

The Importance of Civil Pathways to Protection Orders

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Civil protection orders (CPOs) were created in part to offer legal protections from domestic violence for those who do not want police or other criminal justice interventions. For CPOs to fulfill this function, people must be able to access CPOs outside of criminal processes. The study presented by this Article shows that in some rural communities, they cannot.

From an original dataset of over 3,400 CPO case files—nearly all those filed across an entire state during one full calendar year—this Article uncovers a surprising truth: in some rural places, only people who engage with law enforcement file cases seeking CPOs. People who do not interact with law enforcement (or perhaps do not receive a helpful response) do not file these cases. This finding suggests that people need a pathway to the remedy. That is, they need help from institutions to learn about and pursue CPOs. Where no helping institutions outside of the police exist, there are no civil pathways to CPOs. In these places, CPOs become a component of the criminal system’s response to domestic violence rather than an alternative to it. This criminalization of the remedy limits its reach and value.

Scholars and advocates increasingly have decried the dominant criminalized response to domestic violence and the underinvestment in all other sources of intervention and support. This Article demonstrates that even civil legal interventions are engulfed by the criminal justice system when policies fund the police at the expense of everything else. And it calls for investments in rural civil institutions and information campaigns to increase the accessibility and preserve the value of CPOs.

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INTRODUCTION

Civil protection orders (CPOs)¹ offer critical value as a warning.² They say to those restrained: “Enough. Stop. I mean it. You cannot do this to me. This is not right.” They do this powerfully, with the force of a judge behind them. And their purpose is to do this without requiring any interaction with the criminal legal system; at least, not at first.³

The civil nature of CPOs enables their warning function. As with other civil remedies, people subjected to domestic abuse file cases seeking CPOs—or not—as they see fit.⁴ They may bring such cases on their own or with private counsel. They need not depend upon a prosecutor or any other state entity. Indeed, they need not ever have called 911, reported their experiences to a law enforcement officer, or cooperated with a prosecution at all. Even if they have engaged with law enforcement, there need not have been any result. No investigation need have been completed; no prosecution need have been initiated.⁵

This separation of CPO processes from criminal interventions was deliberately constructed. CPOs were created to counter a criminal legal system that was unresponsive to intimate partner violence and to establish a source of legal protection

1. Civil protection orders have different names in different jurisdictions but share several essential features. Other common names include restraining orders, domestic violence protective orders, and orders of protection. Some states also empower criminal courts to issue criminal protection orders under some circumstances; because these orders have a narrower scope and are obtainable only through criminal processes, they are beyond the scope of this discussion. *See* 18 U.S.C. § 2266(5)(A) (defining “protection order” for purposes of the Violence Against Women Act’s full faith and credit guarantee to include “any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection”).

2. *See infra* Section I.B; *see also* Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?*, 29 *CARDOZO L. REV.* 1487, 1534–35 (2008) (examining the value of the “expressive power” of CPOs in communicating that respondents’ behavior is “illegal and unacceptable”).

3. *See infra* Part I.

4. This Article uses the terms “domestic violence,” “domestic abuse,” and “intimate partner violence” interchangeably to refer to a wide range of violence or abuse that occurs in intimate relationships. Anti-domestic violence organizations define these terms broadly, encompassing multiple forms of abuse and behaviors employed to exert coercive control over another individual, including physical, sexual, psychological, economic, and technological. *See, e.g., Types of Abuse*, LOVE IS RESPECT, <https://www.loveisrespect.org/resources/types-of-abuse/> [<https://perma.cc/Z858-6B9X>] (last visited Sept. 5, 2024). However, state laws typically define domestic abuse more narrowly with regard to the conduct that justifies the issuance of a civil protection order, often limiting such conduct to acts or threats of physical or sexual abuse or other crimes. *See* Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 *U.C. DAVIS L. REV.* 1107, 1129–38 (2009). *See generally* AM. BAR ASS’N COMM’N ON DOMESTIC & SEXUAL VIOLENCE, *DOMESTIC VIOLENCE CIVIL PROTECTION ORDERS* (2020), https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/Resources/charts/cpo2020.pdf [<https://perma.cc/ZBJ7-V8Y6>] (compiling state CPO statutes’ definitions of domestic violence). California law, which permits the issuance of a civil protection order on the basis of coercive control, is a notable exception. *See* CAL. FAM. CODE §§ 6203, 6320(c).

5. *See infra* Sections I.A, I.C.

that people facing abuse could control—one independent from law enforcement and prosecutorial discretion.⁶ Importantly, this separation also offers a critical source of legal protection for people who seek to avoid the potential harms of law enforcement intervention. CPOs can be entered, for example, without the person restrained experiencing arrest, prosecution, or incarceration. Those who are restrained by CPOs and adhere to their terms receive no criminal penalties from the civil process.⁷ Violations of CPOs, however, do expose those restrained to the risk of criminal punishment. CPO violations not only constitute contempt of the civil courts (which sometimes leads to incarceration) but also independent criminal offenses that can be prosecuted in criminal proceedings.⁸ This potential for future punishment underlies CPOs' warnings. A CPO warns the person restrained that if their conduct does not stop, criminal consequences may follow, and it gives them a chance to avoid that fate.

Contemporary anti-domestic violence policy generally prioritizes criminal legal responses, but this emphasis is at odds with the wishes of many who endure this problem. Many people subjected to abuse do not call the police.⁹ Many who

6. Despite these aims, some early civil protection order statutes and court policies permitted only government or private attorneys to initiate these cases. These restrictions were subsequently removed to facilitate access to the remedy. See Margaret Martin Barry, *Protective Order Enforcement: Another Pirouette*, 6 HASTINGS WOMEN'S L.J. 339, 340–41, 351 n.42 (1995) (compiling cases describing 1982 amendments to D.C.'s CPO statute that increased access by allowing petitioners to file cases themselves); 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, 842–44, 843 n.204, 844 n.210 (1993) (“Of those few jurisdictions that originally required a government attorney to file the petitioners’ protection orders, most have now adopted a *pro se* process.”); see also, e.g., *State ex rel. Patrick v. Kidd*, 631 S.W.2d 666, 668 (Mo. Ct. App. 1982) (en banc) (mandating court to accept pro se CPO filing). Placing those subjected to abuse in control of the process is not an aim of protection order regimes in other countries. Australian provinces, for example, permit and in some circumstances require police to file applications for CPOs, even if the person subjected to abuse does not want the remedy. See, e.g., *Family Violence Act 2016* (ACT) pt 3 div 3.2 s 16(2); *Crimes (Domestic and Personal Violence) Act 2007 No. 80* (NSW) pt 10 div 2 s 49; *Domestic and Family Violence Protection Act 2012* (Qld) pt 4 div 1 s 100. In some states, prosecutors likewise seek criminal protection orders in conjunction with domestic violence prosecutions, regardless of the wishes of the person subjected to abuse. See generally Jeannie Suk, *Criminal Law Comes Home*, 116 YALE L.J. 2 (2006).

7. Some respondents, however, may experience other collateral consequences of CPOs, including harms to reputation, employment, and choice of housing. See Joann Sahl, *Can We Forgive Those Who Batter? Proposing an End to the Collateral Consequences of Civil Domestic Violence Cases*, 100 MARQ. L. REV. 527, 536–42 (2016).

8. See, e.g., ALA. CODE § 13A-6-142; D.C. CODE § 16-1005(f), (g); N.Y. FAM. CT. ACT § 846-a; S.C. CODE ANN. §§ 20-4-60(B)(1), 16-25-20; TEX. FAM. CODE ANN. § 85.026. See also Klein & Orloff, *supra* note 6, at 1095–99.

9. See ALEXANDRA THOMPSON & SUSANNAH N. TAPP, BUREAU OF JUST. STAT., U.S. DOJ, NCJ 305101, CRIMINAL VICTIMIZATION, 2021, at 5 (2023), <https://bjs.ojp.gov/content/pub/pdf/cv21.pdf> [<https://perma.cc/PB4Z-NF3P>] (reporting that, in 2021, 48.9% of domestic violence incidents were reported to law enforcement, including incidents related to current and former intimate partners and family members; 50.7% of intimate partner violence incidents were reported; and rape and sexual assaults were reported at even lower rates: just 21.5%); SHERRY HAMBY, BATTERED WOMEN'S PROTECTIVE STRATEGIES: STRONGER THAN YOU KNOW 144–46 (2014) (evaluating studies regarding the rates at which people subjected to abuse report their experiences).

do call report that they would prefer to turn elsewhere if they had other options.¹⁰ Perhaps most concerningly, a survey of callers to the National Domestic Violence Hotline who reported their abuse to law enforcement revealed that 39% felt less safe as a result, and 40% felt the call made no difference.¹¹ Additionally, 24% of these callers said they would not seek law enforcement assistance if they were harmed again.¹² CPOs can serve as a critical tool for those who are seeking accountability and protection but do not want or cannot secure a law enforcement response.

Today, CPOs are the primary legal remedy—criminal or civil—for domestic violence in the United States.¹³ Over one million people seek them each year.¹⁴ CPO cases are estimated to comprise about one-quarter of domestic relations dockets nationwide.¹⁵ Having made CPOs a core feature of the policy response to abuse, it is critical to evaluate whether they serve the purposes in practice that they were enacted to achieve.

This Article presents results from an original empirical study of over 3,400 CPO cases—nearly all those filed in South Carolina family courts during one full calendar year.¹⁶ The results show that in some communities, only people who interact with law enforcement access CPOs: people who don't interact with law enforcement don't file CPO cases. This finding is troubling because it suggests that many people eligible to pursue the remedy are left out of it.¹⁷

10. See LEIGH GOODMARK, NAT'L DOMESTIC VIOLENCE HOTLINE, LAW ENFORCEMENT EXPERIENCE REPORT: DOMESTIC VIOLENCE SURVIVORS' SURVEY REGARDING INTERACTION WITH LAW ENFORCEMENT 5 (2022), https://www.thehotline.org/wp-content/uploads/media/2022/09/2209-Hotline-LES_FINAL.pdf [<https://perma.cc/GFP2-QDFP>].

11. *Id.*

12. *Id.*

13. See TK Logan & Robert Walker, *Civil Protective Order Outcomes: Violations and Perceptions of Effectiveness*, 24 J. INTERPERSONAL VIOLENCE 675, 685 (2009); Jane K. Stoeber, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders*, 67 VAND. L. REV. 1015, 1019 & n.8 (2014) (compiling research finding CPOs to be the most commonly used legal remedy of any kind—civil or criminal—to redress domestic violence). See generally Jane C. Murphy, *Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women*, 11 AM. U. J. GENDER SOC. POL'Y & L. 499 (2003) (describing increasing CPO usage to redress domestic violence).

14. See Ruth E. Fleury-Steiner, Susan L. Miller, Sara Maloney & Emily Bonistall Postel, "No Contact, Except . . .": *Visitation Decisions in Protection Orders for Intimate Partner Abuse*, 11 FEMINIST CRIMINOLOGY 3, 3 (2016); PATRICIA TJADEN & NANCY THOENNES, NAT'L INST. OF JUST. & CTRS. FOR DISEASE CONTROL & PREVENTION, NCJ 181867, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY 54 (2000), <https://www.ojp.gov/pdffiles1/nij/181867.pdf> [<https://perma.cc/5NDB-JUJ6>].

15. See *CSP STAT Domestic Relations*, CT. STAT. PROJECT (Oct. 9, 2023), <https://www.courtstatistics.org/court-statistics/interactive-caseload-data-displays/csp-stat-nav-cards-second-row/csp-stat-domestic-relations> [<https://perma.cc/VHU8-LMTZ>].

16. See *infra* Section II.B.

17. See Angela T. Ragusa, *Rural Australian Women's Legal Help Seeking for Intimate Partner Violence: Women Intimate Partner Violence Victim Survivors' Perceptions of Criminal Justice Support Services*, 28 J. INTERPERSONAL VIOLENCE 685, 689–90 (2012) (assessing that rural survivors of abuse may prefer to identify and access community resources on their own, without police assistance, because of negative police interactions).

The communities highlighted by this study have more in common than this law enforcement pathway to CPOs.¹⁸ They are among the most rural in a mostly rural state.¹⁹ Most of their residents live in poverty and have incomes below state averages, as well as limited access to broadband internet, cars, and public transportation.²⁰ In several communities, Black residents comprise the majority of the population.²¹

Nationwide, people living in rural communities suffer significant harm from domestic violence at higher rates than urban residents, including higher rates of abuse that inflicts severe injury and death, abuse that involves weapons and sexual assault, destruction of property, and threats to kill.²² Yet rural residents subjected to these experiences have few places to turn for help. In the communities highlighted by the study and rural places like them throughout the United States, law enforcement is the sole local institutional resource for any kind of assistance with domestic violence.²³ At the time of the study, none of the highlighted counties had a domestic violence shelter, domestic violence advocacy organization, or legal aid office located within the county's borders.²⁴ Indeed, these places have few lawyers at all.²⁵

The study's finding is significant for what it reveals about the functionality of the remedy under these conditions. To pursue CPOs, people must know about the remedy.²⁶ Prior research has shown that people often learn about CPOs from

18. See *infra* Section II.B.

19. Varied definitions of "rural" inform research and policy. See, e.g., Lisa R. Pruitt, Amanda L. Kool, Lauren Sudeall, Michele Statz, Danielle M. Conway & Hannah Haksgaard, *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 HARV. L. & POL'Y REV. 15, 24–25 (2018). This Article relies upon the U.S. Census Bureau's classification of urban versus rural populations in 2020. See *Urban and Rural: Urban Area Announcement and Criteria for the 2020 Census*, U.S. CENSUS BUREAU (Sept. 2023), <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html> [<https://perma.cc/7ELV-GMCM>]. This classification designates twenty-eight of forty-six South Carolina counties as majority rural. See *Urban and Rural: County-Level Urban and Rural Information for the 2020 Census*, U.S. CENSUS BUREAU (Sept. 2023), <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html> [<https://perma.cc/X38M-FSTT>].

20. See *infra* Figure 3.

21. See *infra* Figure 2.

22. See TK Logan, Lisa Shannon & Robert Walker, *Protective Orders in Rural and Urban Areas: A Multiple Perspective Study*, 11 VIOLENCE AGAINST WOMEN 876, 895–96 (2005) [hereinafter Logan et al., *Protective Orders*]; TK Logan, Robert Walker, Jennifer Cole, Stephanie Ratliff & Carl Leukefeld, *Qualitative Differences Among Rural and Urban Intimate Violence Victimization Experiences and Consequences: A Pilot Study*, 18 J. FAM. VIOLENCE 83, 87 (2003); see also Lisa R. Pruitt, *Place Matters: Domestic Violence and Rural Difference*, 23 WIS. J.L. GENDER & SOC'Y 347, 383–85 (2008) (collecting studies).

23. See Pruitt, *supra* note 22, at 384 ("None of the rural service providers in one small study could identify county services for victims other than criminal justice interventions.").

24. See *infra* Section II.B.

25. See *infra* Section II.B.

26. See Nikki R. Van Hightower & Joe Gorton, *A Case Study of Community-Based Responses to Rural Woman Battering*, 8 VIOLENCE AGAINST WOMEN 845, 866–70 (2002) (identifying need for information on legal remedies for survivors of domestic violence in rural Texas); LEGAL SERVS. CORP., THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 52 (2017), <https://www.lsc.gov/our-impact/publications/other-publications-and-reports/2017-justice-gap-report> [<https://perma.cc/NK3B-LADD>] (explaining that nearly one-third of people who reported being

helping professionals and advocates.²⁷ These helpers can be seen as providing pathways to the remedy.²⁸ The study's finding highlights that in some rural communities, the police provide the only such path.²⁹

In these places, CPOs do not offer an alternative to law enforcement interventions. Instead, CPOs become a component of the criminal response to domestic abuse. This eviscerates their value in offering civil legal protection and undercuts their function as a warning. It also has the potential to leave many unprotected, as rural residents face particular barriers to securing assistance from law enforcement.³⁰

The finding is also notable for what it reveals about the unacceptable resource gap in rural places and the consequence of state and federal policy choices to fund criminal justice interventions at the expense of everything else. It uncovers a dynamic that other researchers have suggested was likely, given the dearth of rural resources.³¹ Moreover, it exposes an unintended consequence of U.S. anti-violence policy's longstanding prioritization of criminal legal responses and underinvestment in all other sources of intervention and support.³² The reality that CPOs—the remedy created precisely to serve as an alternative to criminal processes—could become absorbed by the criminal system illustrates the scale of the failure to invest in non-criminal interventions.

This Article and the study it presents make several contributions to the literature on anti-violence policy and access to civil justice. First, it makes a renewed case for the value of CPOs as a criminal justice alternative. Although imperfect and not without risk, CPOs remain a critical resource for people who want legal protection without police intervention. Second, it shows that CPOs cannot play

subjected to domestic violence and sexual assault did not seek legal assistance because they did not know whether their problem was a legal one).

27. See HAMBY, *supra* note 9, at 147.

28. Several robust strands of access to justice research examine the pathways people travel to legal systems in pursuit of their goals. Scholars taking a top-down perspective examine how legal institutions shape who travels these paths and to what ends, whereas scholars taking a bottom-up perspective examine how events in peoples' lives become cases in the legal system. See, e.g., Rebecca L. Sandefur, *Access to Civil Justice and Race, Class, and Gender Inequality*, 34 ANN. REV. SOCIO. 339, 341–43 (2008) (evaluating this research); Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 IOWA L. REV. 1263, 1272–73 (2016) (same).

29. The case files examined by the study do not reveal the precise nature of the connection between law enforcement and the CPO process—"the path" for each petitioner. The ubiquitous presence of incident reports in the files suggests that law enforcement is at a minimum educating petitioners about the CPO remedy. Additional types of assistance petitioners received from victim advocates at law enforcement agencies, revealed in some case files, include court document preparation, accompaniment to hearings, assistance with service of process, and communication with clerks' offices.

