about their decision to obtain a restraining order.⁸³ Eighty-six percent of the women in a study by Adele Harrell and Barbara E. Smith felt that the TROs were helpful in documenting abuse.⁸⁴ Seventy-nine percent believed that the TROs helped relay the message to their partners that battering was wrong.⁸⁵

Restraining orders represent many positive things to victims. They may be a symbol of a “turning point for change,” or “a vision of a better life in the future.”⁸⁶ As one battered woman puts it, “Once I got the order I thought, it’s time to start all over. When you go to court to get the order and you walk out with it in your hand, you feel like you have a little bit of power over your life again.”⁸⁷ Obtaining a restraining order also represents a victim’s “internalized strength” because it may be the moment in which the battered woman has finally stood up against her battering partner.⁸⁸ The study by Fischer and Rose, along with other studies, confirm that women seeking court orders often have experienced extensive periods of abuse and seek court protection as a remedy of last resort.⁸⁹ Thus, indications of victim satisfaction with the restraining order process suggest that such orders are psychologically beneficial.

Treatment of battered women involves reinforcing and encouraging the realization that the victim is capable of taking care of herself without her partner and that she has the power to make changes in their abusive relationship.⁹⁰ Legal intervention works to interrupt the pattern of domination and control by directly restructuring the relationship level between the victim and abuser.⁹¹ Aside from ordering the abuser to refrain

⁸¹ Fischer & Rose, *supra* note 1, at 417. The study involved surveying 287 women in a Midwestern, medium-sized urban county court who obtained TROs with the assistance of the local battered women’s shelter. *Id.* at 415. The survey took place at the courthouse after the women obtained their TROs, and also after the permanent order hearing for eighty-three of those women. *Id.* at 417.

⁸² *Id.* at 417.

⁸³ Anne Horton, Kyriacos M. Simonidis, & Lucy Simonidis, *Legal Remedies for Spousal Abuse: Victim Characteristics, Expectations, and Satisfaction*, 2 J. FAM. VIOLENCE 265, 274 (1987). The study involved giving sixty-eight individuals an initial questionnaire and a follow-up questionnaire within six months of the TRO issuance. *Id.* at 268. Fifty-four individuals responded to the initial survey and fifty out of the fifty-four also responded to the second questionnaire. *Id.*

⁸⁴ Harrell & Smith, *supra* note 40, at 218. This study involved interviewing 355 women who filed for TROs three months and one year after the initial order. *Id.* at 215.

⁸⁵ *Id.* at 218.

⁸⁶ Fischer & Rose, *supra* note 1, at 424.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* at 416. More than forty percent of the women in the study conducted by Keilitz and her colleagues experienced severe physical abuse at least every few months, and nearly twenty-five percent suffered abuse for more than five years. KEILITZ ET AL., *supra* note 74, at 58. Seventy-two percent of the victims in the study conducted by Horton and her colleagues had a history of abuse. Horton et al., *supra* note 83, at 271.

⁹⁰ According to several victimization studies, battered women lapse into attributional shifting by perceiving the perpetrator as the main catalyst for her abuse and believing that only he wields the power to change her condition. Dutton & Gondolf, *supra* note 10, at 340.

⁹¹ Fischer & Rose, *supra* note 1, at 425.

from violent acts, restraining orders also contain specific measures such as contact or visitation provisions and property rights. These measures give victims an opportunity to regain power in their relationships, especially through the authorization of a judge.⁹² The increased ability to effectuate police response, as a result of the restraining order, also increases victim empowerment. One study demonstrates how women, armed with restraining orders, effectuated greater police response compared to the period when they did not possess restraining orders.⁹³ Because restraining orders represent a method of releasing victims from their conditions of abuse and instilling a sense of control, they are successful in the psychological sense.

Studies about victim satisfaction, nevertheless, encounter methodological problems. The studies rely on questionnaires and self-selective interviews, which might be an unreliable source for determining psychological benefits.⁹⁴ For instance, the study by Horton and her colleagues indicated that women who expressed the most satisfaction with restraining orders possessed strong commitments to achieving change at any cost.⁹⁵ That study also found that victims who were ambivalent about ending relationships with their partner were less satisfied with the results.⁹⁶ The finding of a high percentage of satisfied women in self-administered questionnaires may reflect a skewed data sample composed of a greater majority of women who are highly committed and motivated to stop abuse. These women probably possess a greater sense of determination to fully utilize the process and make it work for them than the average battered victim seeking court intervention. Thus, the levels of satisfaction expressed by the women in the study weigh more heavily as a product of their own determination rather than what restraining orders offer. Surveys about victim satisfaction also run the risk of reflecting attitudes that do not necessarily represent the rest of the battered women population.

The absence of follow-up surveys and interviews, or an inadequate time period between the issuance of the restraining orders and the follow-ups, may inaccurately measure victim satisfaction. The absence of a follow-up questionnaire, as in the case of the Fischer and Rose study, means that the satisfaction expressed by the respondents is more indicative of feelings about the restraining order issuance or expectations the women have about restraining orders than their actual experiences in possessing restraining orders. Although these concerns are addressed in the studies by

⁹² *See id.*

⁹³ Victims with TROs reported that the police were always prompt and supportive when they were called, whereas prior to obtaining the restraining orders, officers would not even come to their aid and would dismiss their calls for help. Chaudhuri & Daly, *supra* note 24, at 235–37, 241.

⁹⁴ For a brief description of Fischer and Rose's study methodology, see *supra* text accompanying note 81. For a methodology description of the study by Keilitz and her colleagues, see *supra* text accompanying note 77. Chaudhuri and Daly's data set came from women who obtained restraining orders who were willing to be interviewed. Chaudhuri & Daly, *supra* note 24, at 232. The data from the study by Horton and her colleagues came from self-administered questionnaires of fifty-four out of sixty-eight respondents who received TROs in Dane County, Wisconsin. Horton et al., *supra* note 83, at 268.

⁹⁵ Horton et al., *supra* note 83, at 274, 276.

⁹⁶ *Id.* at 276.

Keilitz and her colleagues, Horton and her colleagues, Smith and Harrell, and Molly Chaudhuri and Kathleen Daly, all of which used follow-up interviews or surveys, concerns regarding the proper duration for the follow-up period still exist. A study with a follow-up period closer to the issuance of the restraining order may not enable the recipient of the restraining order to fully experience all the situations that could arise and to fully test and evaluate the restraining order.⁹⁷ Results from studies with short follow-up periods may exaggerate positive feelings and fail to document the ordinary psychological effects of restraining orders. A longer follow-up period gives women more time to reflect upon the outcome of the legal process and offer more truthful opinions. As a result, studies incorporating longer follow-up periods will be more reliable and legitimate.⁹⁸

Furthermore, the absence of a control group in these studies makes it hard to firmly conclude that restraining orders are the sole factor for the women's satisfaction and psychological well-being. Battered women often seek treatment and assistance from other social programs before, and even after, court intervention. For instance, seventy-eight percent of the women who obtained restraining orders in the study by Keilitz and her colleagues reported using at least one type of service before and after obtaining a restraining order.⁹⁹ The types of services include legal services, assistance from community and government organizations, police protection, counseling services, and support groups.¹⁰⁰ Without controlling for these other variables, it is hard to determine whether satisfaction and an increased sense of psychological well-being are directly attributable to the restraining orders or to other factors such as outside assistance.

B. EFFICACY FROM AN OBJECTIVE STANDPOINT: REDUCTION IN PHYSICAL ABUSE

Although studies on victim satisfaction appear to indicate the effectiveness of restraining orders on a psychological level,¹⁰¹ a more accurate indicator of efficacy is to consider the deterrent effects of restraining orders on re-abuse. Despite their prevalent use, there are very few empirical studies that document how well restraining orders alleviate domestic violence for victims. Between the mid-1980s and 1990s, only five studies were found to adequately address this issue.¹⁰² Some of the

⁹⁷ Chaudhuri and Daly conducted follow-ups one and two months after the restraining orders were granted. Chaudhuri & Daly, *supra* note 24, at 232. The duration of the follow-ups can be deemed too short to document the true perspectives of women on the orders. The brief nature of TROs, however, probably legitimizes the short follow-up period.

