

DISENTANGLING THE CIVIL-CARCERAL STATE: AN ABOLITIONIST FRAMEWORK FOR THE NON-CRIMINAL RESPONSE TO INTIMATE PARTNER VIOLENCE

EMILY M. POOR[∞]

ABSTRACT

The carceral state is entangled with the ostensibly non-criminal social and legal response to intimate partner violence (IPV). While feminists and anti-IPV advocates increasingly recognize the harmful effects of the carceral state's involvement in addressing violence, less attention has been given to civil remedies and services which are contingent upon interaction with the carceral state. At the same time, the police abolition movement has gained rhetorical momentum, but it remains focused on the traditional role of police in affirmatively regulating conduct, without recognizing how people are coerced into interacting with the carceral state to access resources.

Anti-carceral approaches to IPV cannot work to prevent and remediate harm if civil remedies require interaction with apparatuses of the carceral state. Conversely, abolition cannot work if the movement fails to recognize that the carceral state is entrenched in the civil response to violence, not just the criminal response. This Article identifies and examines how civil remedies for survivors of IPV, including housing protections, crime victim compensation, and immigration relief, are entangled with the carceral state; analyzes the individual and structural harms caused by civil-carceral entanglements; and argues that they undermine the efficacy and equitability of remedies and further the reach of the carceral state. We can reimagine a society that works to prevent and remediate the harms of IPV without relying upon the discriminatory, retributive, and ineffective mechanisms of the carceral state.

[∞] Assistant Professor of Law, Willamette University College of Law. Thank you to Michele Gilman, Leigh Goodmark, Margaret Johnson, Shanta Trivedi, Courtney Cross, Rachel Camp, and Natalie Nanasi for their comments on earlier drafts of this Article. I am grateful for the insightful and helpful feedback of participants at the NYU Clinical Law Review Writing Workshop, the Mid-Atlantic Clinicians' Writing Workshop, and the Family Law Scholars and Teachers Conference. I would also like to thank Katie Ghiardi and Loreto Noguera for their excellent research assistance. Finally, thank you to the amazing editorial team at the NYU Review of Law and Social Change for their help in guiding this piece to the finish line.

INTRODUCTION	274
I. BACKGROUND.....	278
A. The Criminal Legal Response to IPV: A Brief Historical Overview.....	279
B. Civil Protective Orders and the Carceral State.....	279
C. Survivors and the Carceral State	285
1. Separation	285
2. Practical Barriers	289
3. Mismatch of Needs and Solutions	291
4. Dangers of Police Interaction	294
II. CARCERAL ENTANGLEMENTS: CREATING THE CIVIL-CARCERAL STATE	295
A. Crime Victim Compensation.....	296
B. Immigration Relief	300
C. Residential Lease Break Provisions	303
D. Institutional Entanglement: Forced Cooperation Between Community Agencies and Law Enforcement.....	307
III. INDIVIDUAL AND STRUCTURAL HARMS	310
A. Individual Harms.....	310
1. Limiting Autonomy	310
2. Underenforcement	314
3. Overenforcement	317
4. Police Violence.....	319
5. Opening the Door to More State Control	323
B. Structural Harms.....	325
1. Entrenching the Supremacy of the Carceral State	325
2. Police as Gatekeepers to Truth: Epistemic Exceptionalism and Epistemic Injustice.....	328
IV. DISENTANGLING THE CIVIL-CARCERAL STATE	331
A. Remove Existing Carceral Entanglements.....	331
B. Avoid New Entanglements.....	334
CONCLUSION.....	337

INTRODUCTION

The carceral state does not just exist in America’s jails and prisons. It is also entangled with the ostensibly civil response to violence. Civil remedies and services for survivors of intimate partner violence (“IPV”), such as crime victim compensation and housing protections, frequently require reporting to law enforcement and/or obtaining a civil protective order (“CPO”), regardless of whether the survivor themselves¹ wishes to pursue these options.²

1. While IPV disproportionately impacts survivors who identify as women, I use gender-neutral pronouns throughout this Article to reflect the fact that IPV affects people of all gender identities.

2. See generally *infra* Part II (describing how supports for survivors including crime victim compensation, immigration relief, and housing protections require reporting to law enforcement or obtaining a CPO).

Parts of the anti-IPV advocacy community have begun to embrace anti-carceral approaches, recognizing that the criminal legal response fails to address the harms caused by IPV, discriminates against survivors of color and LGBTQ+ identifying survivors, and causes greater harm to many vulnerable populations.³ Advocates have increasingly called for more investment in solutions that seek to prevent IPV and repair the tangible harms caused by violence.⁴ The anti-IPV movement has also sought to expand the legal definition of domestic violence and provide remedies for people subjected to less tangible forms of harm, including economic, psychological, and emotional abuse.⁵ However, many of these solutions require or strongly incentivize reporting to law enforcement and/or obtaining a CPO.⁶ Little attention has been paid to the entanglement of these seemingly non-criminal responses with the criminal legal system.

Simultaneously, the Black Lives Matter movement and mass protests in the summer and fall of 2020 responding to the killings of George Floyd and Breonna Taylor fueled calls to defund or abolish the police.⁷ While few jurisdictions have actually begun to defund or abolish their police forces⁸, the abolition movement continues to gain traction in popular and scholarly discourse.⁹ The abolition

3. See generally LEIGH GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE: A BALANCED POLICY APPROACH TO INTIMATE PARTNER VIOLENCE* 18–22 (2018) [hereinafter GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE*] (describing harms to survivors of a carceral response to IPV); AYA GRUBER, *THE FEMINIST WAR ON CRIME: THE UNEXPECTED ROLE OF WOMEN'S LIBERATION ON MASS INCARCERATION* 7–8, 84 (2020) (describing impact of the carceral system on poor women of color and failure of arrest to prevent subsequent violence); ANGELA Y. DAVIS, GINA DENT, ERICA R. MEINERS & BETH E. RICHIE, *ABOLITION. FEMINISM. NOW.* 14, 50 (2022) (outlining anti-carceral approaches in the anti-IPV community); Mimi E. Kim, *Anti-Carceral Feminism: The Contradictions of Progress and the Possibilities of Counter-Hegemonic Struggle*, 35 *AFFILIA: J. WOMEN & SOC. WORK* 309, 310 (2020) (describing the growth of the anti-carceral feminist movement); Deborah M. Weissman, *Gender Violence, The Carceral State, and the Politics of Solidarity*, 55 *U.C. DAVIS L. REV.* 801, 867–71 (2021) [hereinafter Weissman, *Gender Violence*] (arguing for a new approach to anti-IPV work on the basis of anti-carceral feminism).

4. See *infra* Part II (discussing advocacy for and implementation of civil remedies providing for the tangible needs of IPV survivors).