30. See *infra* Section III.A.1.

31. See Carol K. Feyen, *Isolated Acts: Domestic Violence in a Rural Community*, in THE HIDDEN AMERICA: SOCIAL PROBLEMS IN RURAL AMERICA FOR THE TWENTY-FIRST CENTURY 101, 114 (Robert M. Moore III ed., 2001) (surmising that in many rural counties law enforcement is the only resource available to address domestic violence); Pruitt, *supra* note 22, at 384–86; Hightower & Gorton, *supra* note 26, at 866; see also Logan et al., *Protective Orders*, *supra* note 22, at 900 (noting advocate programs were not available to assist with filing or hearings for CPOs in rural counties studied).

32. See *infra* Section III.B.

this role where law enforcement is the only local institutional resource for domestic abuse. In doing so, it reveals a previously obscured consequence of the overreliance on criminal justice responses to domestic violence:³³ where police are funded at the expense of everything else, even civil protections become accessible only through the criminal justice system. Third, the Article focuses attention on rural places. Law and policy are urban normative, often overlooking unique features of rural life.³⁴ Research on both anti-violence law and policy and access to civil justice often share this urban lens.³⁵ Yet rural conditions merit special scrutiny. Chronic disinvestment has deprived rural communities of public and private resources and institutions.³⁶ Whereas a panoply of institutional supports has been developed in urban communities to meet the needs of people subjected to abuse during the past fifty years, rural places have largely been left out.³⁷ Rural residents themselves, especially Black and Native women, are economically and socially vulnerable and experience high rates of poverty and limited educational and employment opportunities.³⁸ As CPOs are enacted at the state level, in theory, they should be equally available and operate relatively similarly across each state.³⁹ This Article highlights an underappreciated disparity that impedes access to and the function of the remedy in practice. Finally, the Article joins the growing literature seeking to bring transparency to the work of the state courts.⁴⁰

33. See *infra* Section III.B.

34. See Debra Lyn Bassett, *Ruralism*, 88 IOWA L. REV. 273, 276–78 (2003) (“Our society’s bias is decidedly urban. Our society’s focus, its programs, and its culture are based on an urban, rather than rural, assumption. Our society’s urban focus both overshadows and marginalizes rural dwellers.” (footnotes omitted)); Lisa R. Pruitt, *Toward a Feminist Theory of the Rural*, 2007 UTAH L. REV. 421, 484 (2007) (“The deepest atrocities of [the] everyday lives [of rural women] have often gone unseen, without legal redress, due in part to that geographic isolation, but also because of our society’s pervasive urban presumption.”); Wendy Boka, Note, *Domestic Violence in Farming Communities: Overcoming the Unique Problems Posed by the Rural Setting*, 9 DRAKE J. AGRIC. L. 389, 413 (2004) (“Too often, laws and procedures are designed with an ‘urbo-centric’ mindset.”).

35. See WALTER S. DEKESEREDY & MARTIN D. SCHWARTZ, DANGEROUS EXITS: ESCAPING ABUSIVE RELATIONSHIPS IN RURAL AMERICA 6 (Raymond J. Michalowski ed., 2009) (finding that rural crime, including gender-based violence, has long been overlooked by criminologists); Pruitt et al., *supra* note 19, at 130 (“We know little about how rural people access and interact with the legal system or about particular legal needs that are subsequently unrecognized or otherwise are going unaddressed.”).

36. See *infra* Section III.B.

37. See Hightower & Gorton, *supra* note 26, at 869 (concluding that rural communities have not experienced the increased awareness of domestic violence and the development of responsive services that have emerged in urban places).

38. See ELIZABETH A. DOBIS, THOMAS P. KRUMEL, JR., JOHN CROMARTIE, KELSEY L. CONLEY, AUSTIN SANDERS & RUBEN ORTIZ, ECON. RSCH. SERV., U.S. DEP’T OF AGRIC., RURAL AMERICA AT A GLANCE 2, 15–16 (2021), <https://www.ers.usda.gov/webdocs/publications/102576/eib-230.pdf?v=8221.4> [<https://perma.cc/J2BS-VQN5>]; LEGAL SERVS. CORP., *Section 2: Today’s Low-Income America*, in THE JUSTICE GAP: THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 23, 35 (Apr. 2022), <https://justicegap.lsc.gov/the-report/> [<https://perma.cc/LN5S-WHAQ>].

39. See Barbara J. Hart, *State Codes on Domestic Violence: Analysis, Commentary and Recommendations*, JUV. & FAM. CT. J., 1992, at 3, 23–24.

40. Institutionally, state courts tend to publish little about their work. See TANINA ROSTAIN & AMY O’HARA, *The Civil Justice Data Gap*, in LEGAL TECH AND THE FUTURE OF CIVIL JUSTICE 368, 369 (David Freeman Engstrom ed., 2023). Scholars have increasingly called for the empirical study of state court processes. See, e.g., Catherine R. Albiston & Rebecca L. Sandefur, *Expanding the Empirical Study*

CPO proceedings are often a black box. Few courts publish CPO case data.⁴¹ Most CPO litigants are self-represented and may not fully understand what transpires in their cases.⁴² Written opinions are rare.⁴³ Few cases are appealed.⁴⁴ Courts may lack electronic filing systems⁴⁵ and restrict bulk records requests.⁴⁶

of *Access to Justice*, 2013 WIS. L. REV. 101, 119; Anna E. Carpenter, Alyx Mark, Colleen F. Shanahan & Jessica K. Steinberg, *The Field of State Civil Courts*, 122 COLUM. L. REV. 1165, 1181 (2022). The Legal Services Corporation recently launched the Civil Courts Data initiative to help fill this void. *Civil Court Data Initiative*, LEGAL SERVS. CORP., <https://civilcourtdata.lsc.gov> [https://perma.cc/82Q2-Q2J8] (last visited Sept. 5, 2024).

41. See Sahl, *supra* note 7, at 529 n.6.

42. See, e.g., Alesha Durfee, *Victim Narratives, Legal Representation, and Domestic Violence Civil Protection Orders*, 4 FEMINIST CRIMINOLOGY 7, 9–10 (2009) (noting a lack of legal representation among CPO litigants and that litigants filing pro se are at a disadvantage); Beverly Balos, *Domestic Violence Matters: The Case for Appointed Counsel in Protective Order Proceedings*, 15 TEMP. POL. & C.R. L. REV. 557, 567–69 (2006) (same); KATHRYN E. MORACCO, JULIE M. KAFKA, ALEXIS A. MOORE & J. MICHAEL BOWLING, FINAL RESEARCH REPORT: AN EVALUATION OF COURT SYSTEM BEST PRACTICES FOR DOMESTIC VIOLENCE PROTECTIVE ORDERS 25 (2021), <https://www.ojp.gov/pdffiles1/nij/grants/304011.pdf> [https://perma.cc/A4BH-ZX3W] (in cases studied, both parties were represented in only 11.8% of cases, and neither party was represented in 57.6%); INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., CASES WITHOUT COUNSEL: RESEARCH ON EXPERIENCES OF SELF-REPRESENTATION IN U.S. FAMILY COURT 2 (May 2016), https://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_research_report.pdf [https://perma.cc/SWE8-DDUE] (explaining that self-represented litigants often feel “in the dark” throughout their case); Nancy Kinally & Jessica Brown, *Everyone Counts: Taking a Snapshot of Self-Represented Litigants in Miami-Dade*, ABA DIALOGUE (Nov. 17, 2017), https://www.americanbar.org/groups/legal_services/publications/dialogue/volume/20/fall-2017/pro-bono-everyone-counts/ [https://perma.cc/5D7V-T43L] (noting that more than 80% of litigants in a study of Miami-Dade County, Florida, CPO cases were unrepresented); MISS. SUP. CT. COMM’N FOR THE STUDY OF DOMESTIC ABUSE PROC., REPORT OF THE COMMISSION FOR STUDY OF DOMESTIC ABUSE PROCEEDINGS 6–7 (2008), https://courts.ms.gov/research/reports/2008_commission_domestic_abuse.pdf [https://perma.cc/FDN5-7N9X] (finding the majority of petitions for CPOs are filed pro se, and only three locations throughout the state offer legal assistance to victims of domestic violence).

43. Colleen F. Shanahan, Jessica K. Steinberg, Alyx Mark & Anna E. Carpenter, Essay, *Lawyerless Law Development*, 75 STAN. L. REV. ONLINE 64, 65 (2023).

44. *Id.* at 67 (explaining that “the highest rate of appellate decisions” in CPO cases within a year was .01% “in three states over the last three decades” and that “[i]n most years, zero appellate decisions” were issued).

45. See NAT’L COUNCIL OF JUV. & FAM. CT. JUDGES, FREQUENTLY ASKED QUESTIONS ABOUT ELECTRONIC FILING IN CASES INVOLVING DOMESTIC VIOLENCE 2 (2022), https://www.ncjfcj.org/wp-content/uploads/2022/08/Efiling-FAQ_Document-for-Formatting-Web.pdf [https://perma.cc/2RPP-Y7FD] (describing an increase in the availability of e-filing in recent years). State trial court systems tend to be underfunded and oversubscribed, in general, as compared to their appellate and federal counterparts. See Justin Weinstein-Tull, *The Structures of Local Courts*, 106 VA. L. REV. 1031, 1046–55 (2020). See generally Kathryn A. Sabbeth, *Courts and Capitalism: Market-Based Law Development*, LAW & POL. ECON. PROJECT BLOG (July 21, 2021), <https://lpeproject.org/blog/market-based-law-development/> [https://perma.cc/KH28-485H]. Rural trial courts, in particular, often face significant funding challenges within state court systems. POL’Y & LIAISON COMM., CONF. OF STATE CT. ADM’RS, NAT’L CTR. FOR STATE CTS., *Courts Need to Enhance Access to Justice in Rural America* (2018), https://cosca.ncsc.org/_data/assets/pdf_file/0026/23399/policy-paper-1-28-2019.pdf [https://perma.cc/Z6AK-WANB]; see also Pamela R. Metzger & Gregory J. Guggenmos, *COVID-19 and the Ruralization of U.S. Criminal Court Systems*, U. CHI. L. REV. ONLINE, <https://lawreview.uchicago.edu/online-archive/covid-19-and-ruralization-us-criminal-court-systems> [https://perma.cc/LE8V-23MM]; Jack Karp, *A Mountain to Climb: The Inaccessibility of Rural Courts*, LAW360 (Dec. 1, 2023, 7:02 PM), <https://www.law360.com/pulse/articles/1770081/a-mountain-to-climb-the-inaccessibility-of-rural-courts> [https://perma.cc/4REL-GHWL].

46. See, e.g., S.C. App. Ct. R. 610(b).

Paper case files may be stored locally throughout a state and may be restricted from public access by law or local practice.⁴⁷ Each of these factors inhibits a broad-based understanding of how CPOs operate in individual courts, let alone throughout a state or across the country. This lack of understanding, in turn, enables place-based disparities to persist largely unnoticed. This Article and the study it evaluates seek to fill this knowledge gap.

This Article proceeds in four Parts. Part I evaluates the importance of CPOs' status as civil remedies by exploring the history and purpose behind their enactment, their unique function as warnings, and their fraught ties with the criminal justice system. This discussion lays the groundwork for understanding the finding explored in Part II: in some rural places, CPOs are accessed only by people who interact with the criminal justice system. Part III evaluates the implications of these results, both for what they reveal about the operation of the CPO remedy and for anti-violence policy. A brief conclusion follows in Part IV.

I. WHY CIVIL LEGAL PROTECTION MATTERS

Today, civil protection orders are a critical component of anti-violence strategies and the primary legal intervention for domestic violence in the United States.⁴⁸ This Part first explores what CPOs were created to do and why that matters. It then highlights two important consequences of CPOs' civil character: it enables people to seek the protections they want, when they want them, and without having to rely upon law enforcement, and it also enables CPOs to function as a powerful warning to respondents that the abuse must stop. Importantly, CPOs issue this warning without requiring petitioners to accept the risks and hardships of the criminal justice system, yet the warning is fueled by the threat that CPO violations are criminal offenses that can result in arrest and prosecution. This Part concludes by examining the fraught role of the criminal justice system in CPO enforcement: it both gives force to CPOs' protections and limits their desirability.

A. HISTORY AND PURPOSE

All fifty states and the District of Columbia enacted the civil protection order remedy in the wake of the women's liberation movement of the 1960s and 1970s.⁴⁹ CPOs provide temporary protection and a wide range of remedies to people subjected to abuse by intimate partners and family members.⁵⁰ Although the scope of the CPO remedy varies across states in several respects, the basic

47. See LISA MARTIN, SUZANNE SWAN, MARIE MANESS, JESSICA POMERANTZ, PIPER KROLL, EMMA WILKIE & JESSIE COBB, ORDERS OF PROTECTION IN SOUTH CAROLINA 10 (2024), <https://www.scaccessstojustice.org/dv-orders-of-protection> [<https://perma.cc/GM5T-Q9QG>] (documenting this practice in South Carolina).

48. See *supra* notes 13–15 and accompanying text.

49. Hart, *supra* note 39, at 23; Klein & Orloff, *supra* note 6, at 810; Lisa A. Goodman & Deborah Epstein, *Refocusing on Women: A New Direction for Policy and Research on Intimate Partner Violence*, 20 J. INTERPERSONAL VIOLENCE 479, 480 (2005).

50. See AM. BAR ASS'N COMM'N ON DOMESTIC & SEXUAL VIOLENCE, *supra* note 4.

legal framework is largely the same.⁵¹ Individuals seeking CPOs, often referred to as “petitioners,”⁵² typically must prove that they share a qualifying relationship with and have suffered qualifying conduct by the persons from whom they are seeking protection, often referred to as “respondents.”⁵³ Qualifying relationships may include current or former spouses, current or former cohabitants, co-parents, dating partners, and family members.⁵⁴ In some states, people who have been subjected to certain conduct, such as sexual assault or stalking, are eligible to seek protection regardless of their relationship to the actor.⁵⁵ Qualifying conduct may include acts or threats of physical and sexual violence, stalking, harassment, and other crimes or conduct undertaken to frighten and control.⁵⁶ Proving qualifying conduct can be difficult because petitioners are often the only witnesses and are often disbelieved.⁵⁷ Where it exists and where they can surmount evidentiary hurdles, petitioners may present courts with additional evidence such as photographs, police reports, medical records, text messages, social media posts, and recordings.⁵⁸ CPOs were created to provide accessible, expedited, protective, comprehensive, and temporary legal interventions into domestic violence in civil proceedings that petitioners could control, intentionally separate from the criminal justice system.⁵⁹

Before CPOs emerged, criminal prosecutions and divorce proceedings were the only legal avenues for court-ordered protection from domestic abuse.⁶⁰ Although these remedies had different goals and outcomes, they shared several

51. See *id.* (containing chart with state-by-state comparisons of common features of CPO laws). See generally Klein & Orloff, *supra* note 6 (examining the core features of CPO statutes throughout the United States); PETER FINN & SARAH COLSON, NAT’L INST. OF JUST., U.S. DOJ, CIVIL PROTECTION ORDERS: LEGISLATION, CURRENT COURT PRACTICE, AND ENFORCEMENT (1990) (same) [<https://perma.cc/JT7H-HYZ9>].

52. Tara N. Richards & Angela R. Gover, *An Analysis of State-Based Differences in Protection Orders Statutes and Implications for Victim Empowerment*, in CIVIL COURT RESPONSES TO INTIMATE PARTNER VIOLENCE AND ABUSE 39, 42 (Ruth E. Fleury-Steiner et al. eds., 2020).

53. See Klein & Orloff, *supra* note 6, at 814–76.

54. See *id.*

55. See AM. BAR ASS’N COMM’N ON DOMESTIC & SEXUAL VIOLENCE, *supra* note 4; see also Lisa V. Martin, *Restraining Forced Marriage*, 18 NEV. L.J. 919, 985–1003 (2018) (comparing qualifying relationships for minor and adult petitioners in state protection order statutes).

56. See generally Johnson, *supra* note 4 (examining the extent to which conduct beyond physical and sexual abuse justifies issuance of CPOs across the United States).

57. Jane H. Aiken & Jane C. Murphy, *Evidence Issues in Domestic Violence Civil Cases*, 34 FAM. L. Q. 43, 44 (2000); see also *infra* note 108 and accompanying text.

58. See Aiken & Murphy, *supra* note 57, at 45, 52–53, 60.

59. See Hart, *supra* note 39, at 23; LISA A. GOODMAN & DEBORAH EPSTEIN, LISTENING TO BATTERED WOMEN: A SURVIVOR-CENTERED APPROACH TO ADVOCACY, MENTAL HEALTH, AND JUSTICE 79 (2008); Stoever, *supra* note 13, at 1042–43.

60. LEIGH GOODMARK, A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM 9 (2012). For detailed accounts of the history of domestic violence policy in the United States, see *id.* at 9–29 and see generally ELIZABETH M. SCHNEIDER, BATTERED WOMEN & FEMINIST LAWMAKING (2000); SUSAN SCHECHTER, WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN’S MOVEMENT (1982); Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657 (2004); Reva B. Siegel, “The Rule of Love”: *Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117 (1996).

disadvantages as legal interventions for abuse. First, both proceedings were difficult to access. Criminal prosecutions were rare; then-dominant law enforcement policies and practices favored inaction in response to domestic abuse in the name of respecting family privacy.⁶¹ Divorce proceedings were complex and expensive, and standards for cruelty-based divorce (a fault-based ground for divorce crucial before no-fault divorce was available)⁶² were so restrictive that they were essentially unavailable to most.⁶³ Second, both proceedings were lengthy, requiring significant investment of time and extended uncertainty about outcomes.⁶⁴ Third, both proceedings left those subjected to abuse vulnerable to further harm while their cases were pending. Although prosecutions and divorce proceedings each offered mechanisms to restrict contact between the parties while the matters were pending, these orders were not immediately enforceable by law enforcement.⁶⁵ Instead, each required additional court proceedings, necessitating additional time and resources that not only delayed intervention but also deterred their pursuit.⁶⁶ This enforceability gap left people subjected to abuse vulnerable to continued distressing and harassing contact at the time of separation, when tensions may be highest.⁶⁷ Fourth, the outcomes of both proceedings often failed to meet victims' needs.⁶⁸ Each was a maximal form of intervention, imposing life-changing consequences that went far beyond the goal of stopping abuse. They left out people who simply wanted the abuse to stop but did not wish to terminate their marriages or have partners jailed or convicted. Even people who desired such finality left each proceeding with important needs unmet.⁶⁹ Criminal courts lacked jurisdiction to issue orders unrelated to a defendant's sentence.⁷⁰ Thus, even if a defendant were convicted, a number of other pressing legal issues—including those relating to custody, child or spousal support, or possession of real and personal property—might remain unresolved, which could provoke further conflict and keep parties' lives entangled.⁷¹ Divorce proceedings likewise often failed to meet the safety and accountability goals of people subjected to abuse.⁷²

61. See Siegel, *supra* note 60, at 2151–53; see also GOODMARK, *supra* note 60, at 9.

62. See Denese Ashbaugh Vlosky & Pamela A. Monroe, *The Effective Dates of No-Fault Divorce Laws in the 50 States*, 51 FAM. RELS. 317, 317 (2002); HOMER H. CLARK, JR. & SANFORD N. KATZ, *THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES* 533–34, 564–69 (3d ed. 2021).