⁹⁸ The study by Keilitz and her colleagues used a six-month follow-up period while the study by Harrell and Smith used a one-year follow-up period. KEILITZ ET AL., *supra* note 74, at 52; Harrell & Smith, *supra* note 40, at 215. Results of both studies probably have more weight and legitimacy in representing the true attitudes toward restraining orders.

⁹⁹ KEILITZ ET AL., *supra* note 74, at 63.

¹⁰⁰ *Id.* at 63-64.

¹⁰¹ That is, if the methodological problems of the studies are overlooked for the time being.

¹⁰² Carlson et al., *supra* note 17; Chaudhuri & Daly, *supra* note 24; Grau et al., *supra* note 16; Harrell & Smith, *supra* note 40; Klein, *supra* note 20.

studies confirm the common perception that restraining orders are ineffective, while others suggest hope about the prevention of further abuse, at least for certain groups of women.

The study conducted by Janice Grau and her colleagues involved 270 interviews with domestic violence victims in Florida, Vermont, Ohio, and North Carolina who received assistance from federally funded Family Violence Demonstration programs.¹⁰³ Twenty-four percent of the victims obtained restraining orders as a result of their contact with the violence intervention programs and nine percent obtained restraining orders prior to their contact with the programs.¹⁰⁴ The participants were interviewed about four months after their most recent contact with the programs.¹⁰⁵ The design of this study compared pre- and post-restraining order abuse of the women who obtained restraining orders to those who did not.¹⁰⁶ Results indicated that about sixty percent of all victims were abused within four months, regardless of the presence of restraining orders.¹⁰⁷ When the variable of the degree of prior abuse was introduced into the analysis, however, the authors found that victims with fewer prior injuries had a slight decrease in abuse when they had restraining orders.¹⁰⁸ Restraining orders were less likely to aid victims with histories of severe abuse.¹⁰⁹ The authors concluded that restraining orders were not helpful in stopping physical violence and that women who receive restraining orders remain at risk for injury.¹¹⁰

Harrell and Smith conducted their study of 355 women in Denver and Boulder, Colorado who had petitioned for temporary and permanent restraining orders.¹¹¹ The study conducted interviews with the petitioners three months after the initial order and a follow-up interview one year after the order.¹¹² Of the women who obtained TROs, only sixty percent returned for permanent orders.¹¹³ The authors found that sixty percent of the women reported re-abuse in their two interviews, indicating that restraining orders were violated within a year after issuance.¹¹⁴ Moreover, nearly one-third of the women who had restraining orders experienced severe violence,¹¹⁵ forty-three percent reported threats of violence and acts

¹⁰³ Grau et al., *supra* note 16, at 20.

¹⁰⁴ *Id.* at 21.

¹⁰⁵ *Id.* at 20.

¹⁰⁶ The study referred to harassment, verbal threats, and acts of physical violence as "abuse." *Id.* at 20.

¹⁰⁷ *Id.* at 22. Fifty-nine percent of the victims without restraining orders were abused compared to fifty-six percent of those with restraining orders. *Id.*

¹⁰⁸ Fifty-four percent of the victims with lower prior injuries were abused compared to only forty-four percent of those with restraining orders. *Id.* at 24.

¹⁰⁹ Sixty-five percent of the victims with a history of high prior abuse who did not obtain restraining orders were abused, compared to sixty-seven percent of those who had restraining orders. *Id.*

¹¹⁰ *Id.*

¹¹¹ Harrell & Smith, *supra* note 40, at 215, 219.

¹¹² *Id.* at 215.

¹¹³ *See id.* at 219.

¹¹⁴ *Id.* at 223.

¹¹⁵ Twenty-nine percent of the women experienced severe violence, which included being kicked, strangled, beaten, threatened with weapons, and having sex forced on them. *Id.* at 224–25.

of property damage by their partners, and over fifty percent of the women reported psychological abuse within a year of the restraining order.¹¹⁶ The study found that the level of re-abuse was not affected by the presence or absence of a permanent restraining order.¹¹⁷ The authors noted, however, that if women obtaining permanent orders were at greater risk than those who did not obtain permanent orders, then the permanent restraining orders may have been effective in decreasing what otherwise may have been an even higher number of re-abuse victims.¹¹⁸ Similar to the results of the study by Grau and her colleagues, Harrell and Smith found that victims with serious prior abuse histories were at a higher risk of serious re-abuse.¹¹⁹ The study results also indicated that women with children were more likely to experience post-restraining order violence than women without children.¹²⁰

Andrew Klein's study of court data from 663 restraining order cases in Quincy, Massachusetts¹²¹ demonstrated that almost half of the offenders perpetuated violence within two years of the restraining order.¹²² This study tracked defendants for two years, documenting further abuse from filings of criminal complaints against each defendant anywhere in Massachusetts and from new restraining orders issued in the Quincy Court against the offender for new abuse incidents.¹²³ The study indicated that batterers with prior active criminal histories re-abused more than those without criminal histories or those who had inactive histories.¹²⁴ There were no significant differences in re-abuse rates for victims who dropped or kept their restraining orders.¹²⁵ The author concluded that restraining orders do not adequately protect women from further abuse and that their positive effect stems mainly from their issuance rather than their maintenance.¹²⁶

The results from the study by Chaudhuri and Daly indicated higher rates of success with TROs. The study involved interviews with thirty women who obtained restraining orders in the New Haven Family Court.¹²⁷ The initial interview was conducted one week after the victims had

¹¹⁶ *Id.* at 225. Psychological abuse included making the victim stay in the house, shaming her in public, keeping her from going to work, harassing her at work, tracking her around town, taking her money, stopping her from using the car or telephone, and swearing at, screaming at, or insulting her. *Id.* at 216.

¹¹⁷ *Id.* at 229.

¹¹⁸ *Id.* at 240.

¹¹⁹ *Id.* at 241.

¹²⁰ *Id.* at 233. The authors also looked at other potential predictors of re-abuse including the level of restraining order enforcement, history of abuse, case characteristics, and restraining order contents. *Id.* at 229–37.

¹²¹ Klein, *supra* note 20, at 193.

¹²² 48.8% of the offenders re-abused their victims. *Id.* at 199.

¹²³ *Id.* at 194. Filing of a criminal complaint meant either an arrest for violations of existing restraining orders or for new assaults and threats. *Id.*

¹²⁴ *Id.* at 202. An inactive criminal history meant the offender's last arrest was more than fifteen years ago. *Id.*

¹²⁵ *Id.* at 207. Almost half of the women in the study dropped their restraining orders prior to the one-year termination. *Id.*

¹²⁶ *Id.* The author also examined other variables including offender age, abuse incident, victim characteristics, court characteristics, and police characteristics. *Id.* at 194–202.

¹²⁷ Chaudhuri & Daly, *supra* note 24, at 232.

obtained the TROs, and two follow-up phone interviews were conducted one month and two months after obtaining the restraining orders.¹²⁸ The authors found that only thirty-seven percent of the men violated the terms of the TRO within the two-month period after issuance.¹²⁹ That meant that almost two-thirds of the women were not re-abused by their partners. Similar to the findings in Klein's study, the authors of this study discovered that all the men with prior conviction records violated the TROs.¹³⁰ The study also noted that TRO violators were more likely to be unemployed or working part-time jobs, and were more likely to be engaged in drug or alcohol abuse.¹³¹ The authors concluded that the question of TRO effectiveness depended on the offender's circumstances and motivation, and that there was no definite answer to the issue.¹³²

Matthew Carlson and his colleagues' study of court records and police reports of domestic violence cases in Travis County, Texas found that the physical abuse of victims decreased by sixty-six percent after they obtained restraining orders.¹³³ The study looked at 210 couples who filed protective orders between 1990 and 1992 and who also had police records two years before and two years after the restraining orders.¹³⁴ In contrast to the findings of Harrell and Smith,¹³⁵ this study found that women who obtained permanent restraining orders experienced a greater decrease in re-abuse than women who obtained only TROs.¹³⁶

The study also tested variables affecting re-abuse, including the socioeconomic status of victims and offenders, race, length of the relationship, the presence of children, and police intervention.¹³⁷ The study's findings suggest that women with very low socioeconomic status are more likely to be abused before and after the restraining orders, and to report a significantly smaller decrease in re-abuse.¹³⁸ African-American women were more likely to report pre- and post-restraining order violence than Whites or Hispanics, and they also encountered a smaller decline in post-order abuse.¹³⁹ The authors also found that couples in longer relationships had a significantly greater decrease in re-abuse than those in

¹²⁸ *Id.*

¹²⁹ *Id.* at 237.