5. See *infra* notes 400–405 and accompanying text (describing attempts to incorporate patterns of coercive control into criminal law and/or civil protective order statutes).

6. See generally *infra* Part II (discussing “civil-carceral entanglements,” which require survivors to engage with the carceral state to access non-criminal remedies and services).

7. See, e.g., Mariame Kaba, *Yes, We Mean Literally Abolish the Police*, *N.Y. TIMES* (June 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/Sunday/275loyd-abolish-defund-police.html> [<https://perma.cc/WLD2-MLYM>]; Sean Illing, *The “Abolish the Police” Movement Explained by 7 Scholars and Activists*, *VOX* (June 12, 2020), <https://www.vox.com/policy-and-politics/2020/6/12/21283813/george-floyd-blm-abolish-the-police-8cantwait-minneapolis> [<https://perma.cc/HHU8-6KWA>].

8. Grace Manthey, Frank Esposito, and Amanda Hernandez, *Despite ‘Defunding’ Claims, Police Funding Has Increased in Many U.S. Cities*, *ABC NEWS* (Oct. 16, 2022), <https://abcnews.go.com/US/defunding-claims-police-funding-increased-us-cities/story?id=91511971> [<https://perma.cc/MLL4-ZT2M>] (finding that despite more than 10,000 mentions of the impact of “defunding the police” in television broadcasts between June 2020 and October 2022, 91 of 109 city and county budgets studied (83%) actually *increased* police budgets by at least 2%).

9. See, e.g., DERECKA PURNELL, *BECOMING ABOLITIONISTS* 17 (2021); DAVIS, DENT, MEINERS, & RICHIE, *supra* note 3, at 9–10; ALEX S. VITALE, *THE END OF POLICING* 223–28 (2017); Amna Akbar,

movement focuses on the harmful role that mass incarceration and over-policing cause, particularly in communities of color, and the criminal legal system's failure to solve the social problems mass incarceration and over-policing are purported to target.¹⁰ Many proponents of abolition advocate for shifting resources from carceral solutions to social solutions such as funding for affordable housing, direct cash benefits (including reparations), healthcare, and other social supports.¹¹

The anti-carceral feminist movement and the abolitionist movement have begun to talk to each other about the mutual need for divestment from punitive, ineffective carceral solutions and investment in more productive and supportive solutions to prevent and respond to violence.¹² This burgeoning conversation recognizes the harms caused by the dominance of the criminal legal system in responding to IPV in American society.¹³ However, less attention has been paid to how many ostensibly civil “alternatives” to that system are contingent upon interaction with the very same system. The anti-IPV and police abolition movements must recognize and work jointly towards the goal of disentangling the civil and criminal legal systems developed to respond to and prevent violence.

Anti-carceral approaches to IPV cannot work to prevent and remediate harm if civil remedies require interaction with the carceral state. Correspondingly, abolition cannot work if the movement fails to recognize that the carceral state is entrenched in the civil response to violence, not just the criminal response. This Article examines the ways in which civil remedies for survivors of IPV are entangled with the criminal legal system and argues that this entanglement undermines the efficacy of remedies and furthers the reach of the carceral state.

Part I provides a brief historical overview of the development of the carceral response to IPV, which this Article defines to include both the criminal legal

An Abolitionist Horizon for (Police) Reform, 108 CALIF. L. REV. 1781, 1783–85 (2020); Dorothy E. Roberts, *Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 4–7 (2019).

10. See PURNELL, *supra* note 9, at 14–15; DAVIS, DENT, MEINERS, & RICHIE, *supra* note 3, at 36; VITALE, *supra* note 9; Akbar, *supra* note 9, at 1788–1802; Roberts, *supra* note 9, at 7.

11. See, e.g., PURNELL, *supra* note 9, at 210–11 (describing services provided to police after the Department of Justice's investigation into the Ferguson Police Department, such as “mental health services, counseling, free physical fitness resources, adequate time off during uprisings, and competitive salaries,” which were not afforded to the communities they policed, and laying out the policy priorities of the Movement for Black Lives: “ending the war on Black people, reparations, divestment and investment, economic justice, community control, and political power”); VITALE, *supra* note 9, at 222–28 (describing how conditions of poverty impact safety and community well-being, and advocating for programs to address these underlying conditions—“Any program for reducing crime and enhancing social wellbeing, much less achieving racial justice, must address these conditions.”).

12. “Abolition feminism does not shy away from contradictions, which are often the spark for change. Holding onto this both/and, we can and do support our collective immediate and everyday needs for safety, support, and resources while simultaneously working to dismantle carceral systems.” DAVIS, DENT, MEINERS, & RICHIE, *supra* note 3 at 5; see also GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE*, *supra* note 3, at 10–11, 99; 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, 30–33 (Jane K. Stoever ed., 2019).

13. See *infra* Part III (discussing the harms of the criminal legal system in-depth).

system and the CPO system. This Part then discusses several reasons why a survivor may not want to or be able to access the carceral response.

Part II discusses several specific examples of civil-carceral entanglements. Survivors are often required to report to and cooperate with law enforcement in order to access crime victim compensation funds.¹⁴ Non-citizen survivors may be able to access some immigration relief only if they are willing to cooperate with the police.¹⁵ Survivors who urgently need to leave unsafe housing may be forced to report to police or obtain a CPO in order to break their leases early.¹⁶ Finally, agencies serving survivors are institutionally entangled with the carceral state through funding requirements and resource sharing with law enforcement.¹⁷

Part III argues that civil-carceral entanglements cause harm on both individual and structural levels. On an individual level, carceral entanglements diminish the autonomy of persons subjected to abuse by limiting the options available to them. Ample evidence shows that police frequently dismiss and ignore survivors' claims of abuse, which likely discourages them from seeking assistance.¹⁸ Further, people from subordinated communities, including people of color, members of the LGBTQ+ community, and sex workers, are much more likely to face police violence and are less likely to be effectively assisted in interactions with law enforcement.¹⁹ Carcerally entangled remedies²⁰ create a discriminatory dynamic where members of subordinated communities—who are often the most in need of relief—are least able to access it.

Structurally, carceral entanglements further entrench the carceral state in American society and make the goals of abolition less attainable. The decriminalization movement focuses on non-punitive approaches, such as restorative justice and transformative justice processes, to mitigate the conditions that cause harm to others.²¹ These efforts cannot be effective if non-criminal remedies and services require engagement with the carceral state. Carceral entanglements also further the dubious principle that police are inherently neutral arbiters of truth. This

14. *See infra* Part II.A.

15. *See infra* Part II.B.

16. *See infra* Part II.C.

17. *See infra* Part II.D.

18. *See infra* Part III.A.2.

19. *See infra* Part III.A.2; Part III.A.3; Part III.A.4.