63. Leigh Goodmark, *Assessing the Impact of the Violence Against Women Act*, 5 ANN. REV. CRIMINOLOGY 115, 116 (2022); see GOODMARK, *supra* note 60, at 9.

64. Richards & Gover, *supra* note 52, at 39–41.

65. *Id.*

66. See *id.* at 41; FINN & COLSON, *supra* note 51, at 2–3.

67. The time of separation is the most dangerous for people subjected to abuse in intimate relationships. See generally Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1 (1991) (evaluating the dangers of separation, naming the phenomenon of separation assault, and calling for legal responses to account for its harms).

68. See FINN & COLSON, *supra* note 51, at 2–3.

69. See GOODMAN & EPSTEIN, *supra* note 59, at 79.

70. See FINN & COLSON, *supra* note 51, at 3.

71. See GOODMAN & EPSTEIN, *supra* note 59, at 79.

72. See Nina W. Tarr, *Civil Orders for Protection: Freedom or Entrapment?*, 11 WASH. U. J.L. & POL'Y 157, 161–64 (2003) (evaluating the complexities of seeking a civil injunction against abuse).

Even in final orders, family courts could at most restrict contact under the threat of future contempt litigation, which was cumbersome to navigate and lacked a means for immediate intervention.⁷³ In short, criminal prosecutions and divorce proceedings at once offered too much and too little.

CPOs were designed to address these gaps. First, they are accessible. Petitioners (not prosecutors) control whether, when, and how to file and present their cases⁷⁴ and must meet a lower burden of proof than criminal prosecutions.⁷⁵ CPO cases have no filing or service of process fees,⁷⁶ and standardized forms make it easier to file cases without legal assistance.⁷⁷ Second, CPOs are expedient.⁷⁸ Unlike most criminal and civil litigation, parties typically have limited rights to discovery.⁷⁹ Trials are scheduled quickly—typically within weeks of filing.⁸⁰ Third, CPOs are protective. Violations not only constitute contempt of court but also independent criminal offenses, allowing law enforcement to immediately respond.⁸¹ Courts can issue temporary orders protecting petitioners from the time of filing to hearing, with the same enforceability.⁸² Fourth, CPOs are designed to be both comprehensive and tailored to petitioners' goals, although courts retain discretion over the final terms in each order.⁸³ Courts can

through divorce); Tamara L. Kuennen, "No-Drop" Civil Protection Orders: Exploring the Bounds of Judicial Intervention in the Lives of Domestic Violence Victims, 16 UCLA WOMEN'S L.J. 39, 47 (2007) (noting that injunctions issued at divorce could at most order a former spouse to stay away).

73. Tarr, *supra* note 72, at 162–63.

74. GOODMARK, *supra* note 60, at 17; Kuennen, *supra* note 72, at 88.

75. FINN & COLSON, *supra* note 51, at 3, 14; Klein & Orloff, *supra* note 6, at 1043–45.

76. Funding conditions imposed by the Violence Against Women Act of 1994 and subsequent reauthorizations eliminated fees for filing and service of process in CPO cases across the United States. See 34 U.S.C. § 10450. Compare Klein & Orloff, *supra* note 6, at 1050–51 (identifying states that did and did not charge fees for CPO case filing in 1993), with SUZANNE CAVANAGH & DAVID TEASLEY, CONG. RSCH. SERV., LIBR. OF CONG., 95-921 GOV, VIOLENCE AGAINST WOMEN: RECENT DEVELOPMENTS 4 (1995) (explaining that to receive STOP grant funds, states must "certify that victims of domestic violence are exempt from paying costs associated with . . . issuing or serving a . . . protection order").

77. Goldfarb, *supra* note 2, at 1506; Tarr, *supra* note 72, at 164.

78. Deborah M. Weissman, *Gender-Based Violence as Judicial Anomaly: Between "The Truly National and the Truly Local,"* 42 B.C. L. REV. 1081, 1109 (2001).

79. See Klein & Orloff, *supra* note 6, at 1054.

80. Jane K. Stoever, *Access to Safety and Justice: Service of Process in Domestic Violence Cases*, 94 WASH. L. REV. 333, 360, 396 (2019).

81. Hart, *supra* note 39, at 19–21; Klein & Orloff, *supra* note 6, at 1095–1120.

82. Hart, *supra* note 39, at 8; Klein & Orloff, *supra* note 6, at 1031–43.

83. See Debra Pogrud Stark, *What's Law Got To Do with It? Confronting Judicial Nullification of Domestic Violence Remedies*, 10 NW. J.L. & SOC. POL'Y 130, 133–34, 140 (2015). Importantly, because courts exercise this discretion, civil court intervention also brings the risk of interventions beyond or inferior to those that the petitioner seeks. See Goldfarb, *supra* note 2, at 1524–25 (presenting attorney interviews describing court practices of entering stay-away and no contact provisions in CPOs (or not), and reflecting that in some counties CPOs must include such provisions); Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009, 1019 (2000) (noting that although courts have the power to enter CPOs without stay-away requirements, judges "are likely to see this accommodation as counter productive"); Christine Agnew-Brune, Kathryn E. (Beth) Moracco, Cara J. Person & J. Michael Bowling, *Domestic Violence Protective Orders: A Qualitative Examination of Judges' Decision-Making Processes*, 32 J. INTERPERSONAL VIOLENCE 1921, 1921, 1931–32 (2017) (interviewing twenty North Carolina judges and revealing reluctance to issue custody orders in CPOs and belief that petitioners abuse the CPO remedy to gain

include a range of remedies within CPOs, depending upon the needs of the petitioner,⁸⁴ including orders mandating physical separation; prohibiting contact; barring the possession of firearms;⁸⁵ assigning temporary rights to child custody and visitation, possession of a shared residence, and financial support; and awarding other relief appropriate to the circumstances of the case.⁸⁶ Finally, CPOs are temporary and malleable. Initial orders typically last up to one or two years; these can be modified, extended, or dismissed with court approval.⁸⁷ Thus, they offer relief not only for people seeking final separation but also for those desiring temporary or limited intervention.

Although CPOs are designed to be more accessible than other legal remedies, in practice, petitioners often need assistance to learn about the remedy and file their cases.⁸⁸ Such assistance may simply entail informing petitioners about the remedy and where to pursue it, or it may also include help preparing and filing court documents, communicating with the court, ensuring the respondent is served, and accompaniment to hearings.⁸⁹ In some places, non-lawyer domestic

unfair custody advantage); Mikaela Wallin & Alesha Durfee, *Firearm Removal, Judicial Decision-Making, and Domestic Violence Protection Orders*, 7 VIOLENCE & GENDER 27, 30–31 (2020) (finding that only 50.1% of petitioners who requested firearm removal had judges grant this relief); Heather R. Parker, *Access Denied: The Disconnect Between Statutory and Actual Access to Child Support for Civil Protection Order Petitioners*, 76 U. CINCINNATI L. REV. 271, 283, 289–94 (2007) (explaining that many petitioners are denied grants of child support in CPOs); Stark, *supra*, at 152 (finding that Illinois judges granting CPOs often “refused to grant the remedies of payment of child and spousal support, payment of losses, relinquishment of firearms, and counseling”); Edward W. Gondolf, Joyce McWilliams, Barbara Hart & Jane Stuehling, *Court Response to Petitions for Civil Protection Orders*, 9 J. INTERPERSONAL VIOLENCE 503, 512 (1994) (finding that “[t]he court was unlikely to order the financial support, temporary property allocation, court costs, and attorney fees requested by the petitioners”); Deborah M. Weissman, *In Pursuit of Economic Justice: The Political Economy of Domestic Violence Laws and Policies*, 2020 UTAH L. REV. 1, 32–33 (arguing that “few courts address economic matters such as child support,” notwithstanding judges’ authority to do so); N.C. CRIM. JUST. ANALYSIS CTR., N.C. DEP’T OF CRIME CONTROL AND PUB. SAFETY, DISPOSITIONAL OUTCOMES OF DOMESTIC VIOLENCE EX-PARTE AND DOMESTIC VIOLENCE PROTECTIVE ORDERS 10 (2002), <https://digital.ncdcr.gov/documents/detail/3598693> [<https://perma.cc/E85P-C3XJ>] (finding that terms of CPOs did not match petitioners’ requests for relief, and courts rarely entered orders of visitation and child support); Kit Kinports & Karla Fischer, *Orders of Protection in Domestic Violence Cases: An Empirical Assessment of the Impact of the Reform Statutes*, 2 TEX. J. WOMEN & L. 163, 205–07 (1993) (finding that petitioners’ requests for custody, child support, and other financial remedies are often denied). See generally Kuennen, *supra* note 72 (evaluating court denial of petitioner requests to vacate CPOs they no longer desire).

84. Stoever, *supra* note 13, at 1044–45.

85. Indeed, separation is often viewed by courts as the primary purpose of CPOs. Courts may insist upon including stay-away and no contact provisions in CPOs even if petitioners do not seek them. See Goldfarb, *supra* note 2, at 1498.

86. See FINN & COLSON, *supra* note 51, at 33–47; Klein & Orloff, *supra* note 6, at 910–1031; Hart, *supra* note 39, at 14–19.

87. See Stoever, *supra* note 13, at 1090–91. *But see* Kuennen, *supra* note 72, at 41 (noting that some courts decline petitioners’ requests to vacate or dismiss CPOs).

88. Kinports & Fischer, *supra* note 83, at 169–70.

89. See *id.* at 169–74; Suzanne J. Schmitz, *What’s the Harm?: Rethinking the Role of Domestic Violence Advocates and the Unauthorized Practice of Law*, 10 WM. & MARY J. WOMEN & L. 295, 299 (2004).

violence advocates provide this assistance.⁹⁰ These advocates are typically employed by anti-domestic violence organizations and sometimes are based in the courthouses where petitioners file CPO cases.⁹¹ As first responders to emergency calls for assistance with domestic abuse, law enforcement officers also often provide information about CPOs, and law enforcement agencies with victim advocates on staff may also provide additional assistance with CPO cases.⁹²

CPOs are not for everyone. Among other things, CPO proceedings invade privacy⁹³ and can expose petitioners to retaliation;⁹⁴ shame; ostracism; reputational harm;⁹⁵ child protective services interventions;⁹⁶ discrimination in employment, insurance, housing, professional licensure, and public benefits; and immigration

90. See SUSAN L. KEILITZ, PAULA L. HANNAFORD & HILLERY S. EFKEMAN, NAT'L CTR. FOR STATE CTS., CIVIL PROTECTION ORDERS: THE BENEFITS AND LIMITATIONS FOR VICTIMS OF DOMESTIC VIOLENCE 12–14 (1997) (describing the work of advocates in Denver, Delaware, and District of Columbia courts); FINN & COLSON, *supra* note 51, at 24–26 (documenting advocate roles in CPO cases in several jurisdictions); Kinports & Fischer, *supra* note 83, at 173–74 (explaining that advocates fill an important gap in the legal assistance available to petitioners since many cannot afford private counsel and pro bono services are scarce in many communities); Schmitz, *supra* note 89, at 299–300 (describing the work of “lay” or nonlawyer domestic violence advocates). See generally Cris M. Sullivan & Lisa A. Goodman, *Advocacy with Survivors of Intimate Partner Violence: What It Is, What It Isn't, and Why It's Critically Important*, 25 VIOLENCE AGAINST WOMEN 2007, 2007 (2019) (defining advocacy in this context as “partnering with [people subjected to abuse] to represent their rights and interests while linking them to concrete resources, protections, and opportunities”).

91. Schmitz, *supra* note 89, at 299–300.

92. See, e.g., FINN & COLSON, *supra* note 51, at 26 (describing CPO assistance provided by advocates in prosecution offices). Violence Against Women Act grant programs fund victim advocate positions in law enforcement agencies. For more information about law enforcement victim advocates and how their roles compare to advocates employed with anti-violence organizations, see *Law Enforcement-Based Victim Services (LEV)*, INT'L ASS'N CHIEFS POLICE, <https://www.theiacp.org/projects/law-enforcement-based-victim-services-lev> [<https://perma.cc/5ZUX-UVZ7>] (last visited Sept. 5, 2024), a technical assistance partnership with the Department of Justice Office on Violence Against Women, and INT'L ASS'N OF CHIEFS OF POLICE, LAW ENFORCEMENT-BASED VICTIM SERVICES: USING TECHNOLOGY TO COMMUNICATE WITH VICTIMS 3–4 (2022), <https://www.theiacp.org/sites/default/files/LEV/Publications/UsingTechnologyToCommunicateWithVictims.pdf> [<https://perma.cc/NH93-YE8E>].

93. See Pruitt, *supra* note 22, at 363–64, 379; Lisa R. Pruitt & Bradley E. Showman, *Law Stretched Thin: Access to Justice in Rural America*, 59 S.D. L. REV. 466, 489 (2014) (“The fact that legal actors (e.g., law enforcement, prosecutors, and judicial officials) are also neighbors, acquaintances, and even friends or family may help explain rural residents’ reluctance to engage the state.” (footnote omitted)).

94. See HEATHER DOUGLAS, WOMEN, INTIMATE PARTNER VIOLENCE, AND THE LAW 221–33 (2021) (recounting the experiences of women who faced retaliation after leaving abusive relationships); JILL DAVIES & ELEANOR LYON, DOMESTIC VIOLENCE ADVOCACY: COMPLEX LIVES/DIFFICULT CHOICES 24–25 (Claire M. Renzetti & Jeffrey L. Edleson eds., 2d ed. 2014); HAMBY, *supra* note 9, at 21–22.

95. See HAMBY, *supra* note 9, at 118–20 (evaluating the impact of stigma on decisions to seek help with abuse); Logan et al., *Protective Orders*, *supra* note 22, at 892.

96. See generally S. Lisa Washington, *Survived & Coerced: Epistemic Injustice in the Family Regulation System*, 122 COLUM. L. REV. 1097 (2022) (analyzing the child welfare system as an intrusive and disempowering “family regulation system”); Justine A. Dunlap, *Sometimes I Feel Like a Motherless Child: The Error of Pursuing Battered Mothers for Failure To Protect*, 50 LOY. L. REV. 565 (2004) (critiquing the practice of taking children away from battered mothers as blaming mothers for being abused and “harm[ing] the very children sought to be protected”).

concerns.⁹⁷ These risks are amplified for petitioners from marginalized communities.⁹⁸

Yet, CPOs are often effective⁹⁹—arguably “the most effective legal remedy available to decrease or eliminate domestic violence.”¹⁰⁰ Petitioners who receive CPOs report high levels of satisfaction.¹⁰¹ Across several studies, most petitioners report that CPOs are effective, make them feel safer, help them experience reduced fear and depression,¹⁰² and give increased control over their lives and relationships.¹⁰³ Further, CPOs reduce violence and abuse.¹⁰⁴ By preventing violence, CPOs not only avoid physical harm but also substantial economic costs.¹⁰⁵

B. VALUES OF CIVIL PROTECTION

CPOs’ civil character is central to their value. It not only allows petitioners to control their cases and expands the range of available remedies¹⁰⁶ but also offers

97. See Stoever, *supra* note 80, at 356; Emily C. Wilson, *Stop Re-Victimizing the Victims: A Call for Stronger State Laws Prohibiting Insurance Discrimination Against Victims of Domestic Violence*, 23 AM. U. J. GENDER, SOC. POL’Y & L. 413, 416–17, 430 (2015); Jill Theresa Messing, Sujei Vega & Alesha Durfee, *Protection Order Use Among Latina Survivors of Intimate Partner Violence*, 12 FEMINIST CRIMINOLOGY 199, 209 (2017).

98. DAVIES & LYON, *supra* note 94, at 52–54; see also *supra* notes 96–97.

99. See TK LOGAN, *Understanding Civil Protective Order Effectiveness, Barriers, and Arguments: Justice or Just a Piece of Paper?*, in CIVIL COURT RESPONSES TO INTIMATE PARTNER VIOLENCE AND ABUSE, *supra* note 52, at 9, 10–19 (summarizing and compiling studies).

100. Stoever, *supra* note 80, at 351–56 (evaluating studies supporting this assertion).

101. Goldfarb, *supra* note 2, at 1510 (compiling studies); KEILITZ ET AL., *supra* note 90, at 4–5.

102. LOGAN, *supra* note 99, at 13–14 (citing Logan & Walker, *supra* note 13). See generally Logan & Walker, *supra* note 13 (examining the effects of protection orders on women).

103. See Karla Fischer & Mary Rose, *When “Enough Is Enough”: Battered Women’s Decision Making Around Court Orders of Protection*, 41 CRIME & DELINQUENCY 414, 423 (1995). CPOs including comprehensive remedies have been found most effective at securing petitioner well-being. Logan et al., *Protective Orders*, *supra* note 22, at 906; Kinports & Fischer, *supra* note 83, at 207.