¹³⁰ *Id.* at 239–40.

¹³¹ *Id.* at 240.

¹³² *Id.* at 245. The authors also investigated other variables in the study such as police responsiveness and the women's experience with legal representation, program services, and the court system. *Id.* at 235–37, 241–45.

¹³³ Carlson et al., *supra* note 17, at 214–15. The authors compared the percentage of women reporting pre- and post-restraining order abuse two years before obtaining the restraining order and two years after. *Id.* at 214.

¹³⁴ *Id.* at 210–11.

¹³⁵ See Harrell & Smith, *supra* note 40, at 229 (finding no differences in re-abuse levels in the presence or absence of a restraining order).

¹³⁶ Permanent restraining orders reduced pre-order violence by sixty-eight percent, whereas TROs reduced violence by fifty-two percent. Carlson et al., *supra* note 17, at 215.

¹³⁷ *Id.* at 212–13.

¹³⁸ *Id.* at 215.

¹³⁹ White and Hispanic victims reported a seventy-three percent and seventy-four percent decline in abuse, respectively, while African-American women reported only a fifty-four percent decline. *Id.* at 216.

short-term relationships.¹⁴⁰ Similar to the findings of Harrell and Smith, this study confirms that women with children experience a smaller decrease in abuse than their childless counterparts.¹⁴¹ The study also found that women with partners who had been arrested prior to the restraining orders were more likely to experience a reduction in abuse than women whose partners had never been arrested.¹⁴² The authors concluded that restraining orders are effective for a majority of the women because results indicate a reduction in post-order violence.¹⁴³

C. CRITIQUES OF THE RESEARCH STUDIES AND SUGGESTIONS FOR FUTURE STUDIES

The results of available research studies lead to an inconclusive answer about the effectiveness of restraining orders, which encourages further research in this area. One major problem with current studies is the absence of control groups—victims who do not obtain any restraining orders. With the exception of the study by Grau and her colleagues,¹⁴⁴ results of the other studies came from a comparison of the amount of violence before and after the issuance of restraining orders for the same group of women.¹⁴⁵ The problem with this methodology is that there is no conclusive determination that the decrease in post-restraining order violence is the direct result of the restraining orders.

A control group helps facilitate valid inferences about the cause when other irrelevancies exist.¹⁴⁶ It helps separate the effects attributable to the independent variable from the effects attributable to other factors in the study. For instance, in the case of determining the causal relationship between restraining orders and the reduction in re-abuse, controlling for other factors that may affect the level of violence, such as social intervention programs, becomes important to pinpoint the actual cause of the decline or lack of decline in post-restraining order violence.

Measuring the efficacy of restraining orders based on the level of pre- and post-order violence runs the risk of not accounting for extraneous variables that could affect the level of post-restraining order violence. Variables such as time and individual victim characteristics may maintain, increase, or decrease the level of post-order violence. For instance, in the Harrell and Smith study, the finding that permanent restraining orders did

¹⁴⁰ *Id.* at 215.

¹⁴¹ Women with children experienced a fifty-one percent decline in abuse compared to women without children, who experienced a seventy-three percent decline. *Id.* at 216.

¹⁴² Women whose partners were arrested prior to restraining orders reported a seventy-one percent decrease in violence, compared to a forty-five percent decrease in violence for women whose partners were never arrested. *Id.* at 215.

¹⁴³ *Id.* at 220.

¹⁴⁴ In the study conducted by Grau and her colleagues, the sample consisted of women with and without restraining orders who also used services from federally funded domestic violence programs. Grau et al., *supra* note 16, at 20.

¹⁴⁵ See Carlson et al., *supra* note 17, at 211; Chaudhuri & Daly, *supra* note 24, at 232; Harrell & Smith, *supra* note 40, at 215; Klein, *supra* note 20, at 193–94.

¹⁴⁶ For a more detailed discussion about controlled experiments, see THOMAS COOK & DONALD T. CAMPBELL, QUASI-EXPERIMENTATION: DESIGN & ANALYSIS ISSUES FOR FIELD SETTINGS 7–9 (1979).

not affect the level of post-restraining order violence¹⁴⁷ may have been attributable to the personal characteristics of the victims; the women who obtained permanent restraining orders in the study may have been the ones who experienced severe abuse for a long duration of time prior to the orders. Studies indicate that restraining orders are less effective for certain types of women, especially those who experience severe prior abuse,¹⁴⁸ and thus, studies on the effects of restraining orders for this category of women are unlikely to lead to positive findings. The failure to implement controls in pre- and post-studies—for instance, the variable of the severity of the victims' prior abuse in Harrell and Smith's study—may incorrectly result in negative implications about restraining order efficacy.

Although having a control group better confirms the causal inference, the practicability of implementing control groups in domestic violence studies is problematic. This may explain why only one study, among a handful, uses a control group.¹⁴⁹ Researchers face a moral dilemma if they are required to establish experimental and control groups for validity purposes and must deny restraining orders to one group of women when everyone needs protection. Furthermore, controlled studies that allow victims a choice in obtaining restraining orders or forgoing it, to be more ethically sound, run into problems of self-selection and bias. Such studies may end up with artificial sample sets where the control group is comprised only of women with milder cases of abuse who may have a higher tendency to forgo restraining orders than women who suffer from severe abuse.

To resolve this conflict between having control groups and the ethical concerns raised by such control groups in domestic violence studies, social scientists will have to find a compromise between the two. Studies might consider creating a control group comprised of women who only seek social intervention, such as shelters or counseling, and who are qualified for legal intervention but choose not to pursue it, perhaps because of emotional and psychological problems. A control group might also be formed with women who are issued restraining orders, but who do not believe in the order they obtain or who do not fully utilize it. Another alternative is to review restraining order court cases and match women who received the orders to women who are refused such orders in court; such matching would minimize selection bias.

Nevertheless, these methodologies also present problems. Locating specific types of victims, such as those able but unwilling to obtain restraining orders, in order to compare their attributes with those of women who obtain restraining orders is considerably difficult. Moreover, women

¹⁴⁷ Harrell & Smith, *supra* note 40, at 229.

¹⁴⁸ See Grau et al., *supra* note 16, at 24; Harrell & Smith, *supra* note 40, at 241.

¹⁴⁹ It is unclear, however, from the methodology discussed by Grau and her colleagues how the control group was created. The common denominator appears to be that all the women were former clients of federally funded Family Violence Demonstration programs. Grau et al., *supra* note 16, at 20. Twenty-four percent obtained restraining orders as a result of program contacts, and nine percent obtained orders prior to their program contacts. *Id.* at 21. In their study, the authors did not provide details about the similarities in victim characteristics of the two groups, such as length of abuse, severity, age, etc.

who follow through in obtaining a restraining order often believe in the power of legal intervention or else they would have abandoned the process; thus, finding victims who possess restraining orders, but who are willing to disregard the legal protection is probably impracticable. Furthermore, giving women the choice of opting out of a study results in a less randomized treatment group and increases selection bias. The underlying threat is that the results of the study will be representative of the types of people who volunteer themselves for the study as opposed to the general victim population.¹⁵⁰

Even if a study has a control group, there may be methodological problems associated with the control. For instance, one critique of the study by Grau and her colleagues was that the control group received some form of social intervention, which probably affected re-abuse rates.¹⁵¹ The study's conclusion about a negligible difference in re-abuse rates between the control and experimental groups remains questionable because the re-abuse rate for the control group may have been lower than normal due to the social assistance that the women received. A control group composed of women who do not obtain any type of domestic violence assistance would probably reflect more accurate findings about the level of restraining order efficacy.