20. I use “carcerally entangled remedies” as a term of art to refer to ostensibly civil remedies that are contingent upon interaction with the carceral state. *See also* Christy E. Lopez, *Abolish Carceral Logic*, 17 *STAN. J. C.R. & C.L.* 379, 393 (2022) (discussing “our current carcerally-minded public safety approach”).

21. Transformative justice in particular focuses on measures that “should address the material needs of the victim” without relying on state intervention, and that aim to transform the social conditions, such as racial and gender subordination, that contribute to the harms of crime. Donna Coker, *Transformative Justice: Anti-Subordination Processes in Cases of Domestic Violence*, in *RESTORATIVE JUSTICE AND FAMILY VIOLENCE* 129, 144–49 (Heather Strang & John Braithwaite eds., 2002) [hereinafter Coker, *Transformative Justice*].

undermines the credibility of marginalized persons and furthers the supremacy of police as gatekeepers to justice.

Part IV proposes that anti-IPV advocates should work to identify where the carceral state and civil remedies have been intertwined and begin to disentangle them by pushing to change laws and policies that include reporting requirements. Additionally, advocates should be cautious in attempts to expand the definition of IPV in ways that further entrench the criminal legal system in the response to violence. As we reimagine a world where there are meaningful and practical remedies available to prevent IPV and remediate its harms, we should be careful to avoid recreating the retributive and discriminatory systems inherent in the carceral response to violence.

I. BACKGROUND

Significant criticism has been directed toward the centrality and power of the carceral state in recent years.²² By the “carceral state,” I mean the apparatuses of the government that work—directly or indirectly—to police, jail, and otherwise punish individuals for conduct determined by the state to be criminal.²³ The state exercises its carceral capacity most directly through arresting, prosecuting, and imprisoning people for crimes. More indirect manifestations of carceral capacity include punitive administrative actions, the imposition of barriers for those charged or convicted of crimes, and increased surveillance of individuals and communities.²⁴

Throughout this Article, I refer to the “carceral response” to IPV. I consider both the criminal legal system and the CPO system to be part of that carceral response. This Part provides a brief overview of the criminal legal response to IPV and the CPO system and addresses survivors’ interactions with the carceral state.

22. See, e.g., MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (10th Anniversary ed. 2020); Kimberlé Crenshaw, *From Private Violence to Mass Incarceration: Thinking Intersectionally about Women, Race, and Social Control*, 59 U.C.L.A. L. REV. 1418 (2011); Donna Coker & Ahjané D. Macquoid, *Why Opposing Hyper-Incarceration Should be Central to the Work of the Anti-Domestic Violence Movement*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 585 (2015).

23. The state’s “carceral capacity” is “the state’s capacity to police and cage.” Kelly Lytle Hernández, Khalil Gibran Muhammad & Heather Ann Thompson, *Introduction: Constructing the Carceral State*, 102 J. AM. HIST. 18, 20 (2015).

24. Throughout this Article, I discuss the ways in which the state exercises this capacity both directly (through citing, arresting, and jailing people for conduct deemed to be criminal) as well as indirectly (through regulating behavior under the threat of imprisonment or state violence, whether against the person whose behavior is regulated or against another person, such as a family or community member). See generally MAYA SCHENWAR & VICTORIA LAW, *PRISON BY ANY OTHER NAME: THE HARMFUL CONSEQUENCES OF POPULAR REFORMS* (2020) (discussing “alternatives to incarceration,” such as electronic monitoring, data-driven surveillance, forced psychiatric and drug treatment, and extended probation, which subject persons to physical control by the state). See *infra* Part I.B for discussion of how the state exercises indirect carceral capacity through the civil protective order system.

A. *The Criminal Legal Response to IPV: A Brief Historical Overview*

The legal response to IPV substantially developed in the 1970s and 80s, driven by feminist critique and activism calling for IPV to be treated as a serious social issue, rather than as a private matter between a husband and wife.²⁵ Prior to the advent of specific domestic violence criminal law, police in some jurisdictions were frequently instructed not to arrest in cases of IPV, “but instead to attempt conflict resolution.”²⁶

Not all feminists concerned about IPV advocated for criminalization as the primary response. Early activists in the shelter movement focused on providing for the material needs of women who had experienced IPV, and were openly critical of the prospect of partnering with the criminal legal system, particularly when such partnerships would impose the top-down hierarchies that characterized bureaucratic regimes.²⁷ However, the carceral arm of the movement won out in the policy battles. Advocates successfully argued that IPV, like other forms of violence, was a crime and “should be treated like any other crime.”²⁸ In response, states began to pass laws mandating arrest in domestic abuse cases and enacting no-drop prosecution policies in an effort to force police and prosecutors to take IPV seriously.²⁹

B. *Civil Protective Orders and the Carceral State*

The criminal legal system is the most visible part of the carceral state, but it is not the only part. As the criminal response to IPV developed, many advocates centered CPOs as an alternative to that system.³⁰ CPOs are injunctive orders issued by family or civil courts, which provide various forms of relief to petitioners who have been subjected to IPV.³¹ However, contrary to their nomenclature as civil orders, CPOs are *de facto* part of the carceral response to IPV.

25. See Claire Houston, *How Feminist Theory Became (Criminal) Law: Tracing the Path to Mandatory Criminal Intervention in Domestic Violence Cases*, 21 MICH. J. GENDER & L. 217, 225–28, 259–60, 271 (2014); GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE*, *supra* note 3, at 12–15; GRUBER, *supra* note 3.

26. Houston, *supra* note 25, at 225.

27. GRUBER, *supra* note 3, at 42–50; LISA A. GOODMAN & DEBORAH EPSTEIN, *LISTENING TO BATTERED WOMEN: A SURVIVOR-CENTERED APPROACH TO ADVOCACY, MENTAL HEALTH, AND JUSTICE* 33–37 (2008).

28. GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE*, *supra* note 3, at 13.

29. See, e.g., GOODMAN & EPSTEIN, *supra* note 27, at 71–74; *infra* Part III.A.1.

30. See GOODMAN & EPSTEIN, *supra* note 27, at 78–79.

31. See *id.* at 79; 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, 894 (“Twenty jurisdictions statutorily authorize the petitioner to file for a civil protection order in any general court; six jurisdictions authorize filing in circuit court; ten in district court; six in family court, and one in family or juvenile court.”).