104. LOGAN, *supra* note 99, at 12 (citing Logan & Walker, *supra* note 13); Logan & Walker, *supra* note 13, at 676; see also Brian H. Spitzberg, *The Tactical Topography of Stalking Victimization and Management*, 3 TRAUMA VIOLENCE & ABUSE 261, 275 (2002) (collecting studies of CPO compliance rates); Goldfarb, *supra* note 2, at 1511–12 (same). One study found that the filing of a CPO case reduces future violence, whether or not the case results in an order. Judith McFarlane, Ann Malecha, Julia Gist, Kathy Watson, Elizabeth Batten, Iva Hall & Sheila Smith, *Protection Orders and Intimate Partner Violence: An 18-Month Study of 150 Black, Hispanic, and White Women*, 94 AM. J. PUB. HEALTH 613, 616–17 (2004).

105. TK Logan, Robert Walker & William Hoyt, *The Economic Costs of Partner Violence and the Cost-Benefit of Civil Protective Orders*, 27 J. INTERPERSONAL VIOLENCE 1137, 1144 (2012); see also LISA D. BRUSH, POVERTY, BATTERED WOMEN, AND WORK IN U.S. PUBLIC POLICY 66–75 (2011) (evaluating numerous accounts of the costs of domestic abuse at the societal and individual levels). Importantly, in one study tracking women recipients of welfare over time, women who had ever filed a CPO saw their wages decrease by \$0.76/hour during the study period, and women who experienced abuse but did not file a CPO saw their wages decrease by \$0.53/hour, whereas women who did not experience abuse or file a CPO saw their wages rise. *Id.* at 56–57. It is unclear whether the wage reductions experienced by those who received CPOs resulted from the CPO remedy or the nature of abuse they experienced. *Id.* People who seek CPOs are likely to have experienced more severe forms of abuse. See KEILITZ ET AL., *supra* note 90, at 7–8.

106. See *supra* notes 74–87 and accompanying text.

legal protection without requiring interactions with law enforcement and enables CPOs to serve as a potent warning.

When petitioners can learn about and pursue CPOs only through contact with law enforcement, they must risk a criminal justice intervention (and receive a helpful response) to secure a civil one. Petitioners who do not want criminal interventions or cannot get them are excluded from the CPO remedy when law enforcement is the only path to it. Some people subjected to abuse avoid interacting with law enforcement for many sound reasons.¹⁰⁷ They fear they will be disbelieved.¹⁰⁸ They fear retaliation from their partners.¹⁰⁹ They want to protect their partners from arrest, police brutality, prosecution, incarceration, or deportation.¹¹⁰ They worry that a partner's conviction could lead to hardship for their family, including loss of housing, economic strain, and an emotional toll on children.¹¹¹ They may still love their partner and want to remain in the relationship but want the abuse to stop.¹¹² They may believe, from past experience or otherwise, that law enforcement will not help them, especially if officers have personal relationships with their partner.¹¹³ And they may distrust law enforcement officials, prosecutors, and the courts because of past experiences.¹¹⁴

Indeed, law enforcement interventions can expose people subjected to abuse to multiple harms. First, people subjected to abuse are too often arrested and prosecuted for protecting themselves.¹¹⁵ Law enforcement interventions also expose

107. See Debra Pogrud Stark & Jessica Choplin, *Seeing the Wrecking Ball in Motion: Ex Parte Protection Orders and the Realities of Domestic Violence*, 32 WIS. J.L. GENDER & SOC'Y 13, 59 (2017) (noting that people subjected to abuse may not want police involvement for many reasons, including love, financial dependence, and fear of retaliation); GOODMARK, *supra* note 10, at 4 (noting concerns of survivors who did not call the police included fears of police disbelief, mistreatment, inaction, and violence; desires of relationship preservation, privacy, and protecting children; and fear of partners, among others).

108. See GOODMARK, *supra* note 10, at 4. See generally Deborah Epstein & Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences*, 167 U. PA. L. REV. 399, 399 (2019) (exploring how "women's credibility is discounted in a range of legal and social service system settings"); Deborah Tuerkheimer, *Incredible Women: Sexual Violence and the Credibility Discount*, 166 U. PA. L. REV. 1, 3 (2017) (exploring how women are often discredited when seeking relief from sexual abuse).

109. See GOODMARK, *supra* note 10, at 4.

110. See *id.* at 6. Noncitizen immigrants may also be reluctant to approach law enforcement if their partner threatens to have them deported. See Angelica S. Reina, Brenda J. Lohman & Marta María Maldonado, "He Said They'd Deport Me": *Factors Influencing Domestic Violence Help-Seeking Practices Among Latina Immigrants*, 29 J. INTERPERSONAL VIOLENCE 593, 600–01 (2014).

111. See Edna Erez & Joanne Belknap, *In Their Own Words: Battered Women's Assessment of the Criminal Processing System's Responses*, 13 VIOLENCE & VICTIMS 251, 260, 262 (1998).

112. See Stark & Choplin, *supra* note 107, at 59; GOODMARK, *supra* note 10, at 4, 9.

113. See Erez & Belknap, *supra* note 111, at 253–56 (compiling studies documenting victim accounts of seeking law enforcement assistance and not receiving it, and documenting similar reports from their own study).

114. See Greene, *supra* note 28, at 1288–89.

115. GOODMARK, *supra* note 10, at 5; Alesha Durfee, *Situational Ambiguity and Gendered Patterns of Arrest for Intimate Partner Violence*, 18 VIOLENCE AGAINST WOMEN 64, 65 (2012); LEIGH GOODMARK, *DECriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence* 19 (2018) [hereinafter GOODMARK, *DECriminalizing Domestic Violence*]. See generally LEIGH GOODMARK, *IMPERFECT VICTIMS: CRIMINALIZED SURVIVORS AND THE PROMISE OF*

petitioners to the risk of state surveillance and loss of children through child welfare agency interventions.¹¹⁶ Finally, law enforcement interventions expose petitioners to the risk of losing their housing.¹¹⁷ The risks of these harms are heightened for people from vulnerable groups, including people of color and members of the LGBTQ community.¹¹⁸ Not everyone who engages with law enforcement in response to domestic abuse experiences these harms. But many people subjected to abuse are aware of these risks and choose not to engage with law enforcement to avoid them.¹¹⁹

CPOs' civil character also enables CPOs to function as a potent warning.¹²⁰ CPOs warn respondents that their behavior toward petitioners must change. This warning offers respondents the opportunity to stop before they face more serious consequences for their actions. CPOs' warning function derives from their

ABOLITION FEMINISM (Claire M. Renzetti ed., 2023) [hereinafter GOODMARK, IMPERFECT VICTIMS] (evaluating how the carceral response to domestic violence results in the conviction and punishment of survivors of domestic violence).

116. GOODMARK, *supra* note 10, at 5; Dorothy Roberts, *Why Abolition*, 61 FAM. CT. REV. 229, 234–35 (2023) (exploring the intersections between law enforcement and child welfare interventions into poor families). CPO proceedings can expose both parties to the scrutiny and intervention of the child welfare and family regulation system. Logan et al., *Protective Orders*, *supra* note 22, at 887 (noting that in two rural counties child protection workers routinely speak with CPO litigants at hearings). Parents subjected to domestic violence may be found to have neglected their children by subjecting children to the harm of witnessing their abuse. Such findings can result in the temporary or permanent removal of children from victimized parents. Washington, *supra* note 96, at 1105. *See generally* Jeanne A. Fugate, Note, *Who's Failing Whom? A Critical Look at Failure-To-Protect Laws*, 76 N.Y.U. L. REV. 272, 272 (2001) (“Parents or caretakers may be charged with a form of criminal or civil penalty called ‘failure to protect’ when they do not prevent another person from abusing the children in their care.”).

117. Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 AM. SOCIO. REV. 117, 117 (2012); Anna Kastner, Comment, *The Other War at Home: Chronic Nuisance Laws and the Revictimization of Survivors of Domestic Violence*, 103 CALIF. L. REV. 1047, 1047 (2015); Cari Fais, Note, *Denying Access to Justice: The Cost of Applying Chronic Nuisance Laws to Domestic Violence*, 108 COLUM. L. REV. 1181, 1195 (2008).

118. *See, e.g.*, GOODMARK, *supra* note 10, at 7 (noting that survivors of color reported heightened fears of police violence); Michelle S. Jacobs, *The Violent State: Black Women's Invisible Struggle Against Police Violence*, 24 WM. & MARY J. WOMEN & L. 39, 43 (2017) (discussing “the plight of Black women who defend themselves from the[ir] batterers,” including “that Black women are more likely to be arrested by the police when they report intimate violence”); Marguerite B. Lucea, Jamila K. Stockman, Margarita Mana-Ay, Desiree Bertrand, Gloria B. Callwood, Catherine R. Coverston, Doris W. Campbell & Jacquelyn C. Campbell, *Factors Influencing Resource Use by African American and African Caribbean Women Disclosing Intimate Partner Violence*, 28 J. INTERPERSONAL VIOLENCE 1617, 1620–21 (2013) (noting that Black women’s “responses to violent and abusive behavior may be influenced by the chronic experiences of racism and discrimination”); Desmond & Valdez, *supra* note 117, at 136–37 (noting relationship between domestic violence complaints and nuisance violations in Black neighborhoods). *See generally* Natalie J. Sokoloff & Ida Dupont, *Domestic Violence at the Intersections of Race, Class, and Gender*, 11 VIOLENCE AGAINST WOMEN 38 (2005) (analyzing domestic violence literature through lens of intersectionality); Robert Hampton, William Oliver & Lucia Magarian, *Domestic Violence in the African American Community: An Analysis of Social and Structural Factors*, 9 VIOLENCE AGAINST WOMEN 533 (2003) (same).

119. *See* Leigh Goodmark, *Reimagining VAWA: Why Criminalization Is a Failed Policy and What a Non-Carceral VAWA Could Look Like*, 27 VIOLENCE AGAINST WOMEN 84, 88–89 (2021) (compiling studies).

120. *See* McFarlane et al., *supra* note 104, at 616–17.

intertwinement with the criminal system.¹²¹ Whereas their criminal enforceability forecasts the penalties that await violations, their civil nature offers the prospect of resolution without criminal system intervention.

CPOs' warning function offers petitioners several crucial benefits. It enables them to send a forceful message to respondents when they are ready to do so. It allows them to halt the warning when it has been enough and seek to extend it when they continue to feel unsafe.¹²² Compared to criminal proceedings, it offers a potentially more limited intervention and offers at least some petitioners the choice as to whether to ever seek enforcement.¹²³ This function enables CPOs to create a path to legal protection for petitioners who do not want criminal legal intervention or cannot secure it, as well as for those who do and can.¹²⁴

In short, CPOs' civil nature is crucial not only for offering petitioners a broader range of remedies and control over their cases, but also for providing protection

121. *But see* Alesha Durfee & Leigh Goodmark, *Re-Envisioning Protective Orders for Domestic Violence*, in *CIVIL COURT RESPONSES TO INTIMATE PARTNER VIOLENCE AND ABUSE*, *supra* note 52, at 63, 72–76 (arguing that “[t]he increased blurring of the line between civil and criminal in the context of [CPOs] creates an invisible structural barrier that prevents survivors from accessing the services that they need”); GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE*, *supra* note 115, at 12–22 (questioning whether criminal penalties sufficiently deter domestic violence to justify their costs).

122. *See* Klein & Orloff, *supra* note 6, at 1081–85 (evaluating standards for CPO modification and extension). For some petitioners, filing a CPO case and dismissing it prior to hearing is sufficient to achieve their goals. *See* Murphy, *supra* note 13, at 513–14; *see also* Anne Groggel, *A Mixed-Method Approach to Understand Themes of Love in Victims' Dismissals of Civil Protection Orders*, 37 *J. INTERPERSONAL VIOLENCE* NP19909, NP19911 (2022) (explaining how some petitioners withdraw their CPOs prior to their expiration); Lori A. Zoellner, Norah C. Feeny, Jennifer Alvarez, Christina Watlington, Melanie L. O’Neill, Ruth Zager & Edna B. Foa, *Factors Associated with Completion of the Restraining Order Process in Female Victims of Partner Violence*, 15 *J. INTERPERSONAL VIOLENCE* 1081, 1092 (2000) (same). *But see* Kuennen, *supra* note 72, at 50–54 (examining court practices of maintaining CPOs against petitioner requests to dismiss).

123. *See* LOGAN, *supra* note 99, at 16–17.

124. *See* Durfee, *supra* note 42, at 9; Jane K. Stoeber, *Freedom from Violence: Using the Stages of Change Model to Realize the Promise of Civil Protection Orders*, 72 *OHIO ST. L.J.* 303, 308 (2011) (noting that people subjected to abuse often do not want a criminal response). For this warning function to work, CPOs must be petitioner-driven and align with petitioners' goals. *See* DAVIES & LYON, *supra* note 94, at 3–18 (outlining the principles of “victim-defined advocacy”); GOODMAN & EPSTEIN, *supra* note 59, at 78. CPO terms advance institutional goals, for example, when CPO terms advance institutional priorities rather than those of petitioners, or conflict with or fail to address petitioners' needs. CPOs that are institutionally driven or advance institutional goals may result in terms that are unworkable for petitioners, undermine the potency of the warning conveyed to respondents, and subject petitioners to the control of the state. *See* DAVIES & LYON, *supra* note 94, at 74–75, 144–48; Goldfarb, *supra* note 2, at 1521–22. Importantly, petitioner consent does not nullify criminal liability for CPO violations; respondents remain subject to prosecution, and petitioners also have been penalized for violating CPO terms. *See* Goldfarb, *supra* note 2, at 1521–22; Durfee & Goodmark, *supra* note 121, at 75; Emily M. Poor, *Disentangling the Civil-Carceral State: An Abolitionist Framework for the Non-Criminal Response to Intimate Partner Violence*, 47 *N.Y.U. REV. L. & SOC. CHANGE* 273, 281–82 (2023) (evaluating entanglements between non-legal resources to address domestic violence and the carceral state; for example, requirements that people seeking assistance document abuse with police reports or CPOs); *see also* Wendy A. Bach, *The Hyperregulatory State: Women, Race, Poverty, and Support*, 25 *YALE J.L. & FEMINISM* 317, 320 (2014) (documenting ways in which regulatory systems ostensibly established to support those living in poverty subject recipients to surveillance and punishment).

outside of criminal processes and issuing a powerful warning to respondents to change their behavior.

C. FRAUGHT TIES TO THE CRIMINAL JUSTICE SYSTEM

CPOs' ties to the criminal justice system¹²⁵ offer petitioners several benefits. First, these ties enable CPOs' warning function by holding out the prospect of criminal enforcement. Second, law enforcement is more likely to respond effectively to reports of domestic abuse when a CPO is in place.¹²⁶ Third, petitioners who want to hold respondents accountable in court for CPO violations may find criminal prosecution a more viable path than pursuing contempt proceedings in their CPO case without counsel.¹²⁷

Yet, these ties were fraught from the outset.¹²⁸ Historically, they were fraught because of law enforcement's traditional indifference to domestic abuse. CPOs were created in part to relieve people from the need to depend upon the criminal justice system for protection and grant them the agency to seek the assistance they desire, when they desire it.¹²⁹ To this end, state legislatures took care to establish CPOs as an independent remedy, codifying that CPOs are available in addition to other civil and criminal remedies.¹³⁰ That is, CPOs neither replace, override, nor depend upon the commencement or outcome of any other legal proceeding.¹³¹ Although CPOs are established independently, their deterrent force relies on robust enforcement by the criminal justice system. The system's response, however, often remains lackluster.¹³²

These ties are also fraught because they risk deterring people from pursuing CPOs. Studies show many people see the civil and criminal legal systems as

125. In many states, these ties also inform how domestic abuse is conceived; criminal code definitions of domestic abuse often define CPO eligibility. *Cf.* Goodmark, *supra* note 119, at 84 (noting that the federal Violence Against Women Act likewise adopts criminal definitions of intimate partner violence). In states with specialized domestic violence courts, CPO and criminal domestic violence cases may share the same dockets. *See* Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 *YALE J.L. & FEMINISM* 3, 5 (1999) (examining D.C.'s integrated domestic violence court).

126. *See* Heather C. Melton & Kristjane Nordmeyer, *Intimate Partner Abuse: Cases Involving Protective Order Violations Versus Those That Do Not*, 7 *OPEN CRIMINOLOGY J.* 1, 6 (2014) (finding police more likely to take serious response to domestic violence calls where the actions of the accused violate a protection order).

127. *See* Balos, *supra* note 42, at 567–69.

128. *See* Durfee & Goodmark, *supra* note 121, at 75–76 (evaluating the “[b]lurring of the [c]ivil [l]egal and [c]riminal [j]ustice [s]ystems”).

129. *See* GOODMARK, *supra* note 60, at 17.

130. *See, e.g.*, D.C. CODE § 16-1002; S.C. CODE ANN. § 20-4-130.

131. *See* FINN & COLSON, *supra* note 51, at 2–3. New York was a notable exception to this policy. Its original legislation required people seeking protection from abuse to choose whether to assist the state in bringing criminal charges or seek a CPO; the law forbade them from pursuing both remedies. *See id.* at 3; Ed Schollenberg & Betsy Gibbons, *Domestic Violence Protection Orders: A Comparative Review*, 10 *CANADIAN J. FAM. L.* 191, 209 n.97 (1992).