It is important to note, however, that all the women in the study sample were domestic violence program participants,¹⁵² which minimizes the concern that the factor of additional assistance affected outcomes and voided the validity of the control group. Even if women in the control group obtained assistance, the efficacy of the restraining order can still be determined if there is some reduction in violence in the experimental group; both groups contain the variable of assistance and are, therefore, comparable. Nonetheless, the opportunity for a reduction in post-order violence may have been reduced due to the additional variable. The additional assistance that women receive during the restraining order process could minimize the full potential and independent effects of restraining orders on violence.

Another methodological problem concerns the research data. The data of available studies originates from a time frame between the mid-1980s to the early 1990s.¹⁵³ During this period, legal reforms were being

¹⁵⁰ For a discussion about selection, see COOK & CAMPBELL, *supra* note 146, at 53. Selection bias may, however, be eliminated by the careful matching of women who receive restraining orders in court to those whose applications are not granted, and then comparing the levels of re-abuse experienced by the two groups.

¹⁵¹ Carlson et al., *supra* note 17, at 207. Grau and her colleagues' study sample consisted of participants in the domestic violence demonstration programs. Grau et al., *supra* note 16, at 20. Thus, even if the women did not obtain restraining orders, they still had assistance, which could contribute to a greater reduction in violence than if no assistance was provided at all.

¹⁵² Grau et al., *supra* note 16, at 20.

¹⁵³ Grau and her colleagues conducted their interviews in 1980. Grau et al., *supra* note 16, at 20. Chaudhuri and Daly conducted interviews during 1986-97. Chaudhuri & Daly, *supra* note 24, at 233. Klein's research was based on court cases in 1990. Klein, *supra* note 20, at 193. Carlson and his colleagues' research involved court records and police reports filed between 1990 and 1992. Carlson et al., *supra* note 17, at 210. Harrell and Smith's interviews took place in 1991. Harrell & Smith, *supra* note 40, at 214.

implemented and tested, and the law enforcement agencies and the prosecutorial and judicial departments were reevaluating their policies and responses to domestic violence.¹⁵⁴ The experimental nature of programs and policies during this time renders some conclusions of efficacy studies conducted during this time frame less accurate and incomplete. For instance, the insufficiency or absence of prosecutorial and judicial response to domestic violence limits restraining order efficacy. Judicial officers and prosecutors perform key tasks in legal intervention. Judges are in charge of issuing restraining orders and have the ultimate authority in defining the parameters of the violations and imposing punishment. Prosecutors assist the court in identifying offenders and bringing charges against them to protect victims. Numerous studies in the late 1980s and early 1990s have documented disparaging and indifferent or ambivalent responses by court personnel when they deal with battered women.¹⁵⁵ Such judicial attitudes resulted in minimized sentencing of offenders and a reluctance to issue restraining orders to victims.¹⁵⁶ Prosecutors were more likely to dismiss domestic violence cases in an effort to allocate scarce resources to homicides and drug-related cases, and were criticized for failing to perceive the seriousness of domestic violence crimes.¹⁵⁷ The failure of prosecutors and judges to take domestic violence seriously and to stand up against offenders contributed to minimize the effectiveness of restraining orders in the 1980s and early 1990s.¹⁵⁸

Another recognized limitation to the effectiveness of restraining orders concerns police enforcement. Because restraining orders are pieces of paper issued by judges, their ability to reduce violence depends significantly upon law enforcers.¹⁵⁹ Although liability lawsuits filed

¹⁵⁴ Although researchers and practitioners have identified the ineffective role of the criminal justice system in responding to domestic violence for decades, it was not until the 1970s that the system began to take a victim protection and direct intervention approach. See BUZAWA & BUZAWA, *supra* note 10, at 5–7 (discussing the trends); David A. Ford, Ruth Reichard, Stephen Goldsmith, & Mary Jean Regoli, *Future Directions for Criminal Justice Policy on Domestic Violence*, in DO ARRESTS AND RESTRAINING ORDERS WORK?, *supra* note 20, at 243, 244–45. The change resulted in new legislation and the implementation of specific intervention policies, including mandatory arrest policies and no-drop prosecution policies, to criminalize domestic violence and protect victims. For further discussions about the legal, prosecutorial and judicial changes, see BUZAWA & BUZAWA, *supra* note 10, at 121–31, 171–86.

¹⁵⁵ A 1991 study by H. McGregor and A. Hopkins found that judges tended to hold battered women partially responsible for their victimization. Wan, *supra* note 23, at 610. Another study by D.L. Rhode in 1989 found family court judges unsympathetic to victims; some even informed the petitioners that their situations were better addressed at home. *Id.*

¹⁵⁶ BUZAWA & BUZAWA, *supra* note 10, at 96; Wan, *supra* note 23, at 610. For instance, in the Klein study, most offenders who were arrested for violating restraining orders were not placed on probation nor sentenced to jail. Klein, *supra* note 20, at 208. The court dismissed almost thirty-three percent of the cases outright. *Id.* Slightly over twenty-five percent of the violators were placed on probation and eighteen percent were sentenced to jail. *Id.* at 209.

¹⁵⁷ See BUZAWA & BUZAWA, *supra* note 10, at 83–84.

¹⁵⁸ The contribution of prosecution in the restraining order process is, however, limited. Studies on the deterrent effect of prosecution on abuse find that prosecution does not reduce future violence. See Robert C. Davis, Barbara E. Smith, & Laura B. Nickles, *The Deterrent Effect of Prosecuting Domestic Violence Misdemeanors*, 44 CRIME & DELINQ. 434, 435, 441 (1998). Prosecution may, however, serve as a strategic tool that empowers women and allows them to regain control of their relationship. See BUZAWA & BUZAWA, *supra* note 10, at 90.

¹⁵⁹ The deterrent value of arrests on re-abuse remains inconclusive. Many studies have researched this issue, but conclude with mixed positive and negative results. The first controlled, randomized

against police departments in the late 1970s and early 1980s for failure to protect battered women¹⁶⁰ and reform pressures in the 1970s prompted many states to improve enforcement procedures and adopt mandatory arrest legislation,¹⁶¹ police officers were, nevertheless, slow in complying with such mandates.¹⁶² In 1984, a survey of large city police departments revealed that only ten percent encouraged officers to make arrests for crimes of domestic violence.¹⁶³ Forty percent of the departments had policies of mediation instead, and half had an absence of domestic violence policies.¹⁶⁴ A 1986 report by the Minneapolis Police Department documented that, in spite of a mandatory arrest policy, less than twenty percent of all domestic violence incidents that the department had responded to resulted in arrests.¹⁶⁵ The study by Chaudhuri and Daly found that police failed to make arrests, despite a Connecticut law mandating the arrest of offenders who are suspected of committing family violence.¹⁶⁶ Similarly, results from the Harrell and Smith study demonstrate that arrests in domestic violence incidents were rare, even though the violation of restraining orders was made a criminal offense. Out of the 290 incidents reported to the police by women with restraining orders in the study, only fifty-nine arrests were made.¹⁶⁷ These findings suggest that conclusions about restraining order efficacy may have been hampered by the failure of

experiment on the effectiveness of arrest, the "Minneapolis Domestic Violence Experiment," concluded that arresting abusers reduced the risk of future assaults against the same victim by half during a six-month follow-up period. Janell Schmidt & Lawrence Sherman, *Does Arrest Deter Domestic Violence?, in DO ARRESTS AND RESTRAINING ORDERS WORK?*, *supra* note 20, at 43, 44. Replication experiments, however, failed to produce consistent results, leading to mixed reports of deterrent and backfiring effects. For detailed discussions about these experiments and findings, see FAGAN, *supra* note 13, at 13–15; Schmidt & Sherman, *supra*, at 44–50. The absence of a definite conclusion about arrest efficacy makes it hard to calculate the value of enforcement in the restraining order process.