CPOs were one of the first and are still arguably the most central aspect of the civil response to IPV.³² CPOs are initiated by the survivor rather than the state,³³ meaning the survivor (at least theoretically) has more control over the CPO process than they do over the criminal legal response.³⁴ CPOs can help facilitate separation by requiring the respondent to stay away from and/or not contact the petitioner, thereby enjoining future abuse or harassment.³⁵ They can also order the respondent to materially support the petitioner through child support, division of property, possession of a shared home, spousal support, and other forms of monetary relief.³⁶ Given the range of relief available and the fact that they are initiated by survivors, CPOs represent a “more flexible [and] individually tailored” option than those offered by the criminal legal system.³⁷

Early efforts to create a civil legal response to IPV centered on the creation of CPO statutes, and today, CPOs are by far the most commonly used civil legal intervention for survivors of IPV.³⁸ Perhaps because they are so pervasive, a number of scholars and advocates have focused on expanding the availability of this remedy. Some advocate for expanding eligibility criteria by broadening the definition of abuse, using more liberal definitions of family or household member to capture more relationships, or both.³⁹ Scholars have also advocated for the

32. See, e.g., JAMES PTACEK, *BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSES* 46–50 (outlining the history of reform around laws impacting survivors of IPV in the 1970s, particularly the passage of legislation creating the first civil protective orders).

33. See GOODMAN & EPSTEIN, *supra* note 27, at 79.

34. Whereas civil protective orders are initiated by a survivor as petitioner, once the criminal legal system becomes involved, survivors often lose control of the process and outcome due to no-drop prosecution policies and other mandatory interventions. See *infra* Part III.A.1.

35. See LEIGH GOODMARK, *A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM* 88 (2012) [hereinafter GOODMARK, *A TROUBLED MARRIAGE*].

36. See *id.*

37. GOODMAN & EPSTEIN, *supra* note 27, at 79.

38. See, e.g., Sally Goldfarb, *Reconceiving Civil Protective Orders for Domestic Violence: Can Law Help End the Abuse without Ending the Relationship?*, 19 *CARDOZO L. REV.* 1487, 1503–04 (2008) (“Civil protection orders have emerged as the most frequently used and, in the view of many experts, the most effective legal remedy against domestic violence.”); 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, 307–08 (2011) (describing protection orders as “the most survivor-centered remedy readily available in courthouses across America” and “the single most commonly used legal remedy for domestic violence.”); Deborah Epstein, *Procedural Justice: Tempering the State’s Response to Domestic Violence*, 43 *WILLIAM & MARY L. REV.* 1843, 1858–59 (2003) (describing adoption of civil protective order statutes as the sole example of “substantial reforms in the civil justice system”); Tamara L. Kuennen, *Analyzing the Impact of Coercion on Domestic Violence Victims: How Much is too Much?* 22 *BERKELEY J. GENDER L. & JUST.* 2, 12 (describing adoption of civil protective order statutes as the sole example of “major legal reform” that has occurred “within the civil justice system’s response to domestic violence”) (2007); CENTER FOR COURT INNOVATION, *CIVIL DOMESTIC VIOLENCE COURTS: KEY PRINCIPLES*, https://www.innovatingjustice.org/sites/default/files/documents/DV_Civil_Fact_Sheet.pdf [<https://perma.cc/K5F4-6EQ6>] (“Civil protective orders are the most common court response to domestic violence, both intimate partner and intra-family.”).

39. See GOODMARK, *A TROUBLED MARRIAGE*, *supra* note 35, at 17 (describing efforts to “expand the definition of domestic violence” for the purpose of CPOs); Margaret E. Johnson, *Redefining*

expansion of the relief available through the CPO system to permit survivors to receive temporary child support, spousal support, and broader injunctive relief.⁴⁰

However, while CPOs are procedurally civil orders in that they are initiated by private petition and issued by non-criminal courts, they cannot be disentangled from the criminal legal system on which they rely.⁴¹ In many, if not most cases, obtaining a CPO requires (or at least envisions) separation.⁴² Many survivors cannot or do not want to separate from their partners.⁴³ But even if they are willing to separate, survivors may still want contact with abusive partners for a variety of complex reasons, including economic reliance, shared children, emotions, social stigma, or fear of retaliation.⁴⁴

A no-contact provision criminalizes contact between the parties, putting the respondent at risk of arrest for violation of a CPO, even if the survivor is primarily seeking other relief but wants to continue some level of contact with their partner.⁴⁵ Survivors who obtain CPOs, regardless of their intent or their wishes, open up their partners and their relationships to state control through the criminal legal system and its related apparatuses. Even when a survivor who wanted to separate at the time of their petition requests to modify or vacate a CPO in light of changed circumstances or wishes, such requests are sometimes denied by judges who believe that they know what is best for the survivor (and usually, that separation is best).⁴⁶ As one petitioner's attorney reported, a judge denying a petitioner's request to vacate a CPO opined from the bench, "You can't just open the door to the state, getting the state involved, and then think that you can shut it at any time."⁴⁷

Some survivors have also faced criminal charges themselves for "aiding and abetting" contact with abusive partners, leading to even more state control over their relationship.⁴⁸ While CPOs are frequently portrayed as a tool for survivors

Harms, Reimagining Remedies, and Reclaiming Domestic Violence Law, 42 U.C. DAVIS L. REV. 1107, 1154 (2009).

40. See, e.g., GOODMARK, *A TROUBLED MARRIAGE*, *supra* note 35, at 17.

41. See Alesha Durfee, *The Use of Structural Intersectionality as a Method to Analyze How the Domestic Violence Civil Protective Order Process Replicates Inequality*, in 27 VIOLENCE AGAINST WOMEN 639, 643–44 (2020) [hereinafter Durfee, *Structural Inequality*].

42. *Id.* at 652; Goldfarb, *supra* note 38, at 1489; Tamara L. Kuennen, *Love Matters*, 56 ARIZ. L. REV. 977, 1011 (2014) ("As a practical matter, victims can only obtain such orders if they have broken up with their partners, because these orders typically prohibit any contact whatsoever from the respondent.").

43. See *infra* Part I.C.1.

44. *Id.*

45. Pooja Gehi & Soniya Munshi, *Connecting State Violence and Anti-Violence: An Examination of the Impact of VAWA and Hate Crimes Legislation on Asian American Communities*, 21 ASIAN AM. L. J. 5, 32 (2014).

46. GOODMAN & EPSTEIN, *supra* note 27, at 80–81. ("By assuming that all battered women need to end their relationships, judges in civil cases often are substituting their own judgment for that of the victims who are seeking assistance in their courtrooms.").

47. *Id.* at 81.

48. *Id.* (citing *State v. Lucas*, 795 N.E.2d 642 (Ohio 2003)). The Supreme Court of Ohio reversed a conviction against a protected person for aiding and abetting violation of a protection order in this particular case, holding that "an individual who is the protected subject of a temporary

to take control over the response to violence, in practice, their terms and enforcement are frequently inflexible and indistinguishable from the criminal legal system's response.