132. *See* Durfee & Goodmark, *supra* note 121, at 72–75.

the same.¹³³ CPOs' unique ties with the criminal system may exacerbate this confusion.¹³⁴ Indeed, some scholars argue that these ties effectively make CPOs criminal.¹³⁵ Additionally, some petitioners who would not want criminal enforcement may avoid CPOs to prevent the risk that CPO violations will be criminally charged against their wishes.¹³⁶

Finally, these ties are fraught because they perpetuate the carceral state and the criminalized response to domestic violence that has dominated U.S. policy for decades. CPOs do this when they are enforced through criminal prosecution, although studies are mixed as to whether CPO enforcement actions have increased overall arrest, prosecution, and incarceration rates.¹³⁷ Research suggests that these punishments fail to deter further violence and disproportionately penalize men of color.¹³⁸ Additionally, the criminalized response to domestic violence too often harms the people it is intended to protect.¹³⁹

Reforms are needed in anti-violence policy to reduce the emphasis on conviction and incarceration, prevent the punishment and surveillance of people subjected to abuse, and invest in social supports that foster healthy relationships and allow people to extricate themselves from abusive ones. And, while we work toward a recalibrated societal response to domestic abuse, people need functional protections that serve their interests.

Today, CPOs are the only legal protection that offers immediate intervention without requiring the engagement of the criminal justice system.¹⁴⁰ Although CPOs are not free from the risk of unwanted enforcement, in practice, people can and do secure CPOs without ever interacting with the police and without ever enforcing them. At a time when many people subjected to abuse do not want

133. See *id.* at 75–76; Greene, *supra* note 28, at 1288–90; HAZEL GENN & ALAN PATERSON, PATHS TO JUSTICE SCOTLAND: WHAT PEOPLE IN SCOTLAND DO AND THINK ABOUT GOING TO LAW 242, 261 (2001). See generally Lauren Sudeall, *Rethinking the Civil-Criminal Distinction*, in TRANSFORMING CRIMINAL JUSTICE: AN EVIDENCE-BASED AGENDA FOR REFORM 268 (Jon B. Gould & Pamela R. Metzger eds., 2022) (arguing that the civil–criminal distinction is a false one that creates hardship for litigants and undermines the effective resolution of legal issues).

134. See Sudeall, *supra* note 133, at 273–74 (evaluating contributors to this confusion and detriments of the divide between civil and criminal processes for people experiencing domestic abuse).

135. See Poor, *supra* note 124, at 279–85 (evaluating problems arising from the ties between CPOs and the criminal justice system); Leigh Goodmark, *Why Centering the Family Court System Won't Decrease Criminalization of Intimate Partner Violence—And Why That's a Problem*, 30 VA. J. SOC. POL'Y & L. 56, 58–62 (2023) (arguing “the family law system is not truly distinct from the criminal legal system,” but rather overlaps with it, uses criminal means to punish violations of its orders, sometimes operates in a quasi-carceral manner, and can impose negative consequences on survivors, especially survivors of color).

136. See *supra* notes 107–19 and accompanying text.

137. See Logan, *supra* note 99, at 16–17. Respondents who fail to meet financial obligations imposed by CPOs face additional risks of incarceration. See Weissman, *supra* note 83, at 35.

138. See HAMBY, *supra* note 9, at 147–48; GOODMARK, DECRIMINALIZING DOMESTIC VIOLENCE, *supra* note 115, at 16–19.

139. See *supra* notes 108–19 and accompanying text.

140. See *supra* Section I.A.; see also Tarr, *supra* note 72, at 161 (before CPOs, injunctions in divorce cases were the only civil remedy for abuse); Stoeber, *supra* note 13, at 1069–71 (finding no criminal legal interventions that offer an adequate alternative to CPOs).

criminal justice system involvement, and some still cannot secure it, the civil nature of CPOs is critical to preserve. Yet, CPOs retain their function as a warning and offer a civil intervention only if their ties to the criminal justice system remain loose. Where they become too closely intertwined, CPOs become a component of the criminal justice response rather than an alternative to it.

II. THE CRIMINALIZATION OF RURAL CIVIL PROTECTION ORDERS

This Part presents results from an original empirical study that shows that CPOs actually operate as a component of the criminal justice response in some rural counties. The study finds that in these counties, people essentially must interact with law enforcement to access CPOs; people who don't interact with law enforcement don't file CPO cases. This Part first describes the study's methodology. Next, it presents the finding that, in some communities, law enforcement is the sole or predominant path to CPOs, and it evaluates some shared characteristics of the counties in which the finding occurs. It concludes by considering some of the study's limitations.

A. METHODOLOGY

This study is the first to undertake a census approach to CPO research, seeking to examine all cases filed across an entire state during one full calendar year.¹⁴¹ To do so, the study created an original dataset of 3,451 files from cases seeking orders of protection—the CPO available from South Carolina's family courts¹⁴²—in 2019. Each of the state's forty-six counties has a separate courthouse and family court.¹⁴³ These data comprise cases filed in forty-five of these counties in 2019, as identified by South Carolina's Office of Court Administration and county clerks. Information about these cases is maintained locally.¹⁴⁴ Case files are typically stored on paper in the county courthouse in which the case was filed or adjudicated (if the case was transferred after filing). At the time of the study, county clerks reported minimal information about these cases to Court Administration, including only the file numbers and nature of action codes assigned to each case. Three nature of action codes fell within the study parameters.¹⁴⁵ Court Administration provided the file numbers for all cases assigned one of these codes filed in each county in 2019, identifying a total of 3,830 cases.¹⁴⁶

141. Anne Groggel recently took a similar approach in Nebraska, studying a sample of case files from each county in the state. Anne Groggel, *The Role of Place and Sociodemographic Characteristics on the Issuance of Temporary Civil Protection Orders*, 55 LAW & SOC'Y REV. 38, 45 (2021).

142. S.C. CODE ANN. §§ 20-4-10 to -395.

143. *See Clerks of Court*, S.C. JUD. BRANCH, <https://www.sccourts.org/clerkscourt/clerkmap.cfm> [<https://perma.cc/EKD4-E2EF>] (last visited Sept. 5, 2024).

144. *See* S.C. CT. ADMIN., INSTRUCTIONS FOR FORM 610 REQUEST FOR BULK DISTRIBUTION OF AND COMPILED INFORMATION FROM JUDICIAL RECORDS (2024), <https://www.sccourts.org/Rule610Request/RequestforBulkorCompiledData.pdf> [<https://perma.cc/7W6L-ABMQ>].

145. These are 410, 420, and 499. *See generally* S.C. CT. ADMIN., FAMILY COURT COVER SHEET (2021), <https://www.sccourts.org/forms/pdf/SCCA467.pdf> [<https://perma.cc/U22X-SABP>].

146. *See* S.C. App. Ct. R. 610.

Clerks in forty-five counties made these files available for the study. Researchers traveled to county courthouses to scan, redact, and include the redacted files in the study database and subsequently coded information from redacted case files using a survey tool. The survey tracked over forty points of data for each case, including, among many other things, the filing county, whether files contained law enforcement incident reports, and indications of non-lawyer advocate involvement.¹⁴⁷

To ensure completeness, researchers followed standardized collection procedures and were provided the file numbers and total case count for each county as reported by Court Administration to check against the files made available at county courts. Fewer files than the total reported were collected in some counties where files were absent from storage when a researcher visited. More files than the total reported were collected in others, where files that clerks identified as falling within study parameters were not previously reported to Court Administration. To ensure reliability, accuracy checks were regularly performed on random subsets of data coded by each researcher. The author resolved uncertain answers.

The study dataset excludes requests for orders of protection made within two contexts. First, South Carolina law requires orders of protection to be requested by motion within a divorce case if one is ongoing between the parties rather than through a separate action for an order of protection.¹⁴⁸ Such motions are not reported to Court Administration. A study of divorce cases that examines the prevalence and operation of these motions is an important topic for future study. Second, individuals may request limited orders of protection from magistrate courts when family courts are closed.¹⁴⁹ Court Administration data show that this remedy is rarely used, perhaps because of the far narrower protections it offers.¹⁵⁰ The research team collected these data but will examine them independently because of their distinct procedural context and substantive features.

147. Unlike lawyers, whose involvement in a case is signaled by the signing of filings, submission of a notice of appearance, and/or notation of their participation in hearings within court orders, non-lawyer advocates' involvement in a case is not officially noticed to or recognized by the courts. *See* S.C. Fam. Ct. R. 8. As a result, the research team documented practice conventions that sometimes directly, and sometimes indirectly, indicate that an advocate provided assistance with preparing and filing a case, including: the inclusion of an advocate's name and organizational affiliation on court cover sheets or with notary seals, and clerk notes regarding advocate communications or involvement. Additional factors that suggest some level of law enforcement involvement include the filing of law enforcement documents beyond incident reports with the petition, including witness statements and criminal court docket entries as well as petitions incorporating incident reports or other law enforcement documents as a petitioner's narrative of events, petitions written in third person, respondent incarceration at the time the case was initiated, and petitions filed immediately after an incident to which law enforcement responded.

148. S.C. CODE ANN. § 20-4-40(d).

149. S.C. CODE ANN. § 20-4-30(A).

150. Only twenty-nine cases seeking orders of protection from magistrate courts were filed statewide in 2019 according to information reported to Court Administration. MARTIN ET AL., *supra* note 47, at 23. 75% of those were filed in two counties. *Id.* Thirty-nine counties reported no such filings in 2019. *Id.*

B. FINDINGS

Among the insights the study has revealed about CPOs, one inspired this Article: in some communities, law enforcement is the sole or predominant path to CPOs. In these counties, only (or mostly) people who engage with the criminal justice system in some way file cases seeking CPOs from family courts. The study uncovered that all (or most) CPO case files in these counties contain a law enforcement incident report or evidence that a law enforcement victim advocate assisted the petitioner with the case. Viewed another way, the study exposed that in these counties, people who do not interact with the police, or perhaps do not receive a helpful response, do not initiate CPO cases.¹⁵¹

The study found that, in five counties, every CPO case file contained law enforcement incident reports.¹⁵² In a sixth county, 97% of files contained evidence that a law enforcement victim advocate was involved in the case, and 72% of that county's files also contained incident reports.¹⁵³ In this county's sole remaining case, the petitioner was represented by private counsel.¹⁵⁴ In five additional counties, 67 to 75% of case files contained incident reports.¹⁵⁵ In total, the study revealed that law enforcement serves as the predominant path to CPOs in nearly one-quarter of the state's counties. The bar graph in Appendix 1 and the table in Appendix 2 depict the rates in each of the forty-five counties studied.

The ubiquity of law enforcement involvement in CPO cases in these counties was unusual from a statewide perspective. People in other counties reached the courts through a variety of paths—some on their own, some with assistance from domestic violence advocates at non-profit organizations, and a few with assistance from lawyers. Only 20% of all files collected statewide contained incident reports.¹⁵⁶ Individual county rates of incident report presence in case files range from 0 to 100%.¹⁵⁷ As Figure 1 illustrates, one-third (fifteen) of the counties studied had incident reports in just 9% of files or fewer; over half of the counties studied (twenty-six of forty-five) had reports in fewer than one-third of files.¹⁵⁸

151. As discussed in Section II.A, this finding applies only to people who pursue CPOs outside of the context of an ongoing divorce case.

152. See *infra* Figures 2 & 3.

153. See *id.* Like the presence of an incident report, evidence of law enforcement victim advocate involvement shows that a petitioner is interacting with a law enforcement agency in relation to their CPO case. Usually, such interactions are initiated when incidents of abuse are reported to the police via emergency calls or otherwise. Law enforcement victim advocate involvement in a CPO case without an incident report may indicate that a report was not obtainable in advance of CPO case filing.

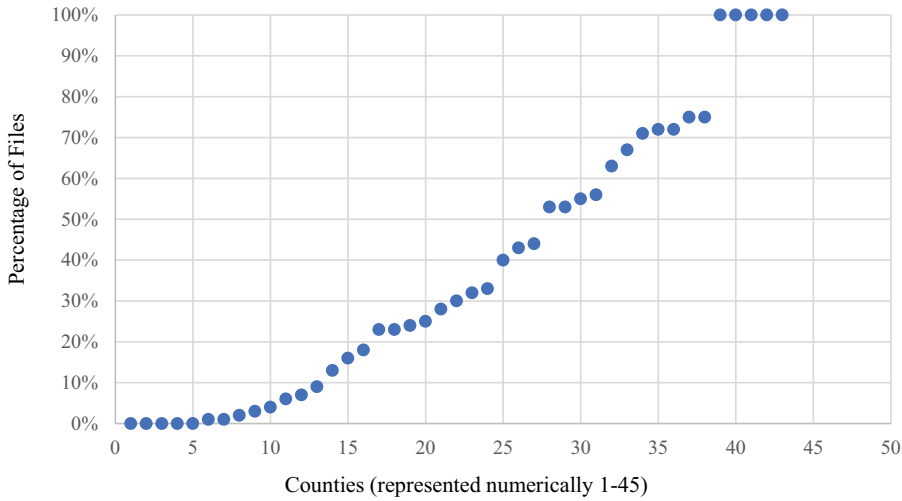
154. See *infra* Figure 2; case file on file with author. Only about three of thirty-six petitioners were represented by counsel in this county. See MARTIN ET AL., *supra* note 47, at 39.

155. See *infra* Figures 2 & 3.

156. See Appendix 2.

157. See *id.*

158. See Appendices 1 & 2.

Figure 1. Rate of Incident Report Inclusion in County CPO Files by County

This finding documents a phenomenon that prior research suggested was likely to exist in rural communities.¹⁵⁹ Prior research observed a dearth of social services available to domestic violence victims in many rural communities¹⁶⁰ and found law enforcement to, in fact, be the sole practical resource in certain rural counties.¹⁶¹ Consistent with these findings, in the study explored in this Article, the counties shown to have universal or predominant law enforcement involvement with CPO petitioners have a similar profile. As Figure 2 shows, these counties are substantially rural places with population densities far below the state average.¹⁶² Their residents live in poverty at rates that exceed state averages, sometimes tremendously, and have median incomes below the state average,

159. For a discussion of the meaning of “rural” for purposes of this Article, see *supra* note 19.

160. See Pruitt, *supra* note 22, at 384–86.

161. See Hightower & Gorton, *supra* note 26, at 865–66 (finding law enforcement to be the only practically available resource for people experiencing domestic violence in a rural Texas county); see also Logan et al., *Protective Orders*, *supra* note 22, at 900 (noting advocates were not available to assist with filing or hearings for CPOs in most of the rural counties studied).

162. The exception is Pickens County, which is designated as only 38% rural. Nonetheless, 69% of Pickens residents lived in unincorporated areas or towns of 5,000 residents or far fewer. 31% of Pickens residents live in the larger towns of Clemson (population 17,681) and Easley (population 22,921). See *County-Level Urban and Rural Information for the 2020 Census*, U.S. CENSUS BUREAU (Sept. 2023), <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html> [<https://perma.cc/8TJT-MCWP>]; *State-Level Urban and Rural Information for the 2020 Census and 2010 Census*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html> [<https://perma.cc/84NY-RXAJ>] (last visited Sept. 6, 2024); *Land Area and Population Density*, S.C. ASS’N OF CNTYS. (2022), <https://www.sccounties.org/sites/default/files/uploads/services/research/profiles/landarea.pdf> [<https://perma.cc/BYE9-4DF3>] (calculated with 2020 U.S. Census data); *South Carolina Municipality Total Resident Population: Decennial Census, 2010–2020 Comparison*, S.C. REVENUE & FISCAL AFFS. OFF., <https://rfa.sc.gov/data-research/population-demographics/census-state-data-center/decennial-census-data/decennial-census-2020-data-release> [<https://perma.cc/ZE52-DGU2>] (last accessed Sept. 6, 2024).

sometimes significantly.¹⁶³ Unsurprisingly, in a state where income tends to correlate with race,¹⁶⁴ most of these counties have populations of Black residents that exceed state averages; in several, Black residents comprise the majority.¹⁶⁵ One has the highest population of Latinx residents in the state.¹⁶⁶

Figure 2. County Demographics

| County | Cases Collected | Incident Reports | % Report | Pop. Density* | % Rural | % Poverty | %150 Poverty | Median Income | %Black | %Latinx |
|-----------|-----------------|------------------|-----------------------|---------------|---------|-----------|--------------|---------------|--------|---------|
| Chester | 6 | 6 | 100% | 56 | 73 | 18 | 31 | 45,400 | 37 | 2 |
| Edgefield | 10 | 10 | 100% | 51 | 88 | 16 | 30 | 52,591 | 34 | 6 |
| Hampton | 1 | 1 | 100% | 33 | 100 | 23 | 37 | 37,560 | 53 | 3 |
| Lee | 9 | 9 | 100% | 40 | 100 | 25 | 36 | 37,710 | 63 | 3 |
| McCormick | 3 | 3 | 100% | 26 | 100 | 18 | 23 | 48,645 | 44 | 2 |
| Oconee | 36 | 26 | 72%, 97% LEVA** | 126 | 64 | 13 | 25 | 52,240 | 8 | 6 |
| Abbeville | 4 | 3 | 75% | 48 | 79 | 15 | 30 | 46,499 | 28 | 2 |
| Pickens | 28 | 21 | 75% | 264 | 38 | 15 | 27 | 52,949 | 7 | 4 |
| Dillon | 43 | 31 | 72% | 70 | 70 | 27 | 42 | 35,483 | 48 | 3 |
| Bamberg | 7 | 5 | 71% | 34 | 100 | 24 | 28 | 35,364 | 60 | 2 |
| Saluda | 3 | 2 | 67% | 42 | 99 | 16 | 33 | 49,493 | 24 | 16 |
| Statewide | 3451 | 677 | 20% | 170 | 32 | 14 | 24 | 56,360 | 27 | 6 |

* Population density measured as people/square mile

** Law enforcement victim advocate involvement

These counties have few local resources to offer residents in need of assistance, and their residents face significant challenges accessing help available to them in other places. During 2019, the year the study evaluates, none of these counties had a domestic violence shelter or domestic violence advocacy organization

163. See *infra* Figure 2. In 2019, county poverty rates ranged from 9 to 30%, while the state poverty rate was 13.90%. *Population with Percent in Poverty by County 2011–2021*, S.C. REVENUE & FISCAL AFFS. OFF., <https://rfa.sc.gov/data-research/population-demographics/census-state-data-center/socioeconomic-data/Population-with-percent-in-poverty-by-county-2011-2020> [https://perma.cc/7XEM-PL3N] (last visited Sept. 6, 2024). Average county rates at which people lived with incomes below 150% of the federal poverty rate during this time ranged from 16% to 45%. *Poverty (Persons Below 150% of Poverty) for South Carolina by County (2018–2022)*, NAT'L INST. ON MINORITY HEALTH & HEALTH DISPARITIES: HDPULSE, <https://hdpulse.nimhd.nih.gov> [https://perma.cc/G8C3-NGRD] (last accessed Aug. 17, 2024) (evaluating U.S. Census Bureau and American Community Survey data). In 2019, county median income ranged from \$32,147 to \$73,890; state median income was \$56,360. *Median Household Income by County 2011–2021*, S.C. REVENUE & FISCAL AFFS. OFF., <https://rfa.sc.gov/data-research/population-demographics/census-state-data-center/mhi-county-2011-2020> [https://perma.cc/MH3V-E63W] (last visited Sept. 6, 2024).