¹⁶⁰ See Machaela M. Hoctor, Comment, *Domestic Violence As a Crime Against the State: The Need for Mandatory Arrest in California*, 85 CAL. L. REV. 643, 651–55 (1997) (discussing the court challenges for nonarrest policies).

¹⁶¹ By mid-1983, a little more than two-thirds of the states had adopted legislation allowing warrantless arrests in misdemeanor domestic violence cases. Joan Zorza, *Must We Stop Arresting Batterers?: Analysis and Policy Implications of New Police Domestic Violence Studies*, 28 NEW ENG. L. REV. 929, 936 (1994). By 1992, forty-seven states had enacted statutes authorizing such arrests. BUZAWA & BUZAWA, *supra* note 10, at 122.

¹⁶² Prior to the legal reforms in the 1970s, police intervention was deemed perfunctory because officers held the perception that domestic violence was a private matter and that the states should not interfere. Hoctor, *supra* note 160, at 649. Officers often failed to respond to domestic violence calls because they rejected having to be "social worker[s]" in domestic violence incidents. BUZAWA & BUZAWA, *supra* note 10, at 38. Officers preferred to be "crime fighters" doing "real" police work," which involves more action and higher levels of arrest. *Id.* When they did respond, police officers tended to mediate and refer parties to social programs rather than make arrests. Hoctor, *supra* note 160, at 649. Research findings from the 1970s demonstrate that police officers did not make arrests in a majority of the domestic violence incidents. Davis & Smith, *supra* note 23, at 542–43.

¹⁶³ Susanne M. Browne, Note, *Due Process and Equal Protection Challenges to the Inadequate Police Response in Domestic Violence Situations*, 68 S. CAL. L. REV. 1295, 1298 (1995).

¹⁶⁴ *Id.*

¹⁶⁵ Out of the 24,948 domestic violence calls, only 3,645 arrests were reported. BUZAWA & BUZAWA, *supra* note 10, at 158.

¹⁶⁶ Police response to domestic violence incidents often resulted in mediation rather than arrest, and warrants were not issued for the offender's arrest even when there was strong evidence of abuse. Chaudhuri & Daly, *supra* note 24, at 236. Although two out of eight offenders were arrested at the scene when the victims had TROs, the arrest warrants for the four fleeing offenders were never enforced and thus, the offenders were never arrested during the two-month follow-up period of the TRO study. *Id.* at 241. Often, arrest warrants are enforced only if the men are arrested for other crimes. *Id.*

¹⁶⁷ Harrell & Smith, *supra* note 40, at 241.

the police to adequately enforce restraining orders and implement procedural requirements to effectuate arrests.

Since the restraining order studies were conducted, new legislation has been implemented on the state and federal levels to resolve problems and further improve the institutional and procedural responses to domestic violence. For instance, Congress enacted the Violence Against Women Act (VAWA) in 1994, which empowered the federal government to participate in the fight against domestic violence.¹⁶⁸ The Act provided \$1.62 billion in funds to assist state domestic violence programs.¹⁶⁹ Some provisions of the legislation include helping state and local government “implement mandatory or proarrest policies, improve the tracking of domestic violence victims, increase the coordination among police, prosecution, and the judiciary, and educate judges about domestic violence.”¹⁷⁰ In October of 2000, President Clinton signed the Violence Against Women Act of 2000 into law, authorizing \$3.3 billion for VAWA programs such as shelter services, civil and legal services for battered victims, and grants to enhance law enforcement activities.¹⁷¹ Studies on restraining order efficacy that incorporate recent developments¹⁷² and improvements will achieve more meaningful results.

Future studies should take advantage of larger sample sizes. Larger sample sizes ensure the randomization of the people being tested, which leads to conclusions with minimized selection bias.¹⁷³ Moreover, they avoid large deviation errors among the individuals being studied, resulting in a more accurate representation of the usual victim population. Large samples also reduce the risk that the findings are a product of chance. Small samples risk conclusions that occur as a result of the particular characteristics of the women in the study, which may not be applicable to all battered women.¹⁷⁴ The more positive results about restraining order

¹⁶⁸ Salwa Nassar, Nat'l Ctr. for Policy Research (“CPR”) for Women & Families, *The New Violence Against Women Act*, at <http://www.cpr4womenandfamilies.org/violence1.html> (last visited Jan. 10, 2002) (on file with author).

¹⁶⁹ David Frazee, *Court TV We'd Like to See: A Plain English Guide to the Violence Against Women Act*, ECHO NYC, at <http://www.echonyc.com/~onissues/f95vama.html> (last visited Jan. 10, 2002) (on file with author).

¹⁷⁰ BUZAWA & BUZAWA, *supra* note 10, at 129.

¹⁷¹ Nassar, *supra* note 168; End Abuse Family Violence Prevention Fund, *The Violence Against Women Act*, at <http://endabuse.org/programs/display.php3?DocID=126> (last visited Jan. 10, 2002) (on file with author).

¹⁷² Other examples of changes include the adoption of mandatory arrest policies by a greater number of states. For instance, prior to the late 1970s, forty-six states allowed officers to make warrantless arrests only where they witnessed the misdemeanor prior to arrest. See BUZAWA & BUZAWA, *supra* note 10, at 122. Since 1994, at least forty-eight states now mandate arrest based on probable cause. Miriam H. Ruttenberg, *A Feminist Critique of Mandatory Arrest: An Analysis of Race and Gender in Domestic Violence Policy*, 2 AM. U. J. GENDER & L. 171, 180 (1994). Statutory amendments have also narrowed the discretion of the police and judges in handling domestic violence by mandating specific actions. In California, for example, officers were specifically ordered not to release offenders who have been arrested for restraining order violations. BUZAWA & BUZAWA, *supra* note 10, at 126. They are also required to “develop and implement written incident report forms identifying the alleged occurrence, their response, and reasons for their actions.” *Id.* Judges in Florida have been prohibited from issuing “mutual orders of protection” in order to prevent treating victims as aggressors. *Id.*

¹⁷³ See COOK & CAMPBELL, *supra* note 146, at 341–44 (discussing randomized experiments).

¹⁷⁴ For a discussion about selection, see COOK & CAMPBELL, *supra* note 146, at 53.

efficacy from the Chaudhuri and Daly study¹⁷⁵ are less reliable because the study sample involved only thirty women.¹⁷⁶ Generalizations are more legitimately formulated from studies with a larger sample size, such as the one in the Harrell and Smith study.

Using both court and police records and interviews to determine restraining order efficacy is more favorable than the use of one or the other; they generally reveal the same causal factors.¹⁷⁷ Court and police records are probably easier to locate and access, and may provide information about the legal history of the victim and her batterer that interviewees may not adequately provide.¹⁷⁸ Police reports and official records, however, are often criticized for underreporting incidents of past abuse, and studies relying solely on them as data may encounter limitations.¹⁷⁹ On the other hand, supplementing court and police reports with interviews can alleviate some of those problems. Interviews provide greater personal details, such as psychological and personal information about the abuse that the court and the police may not document.¹⁸⁰ In addition, the victim is present to answer questions and may help facilitate a more realistic understanding of her circumstances and experience. Relying solely on interviews, however, runs the risks of self-selection, bias, and perception and memory problems. Thus, utilizing both interviews and court and police records reduces the disadvantages of using each independently.