The centrality of CPOs to the social and legal response to IPV means that survivors are encouraged or even coerced by various system actors to obtain a CPO, regardless of their actual goals, and are penalized formally or informally when they fail to do so. As Professor Nina Tarr describes:

[T]here are three basic assumptions associated with orders: (1) if you are a victim of domestic violence, you SHOULD get an Order for Protection; (2) failure to get an Order for Protection is evidence that a person is not in a dangerous situation; and therefore, (3) employers, police, prosecutors, social workers and other members of society treat the woman as if her story lacks credibility, or as if she lacks the character of strength to take care of herself.⁴⁹

The internal culture of many agencies responding to IPV takes it as a given that “real victims” obtain CPOs and separate permanently from their partners (or at least wish to do so).⁵⁰ This expectation often becomes an explicit requirement in the case of the family policing system, or as it is commonly called, the “child welfare system.”⁵¹ Parents who have been subjected to IPV are often told that they *must* obtain a CPO as a condition of a child welfare case, or they risk losing custody of their children.⁵²

protection order may not be prosecuted for aiding and abetting the restrainee under the protection order in violating said order.” *Lucas*, 795 N.E.2d at 648. Similar charges were brought against a petitioner in Indiana in 2011. As in Ohio, the Court of Appeals of Indiana reversed an order denying dismissal of the charges. *Patterson v. State*, 979 N.E.2d 1066 (Ind. Ct. App. 2012). By contrast, Iowa law permits victims to be held in contempt for aiding and abetting violation of a no-contact order. *Henley v. Iowa Dist. Court for Emmet County*, 533 N.W.2d 199 (Iowa 1995).

49. Nina W. Tarr, *Employment and Economic Security for Victims of Domestic Abuse*, 16 S. CAL. REV. L. & SOC. JUST. 371, 388 (2007).

50. GOODMARK, A TROUBLED MARRIAGE, *supra* note 35, at 81. (“The failure to immediately and willingly separate from a man who abuses has implications for a woman’s credibility. Judges, police, and prosecutors, vested in their roles as those who rescue women from abuse, are skeptical of the claims of women who are reluctant or unwilling to separate or who do not separate quickly enough.”).

51. *See infra* Part III.A.5 regarding the family policing system. I use the term “family policing system” rather than “child welfare system” throughout this Article. Critics of the state’s role in regulating parents and children have increasingly moved away from the term “child welfare system” to draw attention to the way the system actually operates. As Dorothy Roberts argues, “Far from promoting the well-being of children, the state weaponizes children as a way to threaten families, to scapegoat parents for societal harms to their children, and to buttress the racist, patriarchal, and capitalist status quo.” DOROTHY ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES—AND HOW ABOLITION CAN BUILD A SAFER WORLD* 24 (2022) [hereinafter ROBERTS, *TORN APART*]. Roberts has used the terms “family-policing system” and “family regulation system” to more accurately capture the state’s role in surveilling, controlling, and separating families, especially Black families and families experiencing poverty.

52. Margo Lindauer, *Damned if You Do, Damned if You Don’t: Why Multi-Court-Involved Battered Mothers Just Can’t Win*, 20 AM. U. J. GENDER SOC. POL’Y & L. 797, 798–799 (2012).

However, obtaining a CPO is not always sufficient to satisfy the expectations of agencies responding to IPV. In fact, CPOs are often a double-edged sword—survivors can be penalized for *not* having a CPO, but they can also be penalized in other ways *for* having a CPO. A CPO may impact a survivor’s access to housing, public benefits, and credit, and may compromise potential custody cases.⁵³

CPOs are effective for some survivors, particularly if their partners have historically had respect for police, but in other circumstances, they can actually create more danger.⁵⁴ Part of this discrepancy in effectiveness is due to reliance on police for enforcement,⁵⁵ and as discussed in depth in Parts I.C and III, interaction with police can be inaccessible or actively harmful for many survivors. Police are also not constitutionally required to respond to violations of CPOs, making them ineffective in many jurisdictions.⁵⁶ Some studies have shown that a permanent CPO does not deter most kinds of abuse,⁵⁷ while others show that orders can be effective in many circumstances, but success varies greatly on the individual circumstances of the parties and the identity of the respondents.⁵⁸ Advocates for survivor-defined practices surrounding CPOs argue that survivors should be given appropriate information and the opportunity to assess whether a CPO would be effective or safe for them, and system actors should work with survivors who actually want CPOs on an individual basis to obtain and enforce the order in the complex context of their lives.⁵⁹ However, as sociologist Andrea Nichols describes, “[i]n some cases, the practices and policies of police, one shelter, and child protective services

53. Tarr, *supra* note 49, at 390. While CPOs are ostensibly intended to protect survivors (and their children) from abuse, some family court judges may see accusations of abuse and attempts to limit contact with the other parent as evidence that the survivor is not willing to facilitate a co-parenting relationship, and survivors may even face arguments that they fabricated allegations of abuse to gain advantage in a custody dispute. *Id.* at 383.

54. Andrea J. Nichols, *Survivor-Defined Practices to Mitigate Revictimization of Battered Women in the Protective Order Process*, 28 J. INTERPERSONAL VIOLENCE 1403, 1417–18 (2013). See John Costello & Alesha Durfee, *Survivor-Defined Advocacy in the Civil Protection Order Process*, 15 FEMINIST CRIMINOLOGY 299, 310–13 (2020).

55. As advocates in the early domestic violence movement sought to enact CPO statutes, they “quickly learned [...] that civil protection orders were effectively useless without police enforcement.” Houston, *supra* note 25, at 255.

56. GOODMARK, A TROUBLED MARRIAGE, *supra* note 35, at 91–93.

57. Adele Harrell & Barbara E. Smith, *Effects of Restraining Orders on Domestic Violence Victims*, in DO ARRESTS AND RESTRAINING ORDERS WORK? 214, 229 (Eve S. Buzawa & Carl G. Buzawa eds., 1996). See Andrew R. Klein, *Re-Abuse in a Population of Court-Restrained Male Batterers: Why Restraining Orders Don’t Work*, in DO ARRESTS AND RESTRAINING ORDERS WORK? 192, 199 (Eve S. Buzawa & Carl G. Buzawa eds., 1996).

58. See Ruth E. Fleury-Steiner, Benjamin D. Fleury-Steiner & Susan L. Miller, *More Than a Piece of Paper? Protection Orders as a Resource for Battered Women*, 5 SOCIO. COMPASS 512, 516–18 (2011) (reviewing social scientific studies on the effectiveness of CPOs); T.K. Logan & Robert Walker, *Civil Protective Order Outcomes: Violations and Perceptions of Effectiveness*, 24 J. INTERPERSONAL VIOLENCE 675 (2009) (discussing mixed effectiveness of CPOs and factors contributing to ineffectiveness in some situations); Kathleen J. Ferraro, *Cops, Courts, and Women Battered*, in VIOLENCE AGAINST WOMEN: THE BLOODY FOOTPRINTS 165, 173 (Pauline B. Bart & Eileen Geil Moran eds., 1993).