164. In 2018, for example, Black residents comprised only 27% of the state's population but 43% of the population of state residents living in poverty. SISTERS OF CHARITY FOUND. OF S.C. & RURAL & MINORITY HEALTH RSCH. CTR., SOUTH CAROLINA: STRUCTURAL FACTORS ASSOCIATED WITH POVERTY 5 (2020), <https://sistersofcharitysc.com/wp-content/uploads/2021/12/FINAL-South-Carolina-Structural-Factors-Associated-with-Poverty-Research-Brief-November-2020-FINAL.pdf> [https://perma.cc/WY62-QL5P] (evaluating data from the 2014 to 2018 U.S. Census Bureau American Community Survey).

165. See *Population Estimates - Percent Distribution by Race - 2020*, S.C. REVENUE & FISCAL AFFS. OFF., <https://rfa.sc.gov/data-research/population-demographics/census-state-data-center/population-data/population-estimates-percent-race-2020> [https://perma.cc/52FF-NDM2] (last visited Sept. 6, 2024).

166. See *id.*

located within their borders.¹⁶⁷ Then and today, none have a local legal aid office.¹⁶⁸ Indeed, these counties have few lawyers of any kind.¹⁶⁹ Although these counties' residents qualify for services provided by organizations in neighboring counties, they confront substantial barriers to accessing them.¹⁷⁰ These residents tend to have limited access to internet (both to broadband and to internet of any kind at home),¹⁷¹ as well as to cars¹⁷² and public transportation.¹⁷³ In short, in these counties, law enforcement was and largely still remains the sole local and potentially most accessible resource for assistance with domestic violence.

Figure 3. County Resources

| County | Cases | Incident Reports | %Report | %Broadband Internet | %No Internet | %No Car | # Lawyers* | People/Lawyer** |
|-----------|-------|------------------|---------------------|---------------------|--------------|---------|------------|-----------------|
| Chester | 6 | 6 | 100% | 58 | 35 | 8 | 13 | 2,468 |
| Edgefield | 10 | 10 | 100% | 68 | 30 | 6 | 4 | 6,113 |
| Hampton | 1 | 1 | 100% | 69 | 28 | 7 | 21 | 866 |
| Lee | 9 | 9 | 100% | 57 | 39 | 12 | 5 | 3,178 |
| McCormick | 3 | 3 | 100% | 71 | 24 | 7 | 0 | n/a |
| Oconee | 36 | 26 | 72%, 97% LEVA*** | 75 | 21 | 7 | 31 | 2,474 |
| Abbeville | 4 | 3 | 75% | 69 | 26 | 12 | 6 | 3,988 |
| Pickens | 28 | 21 | 75% | 78 | 19 | 7 | 37 | 3,166 |
| Dillon | 43 | 31 | 72% | 54 | 39 | 12 | 8 | 3,779 |
| Bamberg | 7 | 5 | 71% | 63 | 34 | 12 | 11 | 1,228 |
| Saluda | 3 | 2 | 67% | 69 | 28 | 6 | 1 | 19,970 |
| Statewide | 3451 | 677 | 20% | | | 6 | 7,325 | 666 |

* Total number of lawyers in the county in 2020

***Number of people per lawyer in the county in 2020

Importantly, although the presence of an incident report shows that a petitioner interacted with law enforcement, the absence of a report does not necessarily show the opposite. First, law enforcement officers do not always write reports in response to domestic violence incidents, and even when written, crime victims do not always secure copies.¹⁷⁴ Second, case file contents and practice experience

167. See *Interactive Map*, S.C. COAL. AGAINST DOMESTIC VIOLENCE & SEXUAL ASSAULT, <https://www.sccadvasa.org/get-help/> [<https://perma.cc/ZY4K-PPAP>] (last visited Sept. 6, 2024). A domestic violence advocacy organization opened a satellite office in Dillon in 2020; a sexual assault advocacy organization operates in Pickens. See *id.*

168. See BRUCE RICH, KENNETH GRUBER, MEREDITH DiMATTINA & HAIYANG SU, S.C. ACCESS TO JUST. COMM'N ET AL., SOUTH CAROLINA LEGAL NEEDS ASSESSMENT 2022: FINAL REPORT 51–54, 209 (2023), <https://bit.ly/44ixg9H> [<https://perma.cc/LCR4-2UN5>]; ELIZABETH CHAMBLISS, WILL DILLARD & HANNAH HONEYCUTT, S.C. ACCESS TO JUST. COMM'N, MEASURING SOUTH CAROLINA'S JUSTICE GAP 9 (2021), <https://www.scaccesstojustice.org/the-sc-justice-gap> [<https://perma.cc/W2YT-8AGV>].

169. See CHAMBLISS ET AL., *supra* note 168, at 22.

170. See RICH ET AL., *supra* note 168, at 51–54, 99; Pruitt & Showman, *supra* note 93, at 486 (Rural residents “must travel greater distances, at greater cost, to access all sorts of services and institutions”); Pruitt, *supra* note 22, at 360.

171. See S.C. CIVIL LEGAL NEEDS DASHBOARD, S.C. ACCESS TO JUST. COMM'N, <https://www.scaccesstojustice.org/legal-needs-dashboard> [<https://perma.cc/3NXD-ATUV>] (last visited Sept. 6, 2024).

172. See *id.*

173. See RICH ET AL., *supra* note 168, at 47–48.

174. This observation derives from my practice experience representing people seeking CPOs since 2005.

reveal that county filing practices vary. Some county clerks may reject incident reports for a filing that petitioners otherwise would submit.¹⁷⁵ Even where clerks would accept incident reports, whether petitioners file them may depend upon the assistance they receive. Petitioners assisted by counsel, for example, may be less likely to file incident reports since from a legal perspective, evidence (other than the claims asserted in the petition) is not typically submitted to the court until trial.¹⁷⁶ By contrast, if petitioners are encouraged to file incident reports by clerks, advocates, or others, they might be more likely to do so. For these reasons and others, some petitioners who do not file incident reports with their CPO petitions will have had contact with law enforcement regarding the incidents alleged; others will not. Thus, the total number of petitioners who interact with law enforcement is likely higher than study data suggest.

C. LIMITATIONS

Case file research is important for revealing patterns, and the study's census approach enabled the finding of the pattern of law enforcement involvement examined by this Article. This research also has limitations. First, the finding examined by this Article provides a snapshot of the frequency with which CPO petitioners engaged with law enforcement throughout the state in 2019. Because such a small number of cases were studied in several counties, this finding cannot be relied upon to predict this frequency in these counties in future years. Second, the study did not achieve a full census. One county did not make its records available, some files were unavailable during collection visits, and collected files were sometimes missing pages.¹⁷⁷ Thus, the true incidence of incident report inclusion likely varies from the study's findings. Third, the findings reveal only the existence of a connection between individuals seeking CPOs and law enforcement. Qualitative research is required to explain its operation and efficacy. Important questions for future research include how people who engaged with law enforcement made their way to the CPO process, what they understood about the CPO remedy and how it relates to criminal prosecution, whether the CPO process met their goals, and why people who did not work with law enforcement did not file CPO cases. The directionality of this pathway also should be explored—it could be that in some counties, court personnel are mandating the submission of incident reports as a precondition to filing a CPO case.

This Article considers the broader significance of this finding from a policy perspective, evaluating what it means for CPOs to be enveloped by the criminal system they were created to counterbalance. Overall, the study's finding of the ubiquity of law enforcement involvement with CPO petitioners in some rural

175. Clerks may reject the filing of incident reports because they are pieces of evidence rather than pleadings and other filings. In some courts, parties must wait to submit evidence to support their claims and defenses until the hearing in their case. In others, clerks file evidence along with CPO petitions.

176. Incident reports are generally hearsay and admissible into evidence only if a proper foundation is laid establishing their authenticity and relevance and the applicability of an exception to the rule against hearsay. *See* Aiken & Murphy, *supra* note 57, at 52–54.

177. *See* MARTIN ET AL., *supra* note 47, at 22.

counties shows two important things. First, it confirms that law enforcement plays a crucial role in connecting people with the CPO process, especially in rural communities. Second, it reveals that in some places, law enforcement functions as the sole or predominant path to CPOs. This function criminalizes the CPO process in the sense that people must interact with law enforcement and risk more extensive criminal justice interventions to access the remedy.

III. IMPLICATIONS

This Part first examines several practical implications of the study's finding for the CPO remedy. In communities where the path to CPOs runs predominately through the criminal justice system, CPOs effectively lose critical benefits of their civil character; they become components of the criminal response rather than independent remedies. Consequently, CPOs become less accessible and less valuable to the people they aim to protect. The study's finding also suggests that CPOs are not a "build it[] [and they] will come" remedy.¹⁷⁸ It is not enough to enact the remedy and assume people who can benefit will find their way to it. Instead, pathways to the remedy must be deliberately constructed—efforts must be made to inform people about CPOs and assist them to pursue this remedy. The finding highlights communities where such pathways appear to start only through law enforcement agencies, with few or no alternative routes to the remedy.

This Part next examines several policy implications of this reality. The dearth of civil pathways to protection orders in some rural places may result from government policies that have concentrated most funding for efforts to combat domestic violence in the criminal justice system, coupled with the longstanding failure to invest in rural communities. These funding trends align with broader political trends of funding law enforcement at rates much higher than other social services and relying upon law enforcement to respond to non-criminal social problems.¹⁷⁹ As a practical matter, the absence of resources in rural communities makes access to CPOs especially critical: there may be nothing else. These implications for the CPO remedy and anti-violence policy merit attention, further study, and response.

A. PRESERVING CIVIL PROTECTION

The reality that the predominant path to CPOs runs through law enforcement in some communities has implications for the remedy's accessibility and its value as a tool to combat domestic violence. From an accessibility perspective, the study's finding both demonstrates the critical role that law enforcement plays in connecting people with CPOs and also raises concerns about the people who are left out when law enforcement is the only institution making these connections. Moreover, the finding raises concerns that where the remedy is available only

178. *FIELD OF DREAMS* (Universal Pictures 1989) ("If you build it, he will come.").

179. See Ram Subramanian & Leily Arzy, *Rethinking How Law Enforcement Is Deployed*, BRENNAN CTR. FOR JUST. (Nov. 17, 2022), <https://www.brennancenter.org/our-work/research-reports/rethinking-how-law-enforcement-deployed> [https://perma.cc/6TS3-EKVZ].

through law enforcement, the value of the remedy is limited in several ways, including as a tool to promote autonomy, serve as a warning, and intervene before severe violence occurs.

1. Accessibility

The study's finding has two important implications for CPO accessibility. First, it suggests that law enforcement efforts expand access to the remedy. The frequency with which the study documented law enforcement involvement with CPO petitioners suggests that they play a crucial role in informing people about and connecting people with the CPO process, especially in certain communities. This finding is consistent with prior research.¹⁸⁰ Moreover, it shows the value of dedicating law enforcement time and effort to these ends. If law enforcement did not assist, it is possible that no one would seek CPOs in these communities. More broadly, the finding aligns with prior research showing that people who disclose abuse to professionals (including police) are more likely to seek CPOs.¹⁸¹ To this end, it lends further support to the value of efforts to equip professionals to inform and connect people experiencing abuse with cross-disciplinary interventions.¹⁸²

Second, it suggests a troubling gap in the accessibility of the remedy. Allowing the path to CPOs to predominately begin with law enforcement limits access to the remedy in several ways. It does so, first, by reserving the remedy only for those who are willing and able to engage with the police. Yet, as evaluated in Part I, many people subjected to abuse avoid law enforcement intervention.¹⁸³ Rural residents may be especially reluctant to engage law enforcement because of privacy concerns: if they seek help, their family, friends, and neighbors will know their business.¹⁸⁴ Such knowledge risks that those disclosing abuse will face dignity harm,¹⁸⁵ ostracism,¹⁸⁶ and harm to personal and family reputation.¹⁸⁷ Indeed, rural residents and their partners may have personal relationships with law enforcement or familiarity with their mindset,¹⁸⁸ which may dissuade them

180. See Amy M. Magnus & Frank A. Donohue, *Reimagining Access to Justice Through the Eyes of Rural Domestic Violence Survivors*, 26 THEORETICAL CRIMINOLOGY 434, 438 (2022) (“[R]ural police serve a critical function in not only addressing domestic violence on the ground, but acting as a liaison between survivors and community resources.”); *supra* note 29 and accompanying text.

181. See HAMBY, *supra* note 9, at 147; Fischer & Rose, *supra* note 103, at 416.

182. See HAMBY, *supra* note 9, at 149–50.

183. See THOMPSON & TAPP, *supra* note 9, at 5; HAMBY, *supra* note 9, at 145.

184. Pruitt, *supra* note 22, at 363–64, 379; Pruitt & Showman, *supra* note 93, at 489 (“The fact that legal actors (e.g., law enforcement, prosecutors, and judicial officials) are also neighbors, acquaintances, and even friends or family may help explain rural residents’ reluctance to engage the state.” (footnote omitted)).

185. See Kristin Bumiller, *Victims in the Shadow of the Law: A Critique of the Model of Legal Protection*, 12 SIGNS 421, 434–35 (1987) (identifying the decision not to pursue legal remedies for gender and race discrimination in employment as often rooted in the preference for dignity in anonymity and the reluctance to assume the role of victim imposed by law); Logan et al., *supra* note 22, *Protective Orders*, at 892.

186. Pruitt, *supra* note 22, at 369, 371.

187. See *id.* at 364–65; Logan et al., *Protective Orders*, *supra* note 22, at 892.

188. Research identifies one such mindset as the influence of the “[good] ol’ boys network,” which encourages rural law enforcement to respond to reports of crimes in ways protective of men with whom

from seeking support.¹⁸⁹ In places where the path to CPOs starts with law enforcement, people who do not interact with law enforcement do not access the CPO remedy. This gap is troubling because it suggests that many people who are potentially eligible to pursue the remedy are left out of it.¹⁹⁰

Allowing the path to CPOs to begin predominately with law enforcement also limits access by tying the CPO process to law enforcement discretion. That is, where law enforcement is the sole source of information and support, law enforcement personnel decide—consciously or unconsciously—to whom information and support should be given. Those individuals whom law enforcement informs about the remedy have the opportunity to pursue it, whereas those whom law enforcement does not inform do not.

This discretion is troubling because civil remedies enable people to pursue their legal rights regardless of the government's opinion about their circumstances. Leaving law enforcement as the primary path to CPOs creates the opportunity for law enforcement judgments to influence who accesses the remedy. When law enforcement is the primary source of information, for example, law enforcement's views of whether circumstances are serious enough or sympathetic enough might influence whether that information is provided to people eligible to pursue CPOs. This discretion is especially problematic because both service providers and people subjected to abuse report that police response to domestic violence is often inadequate, especially in rural communities.¹⁹¹

Equally troubling, to the extent that residents' demographic characteristics influence both their willingness to engage with law enforcement and the nature of the law enforcement response, allowing the path to CPOs to channel through law enforcement may especially limit the ability of certain groups to pursue protection.¹⁹² For example, in three of the six counties where the study found law enforcement was the sole path to CPOs, all of the petitioners were white.¹⁹³

Moreover, when the path to CPOs begins with law enforcement, both law enforcement and people subjected to abuse might be especially apt to conflate CPO and criminal processes.¹⁹⁴ Individuals receiving assistance from a law

they have social connections. DEKESEREDY & SCHWARTZ, *supra* note 35, at 9 (citation omitted); Logan et al., *Protective Orders*, *supra* note 22, at 893.

189. See Pruitt, *supra* note 22, at 378–81.

190. See Ragusa, *supra* note 17, at 704 (rural survivors of abuse may prefer to identify and access community resources on their own, without police assistance, because of negative police interactions).

191. See, e.g., Magnus & Donohue, *supra* note 180, at 438; OFF. ON VIOLENCE AGAINST WOMEN, U.S. DOJ, 2020 BIENNIAL REPORT: THE 2020 BIENNIAL REPORT TO CONGRESS ON THE EFFECTIVENESS OF GRANT PROGRAMS UNDER THE VIOLENCE AGAINST WOMEN ACT 119–20 (2020), <https://www.justice.gov/d9/2024-01/ovw-2020-report-congress.pdf> [<https://perma.cc/M2ZB-HPWY>]; NEIL WEBSDALE, RURAL WOMAN BATTERING AND THE JUSTICE SYSTEM: AN ETHNOGRAPHY 91–125 (1998) (evaluating factors undermining rural police responses to domestic violence in Kentucky).