New studies should also consider the duration of the follow-up period. This variable is probably more pertinent in determining the effectiveness of permanent restraining orders because it is logical to measure effectiveness at the time of expiration for TROs. The follow-up periods in available studies ranged from four months to two years.¹⁸¹ A longer duration for a follow-up, such as two years, is probably better because it will more accurately indicate the ordinary course of the re-abuse experience.¹⁸² Initially, batterers probably have a greater tendency to obey orders because they are made aware of their actions and the sanctions. In due course of time, however, offenders are likely to forget them and return to their normal

¹⁷⁵ See Chaudhuri & Daly, *supra* note 24, at 237.

¹⁷⁶ *Id.* at 232.

¹⁷⁷ See Carlson et al., *supra* note 17, at 223.

¹⁷⁸ The studies conducted by Klein and Carlson and his colleagues both used court data and/or police records. Carlson et al., *supra* note 17, at 210; Klein, *supra* note 20, at 194.

¹⁷⁹ Carlson and his colleagues admitted to the limitations of using court and police records and noted that information was sometimes missing on the court records and police reports. Carlson et al., *supra* note 17, at 223.

¹⁸⁰ See, e.g., Chaudhuri & Daly, *supra* note 24, at 238–44; Harrell & Smith, *supra* note 40, at 215, 225.

¹⁸¹ Carlson et al., *supra* note 17, at 210–11; Chaudhuri & Daly, *supra* note 24, at 232; Grau et al., *supra* note 16, at 20; Harrell & Smith, *supra* note 40, at 215; Klein, *supra* note 20, at 194.

¹⁸² It is unclear whether a shorter follow-up period results in a lower rate of re-abuse. In the Chaudhuri and Daly study, where the follow-up period was two months, thirty-seven percent of the men violated the orders. Chaudhuri & Daly, *supra* note 24, at 237. However, the study conducted by Grau and her colleagues using a four-month follow-up period found that nearly sixty percent of the women were re-abused. Grau et al., *supra* note 16, at 22. Harrell and Smith also found that sixty percent of the women were re-abused in spite of a one-year follow-up period. Harrell & Smith, *supra* note 40, at 223. Klein's study found that 48.8% of the offenders re-abused within two years of the restraining orders. Klein, *supra* note 20, at 199. Carlson and his colleagues found that about thirty-five percent of the women did not experience a decline in abuse. See Carlson et al., *supra* note 17, at 214–15.

abusive habits, which is the period in which the effect of the restraining orders will actually be tested. Thus, leaving enough time for the batterer to potentially relapse into his old habits is important in studying restraining order efficacy.

Studies determining the efficacy of restraining orders should take care to distinguish between permanent orders and TROs, and emphasize research in TROs. The legal process and duration of the two orders are different, which means that their significances lie in the circumstances they seek to address.¹⁸³ Victims apply for TROs because they want immediate relief from abuse. Often, these victims have serious complaints of abuse and are not seeking relief for minor annoyances.¹⁸⁴ Temporary restraining orders may be their first step in the legal protection process. On the other hand, permanent restraining orders are often a follow-up to TROs. They can be viewed as time extensions of the protection sought from the TROs. Therefore, the issue of efficacy is more important for TROs because they resemble the initial stepping stone in the legal intervention process for a battered individual. If TROs are found to be ineffective in the initial stages of the legal process when victims are most in need of protection and where their commitment to the legal process is determined, then the whole purpose of restraining orders is defeated.

Although available studies are quick to reach conclusions about restraining order efficacy from empirical findings, it is important to include the history and severity of abuse of the victims and the characteristics of the offenders in calculating effectiveness. For example, battered women who obtain restraining orders suffer extensive and severe abuse prior to legal intervention.¹⁸⁵ Offenders often have criminal records and are unemployed or abusing drugs or alcohol.¹⁸⁶ Negative findings about restraining order efficacy should not immediately be interpreted to mean that restraining orders are ineffective against violence. To the extent that battered women are more likely to be involved with dangerous men, who are generally less likely to be deterred from crime,¹⁸⁷ findings of some deterrence provide hope that at least some women, who would otherwise

¹⁸³ See *supra* Part II.A.

¹⁸⁴ Harrell & Smith, *supra* note 40, at 237.

¹⁸⁵ For instance, Keilitz and her colleagues found that more than forty percent of the women in their study frequently experienced severe physical violence and that almost a quarter endured abuse for more than five years. KEILITZ ET AL., *supra* note 74, at 58. Harrell and Smith found that many women reported multiple types of abuse when asked to identify the abuse they experienced from a list of thirty-one different abusive acts. Harrell & Smith, *supra* note 40, at 230–31. More than one-fifth of the women experienced twenty-six out of the thirty-one acts. *Id.* at 230.

¹⁸⁶ Sixty-five percent of the men in the study conducted by Keilitz and her colleagues had an arrest history. KEILITZ ET AL., *supra* note 74, at 59. More than half had four or more arrests. SUSAN KEILITZ, COURTNEY DAVIS, HILLERY S. EFKEMAN, CAROL FLANGO, & PAULA L. HANNAFORD, U.S. DEP'T OF JUSTICE, CIVIL PROTECTION ORDERS: VICTIM'S VIEWS ON EFFECTIVENESS (1998) [hereinafter "VICTIM'S VIEWS"]. Charges included violent crimes, drug and alcohol-related crimes, and property and traffic offenses. *Id.* Similarly, Klein found that almost eighty percent of the offenders had at least one criminal complaint, and that the charges ranged from underage drinking to murder. Klein, *supra* note 20, at 195. Thirty of the perpetrators had inactive records or records that were more than fifteen years old. *Id.* Fifty-four percent of the offenders had at least one record for an alcohol or drug crime, and forty-three percent had a minimum of one prior complaint for a crime against persons. *Id.*

¹⁸⁷ Klein compared these men to "active criminals" due to their high re-offend and re-abuse rates. Klein, *supra* note 20, at 205.

experience even further abuse, are being helped.¹⁸⁸ Without restraining orders, an even greater number of women may be re-abused.¹⁸⁹

IV. HIGHLIGHTS AND RECOMMENDATIONS

Despite the problem that only a handful of studies have considered the efficacy issue of restraining orders and that those studies are unable to provide definitive conclusions due to methodological problems, there are, nevertheless, lessons that can be taken from them. The first is that restraining orders are more effective in reducing re-abuse in cases that involve less severe prior injury or less violent batterers.¹⁹⁰ This means that judges should continue to issue restraining orders to women who appear to have milder cases of domestic violence because the potential for deterrence in those cases is much greater.

Judges should make themselves aware of the personal characteristics and history of both victims and offenders before issuing orders, as these factors will help formulate the best terms of protection. For instance, Harrell and Smith found that the level of resistance expressed by the men at the permanent order hearings corresponded to the probability of re-abuse.¹⁹¹ Judges who observe higher levels of resistance at the hearings should give women the full extent of protection available. To ensure the safety of these victims, judicial officers need to verify any possession of firearms by the offenders and confiscate such weapons accordingly to minimize the likelihood of subsequent lethal violence. Courts can also authorize police escorts to accompany the victim and her partner home after the proceedings to supervise the removal of their respective belongings. In addition, judges should refer men who are strongly resistant at the restraining order hearing to mandatory treatment programs that assist in changing their abusive attitudes and perceptions.¹⁹² Judicial officers need to spend sufficient time with victims to explain the implications of their partners' backgrounds and records on re-abuse, and they should encourage strict compliance with the terms and procedures of the orders.

¹⁸⁸ For instance, forty percent of the women who obtained TROs in Harrell and Smith's study did not return for a permanent order; twenty-six percent (sixty-four percent of the forty percent) did not return for the permanent order because the offender stopped bothering them after the TRO. Harrell & Smith, *supra* note 40, at 219.