59. See Nichols, *supra* note 54, at 1417–18; Costello & Durfee, *supra* note 54, at 310–311.

demanded women get protective orders when it was not in their best interests to do so.”⁶⁰

The fact that petitioners are not guaranteed a CPO merely because they apply for one adds to the complexity and uncertainty surrounding the CPO process. Almost all CPO cases are based exclusively on testimony, so CPOs are accessible only for those who system actors—with their entrenched individual and institutional biases—deem credible.⁶¹ The desirability of obtaining a CPO also varies culturally and may be particularized based on race, class, and gender.⁶² As a result, the CPO system is shaped by inherent inequalities that make CPOs inaccessible to certain groups of people across race, class, and gender lines.⁶³ Any remedies contingent upon obtaining a CPO necessarily replicate the inequalities inherent to that system.

Part II discusses examples of carceral entanglements in the civil response to IPV. While CPOs are located procedurally in civil courts (at least at the petition stage, if not at the enforcement stage),⁶⁴ I consider them throughout this Article as part of the carceral response itself, rather than as entanglements with that response. CPOs depend upon carceral logic, including a punitive element even if the petitioner is seeking material resources rather than simply an injunction against behavior by the respondent.⁶⁵ They also require separation and criminalize behaviors by the respondent which would otherwise be legal, even if that is not the petitioner’s intent.⁶⁶

60. Nichols, *supra* note 54, at 1418.

61. Deborah Epstein & Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors’ Credibility and Dismissing Their Experiences*, 167 U. PA. L. REV. 399, 399–400 (2019).

62. For instance, Geneva Brown argues that particular stigma attaches to African American women who seek CPOs, both in the courtroom and in their communities. Because of systemic racism and disinvestment, African American women are also disproportionately living in poverty, making the economic effects of a CPO particularly burdensome. Geneva Brown, *Ain’t I a Victim? The Intersectionality of Race, Class, and Gender in Domestic Violence and the Courtroom*, 19 CARDOZO J. L. & GENDER 147, 148–51 (2012).

63. Durfee, *Structural Inequality*, *supra* note 41, at 640.

64. In most states, civil protective order statutes are located in the family code. *E.g.* TEX. FAM. CODE ANN. § 71.001 et. seq. (West 2021); MD. CODE ANN. FAM. LAW § 4-504 et. seq. (West 2022). Many states also provide similar injunctive relief for non-family or household members, such as survivors of stalking or non-intimate partner sexual assault, which are typically located in civil code sections. *E.g.*, MD. CODE ANN., CTS. & JUD. PROC. § 3-1501 et. seq. (West 2022) (provisions for peace orders); MINN. STAT. ANN. § 609.748 (West 2022) (providing for a harassment restraining order, to which the Rules of Civil Procedure apply).

65. Christy Lopez defines “carceral logic” as “a punishment mindset that views retribution and control, including by physical constraint (e.g., imprisonment), surveillance (e.g. electronic monitoring via ankle bracelet), or violence, as central components of a public safety system.” Lopez, *supra* note 20, at 386. While CPOs are initiated by petitioners in civil courts, they are typically enforceable through criminal law, even if the petitioner’s primary goal is to obtain material relief. *E.g.*, MINN. STAT. ANN. § 518B.01(14) (West 2022). Unlike other forms of injunctive relief, CPOs necessarily envision that they will be used to punish respondents through the punitive arm of the state if they are violated.

66. See *infra* notes 76–81 and accompanying text.

While many who advocate for increased availability of CPOs emphasize their potential to meet the individualized needs of survivors based on the range of relief available, in practice, the CPO system operates as just another facet of the one-size-fits-all carceral response imposed by the state. Any remedies and services conditioned upon obtaining a CPO represent entanglements with the carceral state, even if they do not affirmatively require reporting to police or cooperation with prosecution.⁶⁷

C. *Survivors and the Carceral State*

The carceral state is at the center of the legal and social response to IPV in the United States. However, many survivors do not *want* to interact with that system.⁶⁸ First, the carceral response requires separation in almost all cases, which may not be possible or desirable for many survivors.⁶⁹ Second, practical barriers limit the accessibility of the processes required to participate in the carceral response for some survivors, particularly survivors of color and those experiencing poverty.⁷⁰ Third, the solutions offered by the carceral state do not meet the needs of many survivors.⁷¹ Finally, even when survivors do want to access the criminal legal system, interaction with police can be not just unhelpful, but actively dangerous for some.⁷²

1. *Separation*

As a practical matter, accessing the carceral response almost always requires a survivor to separate from their partner. When the criminal legal system becomes involved in an abusive relationship, the immediate and ongoing response is

67. While I consider CPOs to be part of the carceral response to IPV, I do not intend with this critique to propose the abolition of the CPO system. There are many problems inherent with CPOs at both the petition and enforcement stage that make them inextricable from the carceral response to IPV. However, they still represent an important remedy for a subset of survivors and can be effective in some cases. Rather, I propose that *requiring* a survivor to obtain a CPO in order to access *other* remedies or services represents a carceral entanglement since it inherently envisions interaction with the criminal legal system.

68. A study of approximately 1500 people who called the National Domestic Violence Hotline between March and May 2021 found that “82% had contacted the police, while 12% had not.” Of the callers who had not called the police, 92% “were very or somewhat afraid or concerned about how the police would react.” 40% of those who had called the police “felt calling the police made no difference,” and an additional 39% actually “felt *less* safe after calling the police” (emphasis added). LEIGH GOODMARK, NAT’L DOMESTIC VIOLENCE HOTLINE, LAW ENFORCEMENT EXPERIENCE REPORT: DOMESTIC VIOLENCE SURVIVORS’ SURVEY REGARDING INTERACTION WITH LAW ENFORCEMENT (2022), https://www.thehotline.org/wp-content/uploads/media/2022/09/2209-Hotline-LES_FINAL.pdf [<https://perma.cc/R4U8-7QT2>] [hereinafter LAW ENFORCEMENT EXPERIENCE REPORT].

69. Part I.C.1 *infra*.

70. Part I.C.2 *infra*.

71. Part I.C.3 *infra*.

72. Part I.C.4 *infra*.

typically to remove the party identified as the abuser from a shared home.⁷³ Historically, police typically responded to “domestic disturbance” calls by removing the abusive party from the home temporarily.⁷⁴ Under the current criminal legal regime, in most jurisdictions it is standard practice in IPV cases to enter a stay-away order upon charging, prohibiting a criminal defendant from entering a shared home or having contact with the survivor and/or children, either through a separate no-contact order or as a condition of release.⁷⁵

If a survivor chooses to pursue a CPO instead of or in addition to reporting abuse to the police, in almost all cases a judge will order a stay-away order as part of the CPO, whether the survivor wants to separate from their partner or not.⁷⁶ While many CPO statutes do not explicitly require that an order contain a stay away or no-contact provision,⁷⁷ in practice, judges almost always include them, to the extent that the literature frequently portrays CPOs as existing for the purpose of preventing contact.⁷⁸ This may stem from a general assumption within the judicial system that the purpose of a CPO is to ensure physical safety, and separation

73. GOODMARK, A TROUBLED MARRIAGE, *supra* note 35, at 84–88.

74. *Id.* at 84.