192. See *supra* notes 107–19 and accompanying text.

193. See MARTIN ET AL., *supra* note 47, at 33 tbl.3. Importantly, because a very small number of cases were filed in each of these three counties during the year studied (six in Chester, one in Hampton, three in McCormick), these findings are not reliable predictors of how these factors would play out in the future. See *id.*

194. See *supra* notes 133–36 and accompanying text.

enforcement victim advocate with a CPO case might believe the CPO to be part of the criminal prosecution and unavailable to them outside of it, or might stop seeking assistance with their CPO case from a law enforcement victim advocate if they do not wish the criminal case to proceed. Similarly, law enforcement agencies might conflate an individual's interest (or disinterest) in pursuing a CPO with their interest (or disinterest) in pursuing criminal charges and offer CPO information and assistance only to those interested in prosecution. Law enforcement conceivably might even condition assistance with CPOs on a petitioner's assistance with a criminal prosecution. In the study, one example of law enforcement conflating a CPO case with a criminal prosecution appeared in an affidavit of service filed by law enforcement in one of the twelve counties where law enforcement was the predominant path to CPOs. The affidavit stated, as an explanation for the law enforcement agency's failure to serve process upon the respondent in the CPO case, that "[t]he papers were never served due to the Petitioner dropping the charges against the Respondent."¹⁹⁵ Substantively, this statement may have been a way of conveying that the petitioner had declined to assist with a prosecution, fallen out of touch with law enforcement, or declined to work with law enforcement at all. Yet, procedurally, the statement raises concern that the agency halted its efforts to serve process in the CPO case because the petitioner declined to assist a criminal prosecution. This conflation is especially problematic because CPOs were designed expressly to avoid such entanglements.¹⁹⁶ Whether a crime victim assists with a prosecution does not legally and should not practically determine whether they can pursue a CPO.

It could be argued that the finding that people who engage with law enforcement seek CPOs (and those who don't, don't) shows something other than a gap. Instead, the connection between working with law enforcement and seeking a CPO could arguably stem from preferred kinds of help seeking—that people who are willing to engage with law enforcement are also more willing to seek CPOs. Or, it may be that the average person does not see meaningful distinctions between the criminal and civil justice systems generally, or between CPOs and criminal processes specifically, and thus people who seek CPOs are also more likely to seek law enforcement assistance because they see them as the same.¹⁹⁷ Relatedly, it may be that people who mistrust the criminal justice system do not seek CPOs because they mistrust the civil justice system as well.¹⁹⁸ Yet, research

195. Return of service included in study database on file with author.

196. *See supra* Part I.

197. Unlike CPOs and criminal prosecution, which both entail formal, state-run proceedings presided over by state actors, restorative justice processes are typically community-based and -operated. *See* Goodmark, *supra* note 119, at 95. *See generally* Aparna Polavarapu, *Myth-Busting Restorative Justice: Uncovering the Past and Finding Lessons in Community*, 13 U.C. IRVINE L. REV. 949 (2023) (noting the link between restorative justice and historic and community practices).

198. Greene, *supra* note 28, at 1288–90 (interviewing individuals living in poverty, revealing the common belief that the civil and criminal justice systems are the same and that distrust and negative impressions of one system therefore extended to the other).

undermines the conclusion that these inclinations typically line up so neatly.¹⁹⁹ Indeed, the South Carolina study files suggested that people in rural and urban counties outside of those sharing the finding explored by this Article took varied paths to CPO cases. Little research has been done on how people access the CPO remedy,²⁰⁰ but access to justice research suggests more generally that people want assistance that is “timely, targeted, [and] trustworthy.”²⁰¹ The apparent lack of engagement with the CPO process apart from law enforcement in some rural places raises concerns about the availability of information and support for people subjected to abuse outside of the criminal justice system.

2. Value

Second, allowing the path to CPOs to predominately begin with law enforcement limits the value of the CPO remedy. It does so, first, by undercutting CPOs’ function as a tool to support autonomy and self-determination.²⁰² Where information and support rest exclusively with law enforcement, individuals subjected to abuse lose the opportunity to pursue CPOs when, how, and as they see fit. For example, law enforcement involvement may shift the timeline of the CPO case from one that suits the petitioner’s needs to one that aligns with law enforcement priorities or standard practices.

Next, the entanglement of the CPO process with criminal justice processes eliminates CPOs’ function as a warning. People who want change, intervention, and accountability—but not arrest and prosecution—may turn to CPOs as a middle step to help them set protective boundaries without activating the criminal justice system (unless those boundaries are violated).²⁰³ Where law enforcement is the sole access point to the remedy, this middle step is eviscerated. Further, a predominate law enforcement CPO path eliminates the remedy’s function as an alternative source of protection for people who cannot secure law enforcement intervention. In rural areas with few, if any, accessible resources outside of the criminal justice system, this leaves people to protect themselves.²⁰⁴ Such people continue to endure the very circumstances that motivated the creation of CPOs—a non-responsive criminal justice system and no other apparent source of support. Accepting a system in which CPOs are available only through law enforcement

199. Logan, *supra* note 99, at 27 (“[N]ot a lot is known about differences between those who request [C]POs and those who do not.”).

200. Alesha Durfee and Jill Theresa Messing’s finding that shelter residents were more likely to seek a CPO if they had interacted with police or medical personnel suggests sources of information about the remedy. Alesha Durfee & Jill Theresa Messing, *Characteristics Related to Protection Order Use Among Victims of Intimate Partner Violence*, 18 VIOLENCE AGAINST WOMEN 701, 702, 705 (2012) (“[R]elatively little is known about women’s decisions to seek [C]POs or the pathways to obtaining [C]POs.”).

201. Rebecca L. Sandefur, *Bridging the Gap: Rethinking Outreach for Greater Access to Justice*, 37 UALR L. REV. 721, 728–30 (2015).

202. See Goldfarb, *supra* note 2, at 1532–34.

203. See *id.* at 1534–35 (examining the value of a similar “expressive power” of CPOs for petitioners who seek protection within continuing relationships with respondents).

204. See *infra* Section III.B.1.

deprives petitioners of the opportunity to seek legal protection while mitigating the risks of harm posed by law enforcement intervention.

Relatedly, permitting the path to CPOs to run predominately through law enforcement limits the value of the remedy as a tool to prevent violence before it occurs. In many jurisdictions, CPOs offer the promise of protection before violence is inflicted: petitioners may establish that they have been threatened with harm, stalked, harassed, or subjected to other harmful behavior.²⁰⁵ This preventive function may be especially relevant to people who have not interacted with or received a helpful response from law enforcement. Studies show that people typically contact police for assistance with more severe violence.²⁰⁶ People who have not yet experienced such violence but see it coming and want help stopping it are less likely to seek police assistance and less likely to receive a helpful response if they do so.²⁰⁷ When the predominant path to CPOs runs through law enforcement, people who might find CPOs helpful as a means of preventing more severe violence before it occurs might not pursue them.

Allowing the path to CPOs to begin predominately with law enforcement also may diminish the value of the remedy by limiting the viability of CPO cases brought without law enforcement assistance. This may occur by generating judicial expectations. Where CPO case files nearly always include incident reports or other evidence of law enforcement involvement with a petitioner, courts may come to expect—consciously or not—that evidence of engagement with law enforcement *should* be present in meritorious cases. That is, courts may perceive the presence or absence of evidence of law enforcement engagement as a proxy for the veracity or strength of petitioners' claims.²⁰⁸ In this circumstance, a petitioner who does not have a law enforcement incident report and is not supported by a law enforcement victim advocate may be perceived as having a weaker case or outright disbelieved. Such perceptions privilege the credibility of law enforcement officers as “knowers” of the truth in the courtroom²⁰⁹ and risk having particular force because implicit biases tend to discount the credibility of women (the people who are more often subjected to abuse).²¹⁰ Such perceptions also reinforce

205. See *Domestic Violence Civil Protection Orders*, *supra* note 4 (highlighting requisite harm to petitioners to qualify for CPOs). *But see* Johnson, *supra* note 4, at 1143 (explaining that courts may nonetheless view offending conduct through a “hierarchical lens” by being less keen to provide CPOs for certain conduct).

206. See HAMBY, *supra* note 9, at 144–46.

207. See *id.*; DOUGLAS, *supra* note 94, at 120–48.

208. See Poor, *supra* note 124, at 307–10 (evaluating ways in which people subjected to abuse are required to engage with law enforcement or obtain CPOs to access civil remedies and services for abuse).

209. *Id.* at 330–31. See generally MIRANDA FRICKER, EPISTEMIC INJUSTICE: POWER & THE ETHICS OF KNOWING (2007) (exploring the harm done by prejudices that discount individuals' credibility as speakers, informants, and “knowers”—people perceived as good informants); Washington, *supra* note 96 (identifying this phenomenon in the context of family regulation proceedings).

210. See *supra* note 108; Sharon G. Smith, Xinjian Zhang, Kathleen C. Basile, Melissa T. Merrick, Jing Wang, Marcie-jo Kresnow & Jieru Chen, NAT'L CTR. FOR INJ. PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2015 DATA BRIEF – UPDATED RELEASE 2–3 (2018), <https://www.nsvrc.org/sites/default/files/2021-04/>

the practical need for law enforcement involvement in the CPO process in these places. Even if individuals are resourceful enough to find and travel other paths to the CPO remedy, they may need to engage with law enforcement to persuade courts to grant them protection. Finally, such perceptions run counter to the law. CPO statutes typically do not require petitioners to submit any specific kind of evidence to support their claims other than the narrative of events in their petitions. This openness to varied forms of proof is consistent with the dominant approach of evidence law throughout the United States, which permits proof of claims from an array of sources so long as the proof is relevant, reliable, and overcomes other specific limitations.²¹¹ Indeed, under evidentiary rules against hearsay, many incident reports may be partly or wholly inadmissible.²¹² This openness is also consistent with the policy aim that CPOs constitute a remedy separate and independent from criminal processes.²¹³ In short, although not required and potentially not permitted, the routine inclusion of evidence of law enforcement involvement in CPO case files may generate judicial expectations that disfavor the claims of petitioners who do not wish to engage with law enforcement or do not receive a helpful response.

In all of these ways, permitting the path to CPOs to begin with law enforcement shrinks the value of the remedy from one broadly available on an individual's own terms to meet their individual goals to one that offers protection as a component of a criminal justice response.

B. INVESTING IN CIVIL INSTITUTIONS

The finding that the predominant path to CPOs runs through law enforcement in some rural communities is not only important for what it shows about the remedy but also for what it shows about anti-violence policy more broadly. It ensues from the criminalized response to domestic violence that has dominated policy-making for decades and the general failure to invest in rural places. It both points to the need to invest in non-criminal responses to domestic violence and demonstrates the importance of educating communities and professionals about CPOs to establish non-criminal paths to the remedy.

1. The Rural Resource Vacuum

The fact that rural law enforcement is sometimes the sole or predominant path to CPOs also partly results from the rural resource vacuum. This vacuum has two components examined here: the general dearth of rural resources and the

2015data-brief508.pdf [https://perma.cc/D82X-HE37] (reporting that women experienced higher rates of all forms of intimate partner and sexual violence studied).

211. See, e.g., FED. R. EVID. 402 (relevance), 901 (authenticity), 802 (hearsay). With some exceptions, state evidentiary rules often closely resemble the Federal Rules of Evidence. See *Table of State and Military Adaptations of the Federal Rules of Evidence*, in 6 WEINSTEIN'S FEDERAL EVIDENCE (2024).

212. See, e.g., FED. R. EVID. 803(1)–803(4); Aiken & Murphy, *supra* note 57, at 52–54 (discussing limitations on introducing incident reports under rules against hearsay).

213. See *supra* notes 4–6, 129–31 and accompanying text.

challenges rural residents face with accessing the resources that exist. Both result from policy choices.

First, rural communities often lack the institutions that, and the people who, typically offer assistance with domestic violence and CPOs in urban places.²¹⁴ Whereas the past fifty years have seen a panoply of institutional supports developed in urban communities to address domestic abuse, rural places have largely been left out.²¹⁵ Less than half of U.S. counties have a domestic violence shelter.²¹⁶ Existing rural anti-violence programs often serve multi-county areas, leaving many counties with no local services.²¹⁷ Rural areas throughout the United States also have a dearth of civil legal aid lawyers (or lawyers of any kind).²¹⁸ Medical and mental health care providers are likewise in short supply.²¹⁹ The resource gap may be amplified for people from underserved populations, including Latinx, Indigenous, older, and LGBTQ residents.²²⁰ In many communities, law enforcement may be the only local source of support.

The failure to invest in and develop local support for people subjected to domestic violence beyond law enforcement is a policy choice. It is a specific example of the tendency to “govern[] through crime” rather than address the causes of social problems and support the people experiencing them, which has frequently guided policymaking since the late twentieth century.²²¹ When state

214. Boka, *supra* note 34, at 397–401 (traditional sources of information and support, including domestic violence advocates, shelters, and even pamphlets offered in public places, are often unavailable in rural communities).

215. *See* Hightower & Gorton, *supra* note 26, at 864 (concluding rural communities have not experienced increased awareness of domestic violence and the development of responsive services that have emerged in urban places).

216. *See* HAMBLY, *supra* note 9, at 142.

217. *See, e.g.*, Corinne Peek-Asa, Anne Wallis, Karisa Harland, Kirsten Beyer, Penny Dickey & Audrey Saftlas, *Rural Disparity in Domestic Violence Prevalence and Access to Resources*, 20 J. WOMEN’S HEALTH 1743, 1743 (2011) (finding that “[t]he mean distance to the nearest IPV resource was three times greater for rural women than for urban women, and rural IPV programs served more counties and had fewer on-site shelter services”); Madison Hahamy, *Rural Seclusion May Prolong Domestic Abuse: ‘Everybody Knows Everybody.’* MISS. FREE PRESS (Dec. 12, 2022) <https://www.mississippifreepress.org/29665/rural-connectedness-may-prolong-domestic-abuse-everybody-knows-everybody> [<https://perma.cc/7WGL-EZSY>] (displaying a map of the multiple counties served by Mississippi shelters, as well as counties with no available services); Shelby Harris, *Regional Shortage of Domestic Violence Shelters Creates Obstacles for Survivors*, NC HEALTH NEWS (Apr. 30, 2022), <https://www.northcarolinahealthnews.org/2022/04/30/regional-shortage-of-domestic-violence-shelters-creates-obstacles-for-survivors/> [<https://perma.cc/N4U3-AL4W>].

218. *See* Pruitt et al., *supra* note 19, at 120–21 (discussing data collected from six states in different geographic regions across the United States).

219. *See* WEBSDALE, *supra* note 191, at 162–66; OFF. ON VIOLENCE AGAINST WOMEN, *supra* note 191, at 119–20.

220. *See* Magnus & Donohue, *supra* note 180, at 439; OFF. ON VIOLENCE AGAINST WOMEN, *supra* note 191, at 119–20; Clarissa Donnelly-DeRoven, *Barriers Prevent Rural Domestic Violence Survivors from Getting the Care They Need. For Latinx Survivors, It’s Even Worse*, NC HEALTH NEWS (Jan. 10, 2023), <https://www.northcarolinahealthnews.org/2023/01/10/barriers-prevent-rural-domestic-violence-survivors-from-getting-the-care-they-need-for-latinx-survivors-its-even-worse/> [<https://perma.cc/93W3-CD2F>].

221. GOODMARK, DECRIMINALIZING DOMESTIC VIOLENCE, *supra* note 115, at 15–19. Calls to “defund the police” following the murder of George Floyd by a Minneapolis police officer in 2020 have brought scrutiny to the myriad responsibilities beyond enforcing the law that fall to the police because there is no

and federal policies fund law enforcement disproportionately to (or to the exclusion of) other interventions, they saddle the police with responding to all aspects of the problem and leave people subjected to abuse with no other source of help.

Second, rural resources that do exist are difficult to access. Rural residents often must travel long distances for shelter, advocacy, and other supports.²²² Infrastructure deficiencies compound the challenges this travel imposes: rural residents must traverse long distances over poor roads without using public transportation.²²³ In-person services thus require not only investments of time and money but also access to a car, which a surprising number of rural residents do not enjoy.²²⁴ Rural residents who do not have cars may have to rely on the support of others.²²⁵ Even when individuals have such assistance, the physical distance between domestic violence shelters and individuals' support networks may deter rural residents from using them.²²⁶ Service providers in many fields are beginning to offer online information resources and virtual service delivery that can overcome some of the challenges that distance creates for rural service provision.²²⁷ Yet here, too, deficient infrastructure impedes access. The lack of broadband internet and reliable cell phone service in many rural communities limits the viability of internet-based assistance.²²⁸ These challenges fall hardest on those living in poverty,²²⁹ who are disproportionately Black, Latinx, and Indigenous women.²³⁰

other option. Mariame Kaba, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html>; Sean Illing, *The "Abolish the Police" Movement, Explained by 7 Scholars and Activists*, VOX (June 12, 2020, 11:00 AM), <https://www.vox.com/policy-and-politics/2020/6/12/21283813/george-floyd-blm-abolish-the-police-8cantwait-minneapolis> [<https://perma.cc/3BS7-LFX5>]. The aims of those who call to defund the police vary: some seek abolition of carceral systems, others seek to recalibrate their scope and reallocate assets, whereas others seek to reduce budgets regardless of mission reform. *See generally* Jessica M. Eaglin, *To "Defund" the Police*, 73 STAN. L. REV. ONLINE 120 (2021) (discussing the various types of "defunding" police reforms); Monica C. Bell, Katherine Beckett & Forrest Stuart, *Investing in Alternatives: Three Logics of Criminal System Replacement*, 11 U.C. IRVINE L. REV. 1291 (2021) (discussing alternatives to funding police departments).

222. *See* WEBSDALE, *supra* note 191, at 162.

223. *See* Pruitt & Showman, *supra* note 93, at 486 (noting that rural residents "must travel greater distances, at greater cost, to access all sorts of services and institutions").

224. *See* Bassett, *supra* note 34, at 316–18. A surprising number of rural residents have neither access to a car nor public transportation. Boka, *supra* note 34, at 396 ("The lack of transportation options, both private and public, often means that rural women in abusive relationships must seek the help of others in order to leave their partners.").

225. *See* Bassett, *supra* note 34, at 316–18; Boka, *supra* note 34, at 396.

226. *See* Hightower & Gorton, *supra* note 26, at 856 (finding that most survivors of domestic abuse in a small study of a rural Texas county did not seek assistance from a neighboring county shelter because of distance, transportation, and desires for proximity to family and friends).