¹⁸⁹ Future studies may want to control for the seriousness of the abuser's prior criminal or abuse history because this will help eliminate preexisting differences that can affect the results of restraining order efficacy. For example, Klein controlled for the seriousness of the abuser's prior criminal history when he looked at court-ordered "no contact" orders. Without controls, the re-abuse rate for those with "no-contact" orders was 35.7%, as compared with 27.3% when contact was allowed. Klein, *supra* note 20, at 202. With controls implemented, however, the difference in re-abuse rates between the "no-contact" and "contact" groups became insignificant. *Id.*

¹⁹⁰ Chaudhuri & Daly, *supra* note 24, at 245; Grau et al., *supra* note 16, at 24; Harrell & Smith, *supra* note 40, at 241. It might be the case, however, that offenders in less violent cases are less likely to re-abuse.

¹⁹¹ Harrell & Smith, *supra* note 40, at 232.

¹⁹² The offender may, however, continue his resistance in such programs, which will decrease the likelihood of behavioral modification. The success of treatment programs often involves the independent desire of the perpetrator to be rehabilitated. BUZAWA & BUZAWA, *supra* note 10, at 214.

Race, ethnicity and socioeconomic status are also factors that identify those at risk for re-abuse. Studies show that African-American victims are more likely to experience higher rates of intimate violence than their White or Hispanic counterparts.¹⁹³ African-American victims also report a higher re-abuse rate after obtaining restraining orders.¹⁹⁴ Studies have also shown that women in low-income households experience a higher rate of abuse and re-abuse than women in higher income households.¹⁹⁵ When factors of race and socioeconomic status are combined, African-American women in lower socioeconomic households experience greater rates of continued violence than their Hispanic or White counterparts of the same socioeconomic group.¹⁹⁶

These findings should alert judges, prosecutors and law enforcement agencies to the categories of victims who are most at risk, and should compel them to offer the greatest level of protection available to these women. For instance, law enforcement agencies should always arrest offenders whose partners are highly prone to re-abuse because this will keep them away from the victims and minimize opportunities for re-abuse.¹⁹⁷ States may consider implementing programs that require police officers to make routine checkups with high-risk victims possessing restraining orders in order to ensure adequate protection.¹⁹⁸ Judicial officers should be given less discretion when imposing fines or jail time on restraining order violators whose partners are at high risk for re-abuse. Judges might consider requiring high-risk women who obtain TROs to follow through and obtain permanent orders.¹⁹⁹ One study found that women of lower socioeconomic backgrounds are five times less likely to report re-abuse if they obtain permanent orders.²⁰⁰

¹⁹³ LAWRENCE A. GREENFELD, MICHAEL R. RAND, DIANE CARVEN, PATSY A. KLAUS, CRAIG A. PERKINS, CHERYL RINGEL, GREG WARCHOL, CATHY MASTON, & JAMES ALAN FOX, U.S. DEP'T OF JUSTICE, VIOLENCE BY INTIMATES: ANALYSIS OF DATA ON CRIMES BY CURRENT OR FORMER SPOUSES, BOYFRIENDS, AND GIRLFRIENDS 13 (1998); Carlson et al., *supra* note 17, at 216.

¹⁹⁴ Carlson et al., *supra* note 17, at 216.

¹⁹⁵ See, e.g., GREENFELD ET AL., *supra* note 193, at 14; Carlson et al., *supra* note 17, at 216.

¹⁹⁶ See Carlson et al., *supra* note 17, at 219.

¹⁹⁷ Studies are inconclusive about arrest efficacy on re-abuse. Some studies show that arrest may be effective only against certain types of perpetrators. See *supra* text accompanying note 159. But, results in the study conducted by Carlson and his colleagues show that women of low socioeconomic status whose partners were arrested or who obtained permanent orders were five times less likely to report re-abuse. Carlson et al., *supra* note 17, at 219. Arrests, although incapable of eliminating abuse completely, may help to reduce what otherwise might be an even greater magnitude and frequency of violence.

¹⁹⁸ Such programs, however, will require a great amount of funding because police officers have other crimes to respond to besides domestic violence. Nevertheless, states should consider setting up government agencies to serve as information conduits to police departments or courts. These agencies would not be independent entities such as social intervention programs, but would focus only on the routine monitoring of victims and would be an integral part of the criminal justice system.

¹⁹⁹ Due to the methodological problems raised earlier in this article, it remains uncertain whether permanent orders effectively reduce violence. In the absence of confirming data, however, it may be best to encourage high-risk women to obtain permanent orders.

²⁰⁰ Carlson et al., *supra* note 17, at 219. Judges should encourage African-American victims to obtain permanent orders because they are the ethnic group least likely to obtain a permanent order. Harrell & Smith, *supra* note 40, at 220. Although the lower rate of return might simply indicate that a TRO was enough to resolve the problem, this is probably not the case for all African-American women since they are most likely to experience re-abuse. Carlson et al., *supra* note 17, at 216. Such mandatory policies, however, pose a risk of disempowering women.

Ensuring adequate protection of the women includes providing them with economic and social aid. To assist women of lower socioeconomic backgrounds gain economic independence from their partners, states should implement programs that provide short-term funding to women after they obtain restraining orders. For instance, programs could allocate monthly payments to qualified victims to help them pay for daily necessities such as food and rent so that they are not instantly deprived of an income source after separation from their partners. States may consider contracting with and subsidizing local businesses to provide temporary jobs for battered victims. In addition, states can establish special employment centers that specifically assist battered women in locating jobs, as well as provide social support and counseling. To help lessen victims' psychological attachments to their partners,²⁰¹ judges need to refer women to counseling programs and other social intervention agencies upon the issuance of the restraining orders. Judges must strictly enforce offender compliance with any income support provisions specified in the orders, and encourage law enforcement's regulation of compliance. Taking these steps will ensure that victims who are identified to be at high risk for re-abuse will have adequate protection.

Restraining orders are also found to be less effective in reducing post-order abuse for women with children. Women with children are seventy percent more likely to experience abuse than women without children, and fifty percent more likely to experience threats or property damage.²⁰² Women with children experience a smaller decrease in re-abuse after obtaining orders than those without children.²⁰³ When the variable regarding the duration of the relationship is factored into the equation, results show that women in short-term relationships are more likely to report re-abuse than their counterparts in longer relationships, with or without children.²⁰⁴ Among women in relationships that are less than five years old, however, those with children are still more likely to experience re-abuse.²⁰⁵

Several potential explanations are offered for these findings. When children are involved, the offender and victim may have more opportunities to engage in contact that may lead to violence. For instance, visitation rights and custody issues require that the victim communicate with her partner for the exchange of the children or other related business.²⁰⁶ Victims with children are less able to move away from the perpetrator²⁰⁷ and may have to depend on their partner for financial support. In addition,

²⁰¹ Some battered women remain emotionally tied to their assailants, which may defeat the goal of restraining orders to eliminate contact between the victim and the perpetrator. For instance, women in the Chaudhuri and Daly study allowed or initiated contact with men after their TROs for economic and psychological reasons. Chaudhuri & Daly, *supra* note 24, at 238–39.

²⁰² Harrell & Smith, *supra* note 40, at 233.

²⁰³ Carlson et al., *supra* note 17, at 216.

²⁰⁴ *Id.* at 222.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

victims may sacrifice some of their protection to provide a child with the opportunity to establish emotional ties with his or her father.²⁰⁸

The custody issue needs to be addressed to reduce the continued abuse of mothers.²⁰⁹ One idea to minimize the opportunities for violence by the perpetrator is to require the presence of a third party during child-related transactions. States can maintain “supervised child exchange centers”²¹⁰ and pass legislation mandating judges to refer victims with children to these centers when custody and visitation rights are given to their partners. Legislation can also be implemented to increase the penalties for restraining order violations that result from child-related functions between the offender and the victim. In addition, judges can condition custody and visitation rights on the perpetrators’ continued compliance with the restraining orders. Minimizing the violence for women with children will serve to protect not only the battered women, but also the children involved.