75. *Id.* at 87–88.

76. The concept that a protection order is intended to prevent contact is so prevalent that it is reflected in some of the terminology around orders themselves. “Protection orders have also been called restraining orders, civil protection orders, orders of protection, stay-away orders, protection from abuse orders, domestic violence restraining orders, civil harassment restraining orders, no-contact orders, and anti-harassment orders.” Christopher T. Benitez, Dale E. McNiel, & Renee L. Binder, *Do Protection Orders Protect?*, 38 J. AM. ACAD. PSYCHIATRY & L. 376, 376 (2010). “In these orders, a person is usually mandated to have no contact with another person, with specific restrictions for proximity.” *Id.* at 377. *See also* Durfee, *Structural Inequality*, *supra* note 41, at 652–53; Goldfarb, *supra* note 38, at 1504–05 (2008) (discussing the prevalence of no contact provisions in CPOs, either by law or judicial custom).

77. For example, Minnesota’s Domestic Abuse Act provides a list of 15 forms of relief the court may order as part of an order for protection, including excluding the respondent from the petitioner’s home, place or work, or school and prohibiting the respondent from having contact with the petitioner, but does not mandate that an order contain any particular set of relief. MINN. STAT. ANN. § 518B.01(6)(a) (West 2022). *See also, e.g.*, CONN. GEN. STAT. ANN. § 46B-15(b) (West 2023); 750 ILL. COMP. STAT. ANN. 60/214 (West 2022); UTAH CODE ANN. § 78B-7-603 (West 2022).

78. Goldfarb, *supra* note 38, at 1504–05; Durfee, *Structural Inequality*, *supra* note 41, at 652–53 (discussing judicial beliefs that the goal of a CPO is to separate the parties and enhance criminal consequences for the respondent); Christina DeJong & Amanda Burgess-Proctor, *A Summary of Personal Protection Order Statutes in the United States*, 12 VIOLENCE AGAINST WOMEN 68, 69 (2006) (referring to “personal protection orders”: “Sometimes referred to as ‘no-contact orders’ (NCOs), these civil orders prohibit an individual accused of domestic abuse from contacting the alleged victim. PPOs are designed to reduce the incidence of domestic abuse by limiting contact between victim and offender.”); Helen Eigenberg, Karen McGuffee, Phyllis Berry & William H. Hall, *Protective Order Legislation: Trends in State Statutes*, 31 J. CRIM. JUST. 411, 412 (2003) (“At the most basic level, orders are useful because they prohibit batterers from having contact with their victims and thereby, theoretically, restrict their ability to deliver further emotional, sexual, or physical abuse.”); Tara N. Richards, Alison Tudor & Angela R. Gover, *An Updated Assessment of Personal Protective Order Statutes in the United States: Have Statutes Become More Progressive in the Past Decade?*, 24 VIOLENCE AGAINST WOMEN 816, 818 (2018) (“PPOs [personal protection orders] are intended to prohibit an abuser from having contact with a victim to prevent subsequent domestic violence from occurring.”).

is the only means by which a survivor can achieve safety.⁷⁹ It also reflects a belief that abuse is not real or serious if a survivor does not want to separate.⁸⁰ Even though it is the respondent, not the petitioner, who is enjoined by a stay-away order, many survivors have faced backlash from judges and other actors within the criminal legal system if they continue to voluntarily have contact with the respondent after the issuance of a CPO.⁸¹

The carceral response assumes that separation is necessary for a survivor to obtain “safety,” and that physical safety is the survivor’s top priority.⁸² However, many survivors may not wish to separate from their partners for various reasons, but still want assistance to stop abuse, mitigate harm, or provide them with resources to separate at a later time if they choose to do so. In addition, survivors’ and legal actors’ conceptions of safety are often quite different. The legal system’s conception of IPV frequently assumes a goal of short-term physical safety, pursued through the temporary or permanent separation of the parties.⁸³ However, survivors who are forced to separate often end up isolated from their communities, which may have served as a source of safety for them and their families.⁸⁴ Mandatory policies requiring separation are not always effective at *achieving* temporary or permanent physical safety from violence, but also “assume[] that all [people] who have been battered would choose safety—defined as separation from an abusive partner—or accountability over autonomy.”⁸⁵ Presuming that survivors should leave abusive partners ignores the reality that many survivors do not have the resources to escape violence, and that losing resources will actually make them *less* safe.⁸⁶ Is a family that is not actively experiencing physical violence but cannot meet its basic housing, food, and other needs truly “safe”?

79. See GOODMARK, *A TROUBLED MARRIAGE*, *supra* note 35, at 83–105.

80. Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009, 1018 (2000) [hereinafter Coker, *Shifting Power for Battered Women*].

81. Some judges have even “fined or imprisoned [petitioners] for initiating contact with [the respondent] during the effective period of a [CPO].” GOODMAN & EPSTEIN, *supra* note 27, at 81.

82. “In interviews, judges emphasized the importance of enforcement of orders and the critical role of police and the criminal legal system in achieving the institutional goal of safety through separation.” Durfee, *Structural Inequality*, *supra* note 41, at 652. Some legal actors will refuse to assist survivors if they do not believe that separation (and the presumed attendant safety that comes from it) is their primary goal. “[L]egal professionals in reform institutions in the US—judges who routinely hear protection order or misdemeanor battering cases, court personnel hired to work with battered women, prosecutors, police officers, probation officers, and court clerks—presume that women *should* separate for their safety. . . . In fact, some actors refuse to assist women whom they do not view as serious about leaving their abusers.” Coker, *Transformative Justice*, *supra* note 21, at 133.

83. Margaret E. Johnson, *A Home with Dignity: Domestic Violence and Property Rights*, 2014 BYU L. REV. 1, 7–9 (2014).

84. *Id.* at 9.