227. *See* OFF. ON VIOLENCE AGAINST WOMEN, *supra* note 191, at 119–20, 135.

228. *See* HAMBY, *supra* note 9, at 98 (discussing cell phone service); DOBIS ET AL., *supra* note 38, at 10, 12 (finding residents of poor counties in the American South are least able to access high-speed internet).

229. *See supra* note 224 and accompanying text.

230. *See* DOBIS ET AL., *supra* note 38, at 2, 15–16; LEGAL SERVS. CORP., *supra* note 38, at 24.

Importantly, the overall dearth of public and private resources in rural communities and the difficulty residents face in accessing them also result from policy choices. State policies that fund local governments through property and sales tax revenue leave rural local governments cash-strapped.²³¹ Moreover, with small numbers of people, rural governments are unable to achieve economies of scale.²³² Rural government services are thus both more costly and supported by fewer dollars, limiting the quantity and quality of services these localities can provide.²³³ Federal spending policies on formula grants and goods such as housing and healthcare that favor population centers aggravate local funding deficiencies.²³⁴ Further, market forces (and policies leaving the provision of these social goods to markets) have left rural places with inadequate public transportation, healthcare, cell phone service, and broadband internet.²³⁵ These same forces and the smaller population base reduce corporate investment and the breadth of local institutions.²³⁶ Consequently, rural places often lack jobs that pay adequate wages and organizations that can help redress the effects of poverty,²³⁷ leaving residents more likely to need institutional support with domestic abuse and more challenged in securing it.²³⁸

Together, these policy choices leave the police as the sole or primary source of help with domestic abuse in some rural places. The study evaluated by this Article uncovers an unintended consequence of this result: CPOs become criminalized. Most importantly, the reality that CPOs—the remedy created precisely to serve as an alternative to criminal processes—could become absorbed by criminal processes raises concerns about the extent to which we have failed to invest in non-criminal interventions. It highlights a critical need to invest in local, non-criminal sources of help with domestic violence in rural places. This reality also suggests that the viability of CPOs as an intervention for domestic violence may depend upon the construction of pathways to them. It further identifies the need for more research about effective pathways to CPOs in rural and urban communities, including how to best inform people about and support those who desire

231. See Pruitt & Showman, *supra* note 93, at 501–02.

232. See Pruitt, *supra* note 22, at 362; Pruitt & Showman, *supra* note 93, at 501–02.

233. See Pruitt & Showman, *supra* note 93, at 501, 509 (“Nonmetro counties are often least able to finance a robust justice system.”).

234. See Bassett, *supra* note 34, at 279–80, 319–23.

235. See Ann M. Eisenberg, *Economic Regulation and Rural America*, 98 WASH. U. L. REV. 737, 754–57, 778–81 (2021) (evaluating how market forces, especially the pull to achieve economies of scale, have encouraged institutional divestment from rural communities and left rural communities with deficient transportation and communication networks and a dearth of social and economic goods); Pruitt & Showman, *supra* note 93, at 486–88; Pruitt, *supra* note 22, at 360.

236. See Pruitt & Showman, *supra* note 93, at 502 (“[W]hen compared with urban centers, nonmetro regions are home to fewer local institutions—e.g., churches, clubs, associations, and service organizations—to engage rural citizenry in public life.”).

237. See Bassett, *supra* note 34, at 303–06 (examining scope, dynamics, and structural contributors to poverty in rural places); Pruitt et al., *supra* note 19, at 120–21 (discussing attorney-to-resident data collected from five states in different geographic regions across the United States).

238. See Pruitt, *supra* note 22, at 376–77.

them in seeking the remedy.²³⁹ Working to educate communities and professionals about CPOs and other available resources for domestic violence is a critical first step.

2. VAWA Funding Priorities

Federal policy exacerbates the rural resource imbalance that sometimes makes rural law enforcement the sole or predominant path to CPOs. The Violence Against Women Act (VAWA) has been the centerpiece of the federal response to domestic and dating violence, sexual assault, stalking, and other gender-based crimes since 1994.²⁴⁰ The initial Act and subsequent reauthorizations have criminalized several forms of gender-based violence at the federal level; established immigration protections for non-citizens subjected to domestic violence, sexual assault, stalking, and trafficking; ensured the viability of CPOs across state lines; and most importantly for this discussion, established grants distributing hundreds of millions of dollars annually to fund governmental and community responses to violence at the state and local levels.²⁴¹ For decades, VAWA has privileged the tools of the criminal justice system as a way to combat domestic and gender-based violence.²⁴²

Between 1995 and 2018, VAWA grants awarded more than \$8 billion in funding to governments, nonprofit organizations, and universities.²⁴³ These grants support a range of interventions, but the criminal justice system has been the primary focus and beneficiary of VAWA funds.²⁴⁴ Indeed, one study found that between 1994 and 2013, the share of VAWA funds dedicated to criminal justice responses increased from approximately 62% to approximately 85%.²⁴⁵ In 2019,

239. The research team behind the South Carolina study is developing a qualitative study to examine the sources of CPO information and assistance in different counties and how local information and practices facilitate access to the remedy.

240. 34 U.S.C. § 12341.

241. See generally LISA N. SACCO & EMILY J. HANSON, CONG. RSCH. SERV., R45410, THE VIOLENCE AGAINST WOMEN ACT (VAWA): HISTORICAL OVERVIEW, FUNDING, AND REAUTHORIZATION (2019), <https://crsreports.congress.gov/product/pdf/R/R45410> [<https://perma.cc/Q7BB-745R>].

242. As described by the Congressional Research Service, these goals include: “to prevent violent crime; respond to the needs of crime victims; learn more about crime; and change public attitudes through a collaborative effort by the criminal justice system, social service agencies, research organizations, schools, public health organizations, and private organizations.” *Id.* at 12. See also Goodmark, *supra* note 63, at 121 (“VAWA is, at its core, legislation dedicated to expanding and improving the criminal legal system’s response to gender-based violence.”).

243. SACCO & HANSON, *supra* note 241, at 4.

244. See Angela R. Gover & Angela M. Moore, *The 1994 Violence Against Women Act: A Historic Response to Gender Violence*, 27 VIOLENCE AGAINST WOMEN 8, 16 (2021); Weissman, *supra* note 78, at 17 (“The criminal justice system has benefited from VAWA’s funding stream more than any other type of domestic violence-related intervention.”). Other interventions funded by VAWA grants include housing; services for victims of sexual assault prevention education, professional training, and technical assistance; social services; civil legal assistance; supervised visitation centers; and state and tribal anti-violence coalitions. SACCO & HANSON, *supra* note 241, at 30–36.

245. Goodmark, *supra* note 119, at 87 (citing Jill Theresa Messing, Allison Ward-Lasher, Jonel Thaller & Meredith E. Bagwell-Gray, *The State of Intimate Partner Violence Intervention: Progress and Continuing Challenges*, 60 SOC. WORK 305, 306 (2015)); see also Caroline Bettinger-Lopez, Donna Coker, Julie Goldscheid, Leigh Goodmark, Valli Kalei Kanuha, James Ptacek & Deborah Weissman,

VAWA's two largest grant programs awarded more than \$268 million to law enforcement, prosecutors, courts, and community organizations supporting criminal justice interventions.²⁴⁶ Scholars and advocates have increasingly decried the dominance of the criminalized response to domestic violence and how its funding priorities have undermined investments in non-criminal responses and failed to meet the critical basic needs of people subjected to abuse.²⁴⁷

VAWA policy recognizes the critical need for resources to address gender-based violence in rural communities, but its grants have not been sufficient to remedy the rural resource void.²⁴⁸ VAWA's Rural Sexual Assault, Domestic Violence, Dating Violence, and Stalking Program (Rural Program) aims to increase collaboration among victim service providers, law enforcement, prosecutors, courts, health professionals, and other criminal justice service providers; expand victim services, direct intervention, and prevention; and establish sexual assault nurse examiner programs.²⁴⁹ Although the Rural Program has existed since 1994²⁵⁰ and has awarded tens of millions in annual grants to eligible programs in recent years,²⁵¹ a vast gulf in rural resources persists. Many states that

VAWA Is Not Enough: Academics Speak Out About VAWA, FEMINIST L. PROFESSORS (Feb. 27, 2012), <https://www.feministlawprofessors.com/2012/02/academics-speak-about-vawa-reauthorization/> [<https://perma.cc/8YV4-GNW9>] (stating that VAWA grants funded criminal justice responses at more than twice the rate of all those awarded to housing, civil legal assistance, and judicial training).

246. See SACCO & HANSON, *supra* note 241, at 5, 12; Goodmark, *supra* note 119, at 87 (evaluating these allocations for FY 2019 and noting that criminal legal system entities are eligible for funding under several other grant programs as well).

247. Goodmark, *supra* note 119, at 92 ("Because funding is often a zero-sum game, the dedication of the majority of VAWA's resources to criminalization has precluded communities from investing in non-carceral solutions to intimate partner violence."); Mimi E. Kim, *The Coupling and Decoupling of Safety and Crime Control: An Anti-Violence Movement Timeline*, in *THE POLITICIZATION OF SAFETY: CRITICAL PERSPECTIVES ON DOMESTIC VIOLENCE RESPONSES* 15, 23–24 (Jane K. Stoever ed., 2019) (tracing the history of anti-violence movement support for and increasing opposition to criminal responses); Deborah M. Weissman, *Gender Violence, the Carceral State, and the Politics of Solidarity*, 55 U.C. DAVIS L. REV. 801, 858–67 (2021) (surveying non-carceral and economic measures to prevent and redress domestic abuse). See generally ANGELA Y. DAVIS, GINA DENT, ERICA R. MEINERS & BETH E. RICHIE, *ABOLITION. FEMINISM. NOW.* (2022) (advocating for abolition as a feminist); AYA GRUBER, *THE FEMINIST WAR ON CRIME: THE UNEXPECTED ROLE OF WOMEN'S LIBERATION IN MASS INCARCERATION* (2020) (exploring the relationship between efforts to combat violence against women and mass incarceration); GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE*, *supra* note 115 (evaluating how the criminal legal system became the dominant response to domestic violence and advocating for a balanced policy response recognizing domestic violence as primarily a problem about economics, public health, community, and human rights rather than crime); GOODMARK, *IMPERFECT VICTIMS*, *supra* note 115 (exploring how the criminal legal system punishes survivors and arguing that its abolition is required to secure justice and remedy harm); Donna Coker & Ahjané D. Macquoid, *Why Opposing Hyper-Incarceration Should Be Central to the Work of the Anti-Domestic Violence Movement*, 5 U. MIA. RACE & SOC. JUST. L. REV. 585 (2015) (evaluating hyper-incarceration's contributions to domestic violence and encouraging anti-violence advocates to oppose carceral responses).

248. See 34 U.S.C. § 12341; Bassett, *supra* note 34, at 321–23.

249. See 34 U.S.C. § 12341(d)(5).

250. Violence Against Women Act of 1994, Pub. L. No. 103-322, title IV, § 40295 (current version at 34 U.S.C. § 12341).

251. *VAWA and Related Program Appropriations Chart*, NAT'L NETWORK TO END DOMESTIC VIOLENCE (May 2024), <https://nneedv.org/resources-library/vawa-and-related-program-appropriations-chart/> [<https://perma.cc/6E6T-495A>].

are mostly rural by other metrics, like South Carolina, are not rural enough to qualify for most Rural Program funds.²⁵² Rural Program projects generally must devote no more than 30% of funds to information and prevention efforts.²⁵³ Even in places where funds are allocated, substantial needs remain unmet. From 2018 to 2019, when Congress appropriated a total of \$82 million to the program, grant recipients reported “significant gaps” in services for people subjected to abuse in their communities, especially for those from underserved populations, and “extreme challenges in helping victims meet basic needs.”²⁵⁴ To help fill these gaps, Congress must appropriate more funding to more rural places, directed at institutions providing interventions outside of the criminal legal system, with increased allowances for information efforts.

Overall, VAWA’s predominant funding of criminal justice responses reinforces law enforcement as the primary helping institution for domestic violence in rural communities.

CONCLUSION

This Article makes the case that one important purpose of CPOs remains offering *civil* legal protection. It argues that for CPOs to fulfill this purpose, people must be able to turn to institutions other than law enforcement for help. In other words, they must have civil pathways to the remedy. And it finds that in some rural communities, they do not.

This finding is important because it provides new insight into the operation of the CPO remedy in practice. The data this Article showcases were buried in paper files stored in forty-five different courthouses, accessible only with official permission, travel, the generosity and assistance of clerks, and years of research. Increasing court data transparency and investing in court records research can help the public evaluate how institutions and policies function in practice and how they can be improved to better serve community needs.

Moreover, this finding is important because it raises questions about the capacity of the CPO remedy to fulfill its purpose in light of local differences in its operation, especially in rural communities. Specifically, it suggests that for CPOs to fulfill their unique purposes as forms of civil legal protection, communities must have civil pathways to the remedy. And it highlights a critical need for

252. 75% of program funds must be awarded to states with “a population density of 57 or fewer persons per square mile or a State in which the largest county has fewer than 250,000 people, based on the most recent decennial census.” 34 U.S.C. §§ 12291(a)(27), 12341(d)(5). Following the 2020 Census, seventeen states and four U.S. territories meet this definition: Alaska, Colorado, Idaho, Kansas, Maine, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Vermont, West Virginia, Wyoming, American Samoa, Guam, Northern Mariana Islands, and Virgin Islands. OFF. ON VIOLENCE AGAINST WOMEN, U.S. DEP’T OF JUST., OVW FISCAL YEAR 2023 RURAL DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING PROGRAM - SOLICITATION 13 (2023), <https://www.justice.gov/ovw/page/file/1569871/dl> [<https://perma.cc/57MF-YMRJ>].

253. See OFF. ON VIOLENCE AGAINST WOMEN, *supra* note 252, at 7.

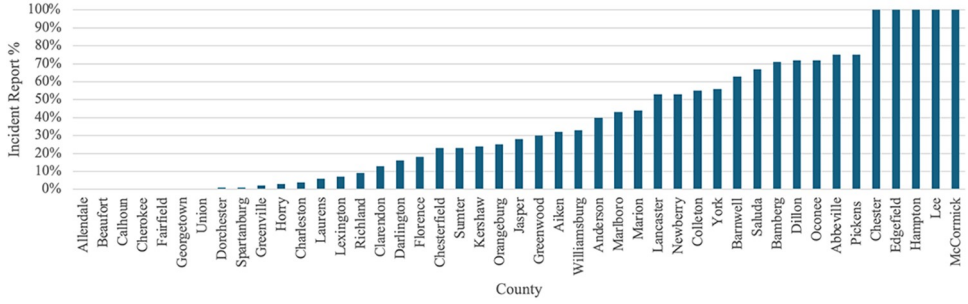
254. OFF. ON VIOLENCE AGAINST WOMEN, *supra* note 191, at 119–20; SACCO & HENSON, *supra* note 241, at 13.

research on CPO pathways and best practices for building and sustaining them. At a minimum, for these pathways to exist, communities must have access to information about the CPO remedy and to trusted local institutions equipped to inform people and assist them to pursue CPOs.²⁵⁵ For communities to have local access to information and institutions, governments and private actors must invest in them.

After decades of centering CPOs as a policy response to domestic violence, such investments can help ensure CPOs serve the purposes in practice that they were enacted to achieve in urban and rural communities alike.

255. See Sandefur, *supra* note 201, at 728–30.

APPENDIX 1. PERCENTAGE OF CPO CASE FILES CONTAINING INCIDENT REPORTS PER COUNTY



APPENDIX 2. TABLE OF INCIDENT REPORTS IDENTIFIED BY COUNTY

| County | Cases Collected | Incident Report Count | Incident Report Percentage |
|---------------|------------------------|------------------------------|-----------------------------------|
| Abbeville | 4 | 3 | 75% |
| Aiken | 105 | 34 | 32% |
| Allendale | 1 | 0 | 0% |
| Anderson | 304 | 122 | 40% |
| Bamberg | 7 | 5 | 71% |
| Barnwell | 8 | 5 | 63% |
| Beaufort | 10 | 0 | 0% |
| Calhoun | 1 | 0 | 0% |
| Charleston | 410 | 17 | 4% |
| Cherokee | 24 | 0 | 0% |
| Chester | 6 | 6 | 100% |
| Chesterfield | 39 | 9 | 23% |
| Clarendon | 55 | 7 | 13% |
| Colleton | 40 | 22 | 55% |
| Darlington | 62 | 10 | 16% |
| Dillon | 43 | 31 | 72% |
| Dorchester | 145 | 1 | 1% |
| Edgefield | 10 | 10 | 100% |
| Fairfield | 5 | 0 | 0% |
| Florence | 152 | 27 | 18% |
| Georgetown | 20 | 1 | 0% |
| Greenville | 226 | 4 | 2% |
| Greenwood | 77 | 23 | 30% |
| Hampton | 1 | 1 | 100% |
| Horry | 114 | 3 | 3% |
| Jasper | 18 | 5 | 28% |
| Kershaw | 66 | 16 | 24% |
| Lancaster | 92 | 49 | 53% |
| Laurens | 34 | 2 | 6% |
| Lee | 9 | 9 | 100% |
| Lexington | 165 | 12 | 7% |
| Marion | 32 | 14 | 44% |

| County | Cases Collected | Incident Report Count | Incident Report Percentage |
|---------------|------------------------|------------------------------|-----------------------------------|
| Marlboro | 7 | 3 | 43% |
| McCormick | 3 | 3 | 100% |
| Newberry | 38 | 20 | 53% |
| Oconee | 36 | 26 | 72% |
| Orangeburg | 100 | 25 | 25% |
| Pickens | 28 | 21 | 75% |
| Richland | 356 | 32 | 9% |
| Saluda | 3 | 2 | 67% |
| Spartanburg | 284 | 4 | 1% |
| Sumter | 189 | 44 | 23% |
| Union | 29 | 0 | 0% |
| Williamsburg | 12 | 4 | 33% |
| York | 81 | 45 | 56% |
| Statewide | 3451 | 677 | 20% |