Another important issue about restraining orders concerns the obstacles that women encounter procedurally. Harrell and Smith found that only sixty percent of the women who obtained temporary restraining orders (“TROs”) returned to get a permanent order.²¹¹ Although most of the women did not return because they were satisfied with the results from the TROs, some reported problems in obtaining permanent orders. For instance, forty-one percent of the women who did not return reported difficulty in serving their TROs, which prevented them from getting the permanent orders.²¹² Others indicated that the process was inconvenient because it was too time-consuming and costly.²¹³ One-third of the women reported that they were pressured by their partners to drop the process.²¹⁴

It is important for courts to address these procedural obstacles to help women complete the legal process they initiate. Judicial administrators need to inform petitioners about the restraining order process and requirements so that women do not default on procedural grounds.²¹⁵ Judges might consider matching victims to specific agencies that will provide assistance with the procedural aspects for the remainder of the restraining order process. Information concerning public counseling and help lines should continue to be widely circulated in various languages to victims. With regard to the difficulty in serving TROs, sheriffs should extend their efforts in helping women find their partners. As many of the

²⁰⁸ *Id.*

²⁰⁹ Preventing the abuse of victims with children is also pertinent in reducing the negative psychological impacts of domestic violence on children. For a discussion about the effects of family violence on children, see Dutton & Gondolf, *supra* note 10, at 334–35.

²¹⁰ Carlson et al., *supra* note 17, at 222.

²¹¹ See Harrell & Smith, *supra* note 40, at 219.

²¹² *Id.* at 220. Service of the TRO is one of the prerequisites to a permanent order hearing.

²¹³ *Id.* at 219.

²¹⁴ *Id.* Pressure by the offender included talking the victim out of the process, invoking fear of retaliation, and threatening her. *Id.*

²¹⁵ For instance, Harrell and Smith found that few women were aware of the available extensions for the TRO service requirement. Harrell & Smith, *supra* note 40, at 238. Informing women who have difficulty serving TROs about this extension would lessen the likelihood of procedural defaults.

perpetrators may have criminal records or be on probation, sheriffs and other law enforcement agencies may be able to use their databases to track them down.²¹⁶ To resolve the third issue about victims dropping the restraining order process as a result of the pressure imposed by their partners, courts can consider strengthening the enforcement of TROs and creating punishment for such coercions.²¹⁷ Judges might also implement no-drop policies with permanent orders so that women who obtain TROs are required to obtain permanent orders.²¹⁸ The court can also refer victims and offenders to counseling programs that alleviate the extra tension produced by the restraining order process.

V. THE INEVITABLE OUTCOME?

Despite studies indicating that restraining orders prevent re-abuse in some instances, it is, nevertheless, the case that legal intervention will not completely deter some offenders from perpetuating violence. Restraining orders are less effective on offenders with criminal histories, those who are unemployed, those who abuse drugs and alcohol, and those involved in shorter relationships with the victim.²¹⁹ These findings are similar to the results from studies on arrest efficacy, which have concluded that arrests have deterrent effects only on employed and married abusers.²²⁰ Arrests were found to increase violence when unemployed and unmarried offenders were involved.²²¹

These findings about the characteristics of re-abusers are consistent with the “stakes in conformity” theory, which hypothesizes that “people are prone to act upon their antisocial impulses when external controls over them are weak.”²²² Thus, legal sanctions are effective only when reinforced by informal social controls. Informal social controls or the offender’s “stakes” include factors such as the person’s social status or reputation in the neighborhood, the investment in a relationship, and employment.²²³ When an offender does not have much to lose from the social consequences of criminal punishment, he is less likely to be deterred from his behavior. For instance, an offender who is unemployed will not be at risk for losing his job when sanctions are imposed because he has no job. As a result, he has less to lose from the consequences of noncompliance with legal sanctions, and the sanctions will not produce any

²¹⁶ *Id.*

²¹⁷ Again, this raises the question of whether enforcement and heavier punishment terms deter all offenders. See *supra* text accompanying note 159.

²¹⁸ This is probably less favorable because it disempowers victims and may, in the long run, deter women from obtaining restraining orders. Women might feel that the fear of threats and retaliation by offenders outweigh the benefits of legal intervention, and may decide not to initiate the process all together.

²¹⁹ VICTIM’S VIEWS, *supra* note 186; Chaudhuri & Daly, *supra* note 24, at 239–40; Klein, *supra* note 20, at 202.

²²⁰ See Schmidt & Sherman, *supra* note 159, at 46–48.

²²¹ *Id.* at 48.

²²² Jackson Toby, *Social Disorganization and Stake in Conformity: Complementary Factors in the Predatory Behavior of Hoodlums*, 48 J. CRIM. L., CRIMINOLOGY, & POLICE SCI. 12, 12 (1957).

²²³ FAGAN, *supra* note 13, at 26; Carlson et al., *supra* note 17, at 210.

positive effects on his abusive behavior. A perpetrator who has a criminal record will also not care about the consequence of social stigmatization resulting from sanctions because he already has a bad reputation or “record” in society. On the other hand, when the perpetrator is married or employed, he faces a greater sense of loss in his relationship and social status because of the amount of investment he has put into each. Therefore, offenders with such risks are more likely to comply with legal sanctions and to terminate their abusive conduct.

The idea that men with less “stakes in conformity” are less likely to be deterred from violence paints a dismal picture for some domestic violence victims because it suggests that some women may never escape from the cycle of violence if their partners do not have many social controls. The deterrent effect of legal sanctions against these types of men will remain bleak. The “stakes of conformity” theory recapitulates the notion that domestic violence is a complex problem involving not only the parties directly dealing with violence, but also the entire society. Domestic violence is not only about the threat to physical safety; it also concerns the welfare of the individuals who perpetrate violence and society’s responsibility in improving the social welfare for such individuals. If society can somehow implement programs and legislation that help develop and improve the social and economic conditions of the offenders and increase their “stakes” in society, then legal interventions in abuse may have a better chance of success.

VI. CONCLUSION

Domestic violence remains a serious epidemic that affects many families in America. As a result of the feminist movement in the late 1960s and 1970s, new legislation and reforms were implemented by the state and federal governments to improve assistance to battered women. One of these reforms, which is currently available to victims in all fifty states,²²⁴ involves civil restraining orders. Civil restraining orders continue to be an attractive form of legal intervention because of their broad range of protections and their immediate availability to qualifying victims. Because of their pervasive use, researchers have attempted to determine their effectiveness in preventing re-abuse.

Studies about victim satisfaction reveal the positive psychological impacts of the restraining orders. Empirical studies about their deterrent effects on re-abuse, however, are less conclusive. The problem in formulating a definite answer about restraining order efficacy results from the methodological deficiencies of available studies. Available studies do not utilize control groups²²⁵ and fail to use adequate follow-up periods.²²⁶ They also rely on outdated data.²²⁷ In light of recent domestic violence

²²⁴ Carlson et al., *supra* note 17, at 207.

²²⁵ See e.g., Carlson et al., *supra* note 17; Chaudhuri & Daly, *supra* note 24; Harrell & Smith, *supra* note 40; Klein, *supra* note 20.

²²⁶ See *supra* Part III.C.

²²⁷ See *supra* note 153 and accompanying text.

legislation and improvements in enforcement and social intervention programs, new studies should be conducted to reexamine the issue of restraining order efficacy. Future studies should implement methods that reduce the methodological flaws identified in this article to achieve better results.

Ignoring the methodological problems, findings from current studies are useful in revealing the factors of re-abuse and the procedural deficiencies of the restraining order process. Re-abuse factors include race and ethnicity, socioeconomic status, and the presence of children. Women who are African-American, who have children, and who represent lower socioeconomic backgrounds have the highest risk for re-abuse. Judicial officers and law enforcers should be alerted to these types of high-risk victims and be advised to offer the fullest extent of protection available to these victims. Legal intervention, however, is not a solution for everyone. Studies show that restraining orders are effective against further violence for women with less severe prior injuries or for those whose partners are less violent.²²⁸ Victims whose partners have low “stakes” in conformity may find it hard to escape the cycles of violence.

²²⁸ Chaudhuri & Daly, *supra* note 24, at 245; Grau et al., *supra* note 16, at 24; Harrell & Smith, *supra* note 40, at 241.