85. Leigh Goodmark, *Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases*, 37 FLA. STATE U. L. REV. 1, 35 (2009).

86. See Coker, *Shifting Power for Battered Women*, *supra* note 80.

Even if survivors are primarily concerned with escaping physical violence, abruptly separating from a partner is not necessarily an effective means to do so. One of the most explored reasons a survivor may not wish to separate from their partner is fear of worsening violence. Researchers studying IPV have documented the problem of “separation violence” or “separation assault.”⁸⁷ The prevailing theory of IPV centers around the concept of power and control.⁸⁸ Theorists of separation violence found that abusers frequently increase violence after separation in an effort to regain control.⁸⁹ Separation-based remedies, including arrest and CPOs, attempt to minimize this risk by imposing legal consequences upon an abuser for failure to stay separated.⁹⁰ However, this imposed separation is usually temporary and often ineffective at preventing further violence.⁹¹ The risk of separation violence is directly contradictory to the stated aim of the criminal legal response, namely to stop the violence and ensure the survivor’s physical safety.

Survivors have many other reasons they may wish to stay with a partner, some related to safety and some related to other goals which they may prioritize above physical safety. Survivors face tradeoffs among various factors when they choose how to respond to abuse, and these tradeoffs are shaped by the complex, individualized context of their lives and relationships.⁹² Many survivors share children with their partners and want to maintain their children’s relationships with their other parent or maintain a traditional family structure.⁹³ They may also be concerned about the potential of losing custody.⁹⁴ Many depend upon their partner

87. See Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 65–68 (1991).

88. Jane K. Stoeber, *Transforming Domestic Violence Representation*, 101 KY. L.J. 483, 512 (2013) (“Currently, the Power and Control Wheel is the most prevalent model used for teaching about domestic violence.”). Leigh Goodmark documents the prevalence of the Power and Control Wheel as a tool in the anti-IPV community, but criticizes its use as prioritizing physical abuse. GOODMARK, A TROUBLED MARRIAGE, *supra* note 35, at 33–34.

89. See Mahoney, *supra* note 87, at 66–67; Robert Walker, TK Logan, Carol E. Jordan, & Jacquelyn C. Campbell, *An Integrative Review of Separation in the Context of Victimization: Consequences and Implications for Women*, 5 TRAUMA, VIOLENCE, & ABUSE 143, 158–59 (2004).

90. GOODMARK, A TROUBLED MARRIAGE, *supra* note 35, at 84, 88.

91. *Id.* at 84–85, 88–93.

92. Kristie A. Thomas, Lisa A. Goodman, & Susan Putnins, “*I Have Lost Everything*”: *Trade-Offs of Seeking Safety from Intimate Partner Violence*, 85 AM. J. ORTHOPSYCHIATRY 170, 171 (2015) (summarizing research regarding factors survivors consider in choosing strategies to “stop, escape from, or prevent violence”).

93. See Karin V. Rhodes, Catherine Cerulli, Melissa E. Dichter, Catherine L. Kothari & Frances K. Barg, “*I Didn’t Want to Put Them Through That*”: *The Influence of Children on Victim Decision-Making in Intimate Partner Violence Cases*, 25 J. FAM. VIOLENCE 485, 488 (2010) (finding that while some survivors chose to leave an abusive relationship to protect their children, others chose to stay out of “concern for ‘keeping the family together’”). A participant in another study waited to leave a relationship until it became physically violent because “she wanted to maintain the traditional nuclear family unit, and she did not feel ‘justified in uprooting [her] children’ until the violence became physical.” Thelma Riddell, Marilyn Ford-Gilboe, & Beverly Leipert, *Strategies Used by Rural Women to Stop, Avoid, or Escape from Intimate Partner Violence*, 30 HEALTH CARE FOR WOMEN INT’L 134, 147 (2009).

94. Walker, *supra* note 89, at 160–63.

financially and would be unable to meet their material needs without their partner's income and resources, including housing.⁹⁵ Survivors may also face pressure from their community or due to their own cultural or religious beliefs to stay in a relationship, even when facing abuse.⁹⁶ They may simply love their partner and value their relationship—IPV takes place in the context of emotionally complex relationships, and some survivors are unwilling to end a relationship with someone they love, even if maintain the relationship means enduring abuse.⁹⁷ They may also be willing to try to save a relationship that involves abuse, and in some cases they succeed.⁹⁸ The carceral response does not recognize any of these complex and individual decision-making factors. Instead, it mandates separation as a one-size-fits-all solution and closes the door to survivors who are not interested in that solution or for whom it is practically impossible.⁹⁹

2. Practical Barriers

The carceral response is not automatic—it requires repeated interactions with multiple agents of the state. These interactions can be actively harmful to many survivors.¹⁰⁰ But even setting aside these harms, survivors face practical barriers to accessing the options the carceral state provides.

Although law enforcement is a public service and CPOs do not incur filing fees, interacting with the carceral state is still not free.¹⁰¹ Reporting to the police takes time—a survivor may need to take time off from work for interviews with police or prosecutors. If they have children, they will likely need to find childcare for any meetings regarding their case. If reporting to the police results in prosecution, there may be many more court hearings and meetings to attend, imposing

95. See *id.* at 148–52; Ferraro, *supra* note 58, at 172.

96. Johnson, *A Home with Dignity*, *supra* note 83, at 9; Neely Mahapatra & Abha Rai, *Every Cloud Has a Silver Lining But... “Pathways to Seeking Formal-Help and South-Asian Immigrant Women Survivors of Intimate Partner Violence,”* 40 HEALTH CARE FOR WOMEN INT’L 1170 (2019).

97. Leigh Goodmark criticizes traditional theories of violence that pathologize survivors who love their partners: “The literature accepts the idea that some women subjected to abuse do, in fact, continue to say that they love their partners despite the abuse. But the literature explains this love away, almost apologizing for the desire of women to continue their relationships. [...] Because, of course, if a woman stays with her partner out of love, the domestic violence service system has very little to offer her.” GOODMARK, A TROUBLED MARRIAGE, *supra* note 35, at 98. See also Subadra Panchanadeswaran, Laura Ting, Jessica G. Burke, Patricia O’Campo, Karen A. McDonnell & Andrea C. Gielen, *Profiling Abusive Men Based on Women’s Self-Reports: Findings from a Sample of Urban Low-Income Minority Women*, 16(3) VIOLENCE AGAINST WOMEN 313, 318–21 (2010) (finding that in a study of 262 women who had reported experiencing abuse from their current partners, “most thought their partners were generally dependable and had positive traits” (321)); Kuennen, *supra* note 41, at 990–91.

98. GOODMARK, A TROUBLED MARRIAGE, *supra* note 35, at 96–100.

99. “It is a cruel trap when the state’s legal interventions rest on the presumption that women who are ‘serious’ about ending domestic violence will leave their partner while, at the same time, reducing dramatically the availability of public assistance that makes leaving somewhat possible.” Coker, *Shifting Power for Battered Women*, *supra* note 80, at 1018.

100. See Part III.A *infra*.

101. See Tarr, *supra* note 49, at 387–90.

further costs.¹⁰² This also applies to CPOs, which typically require multiple court appearances within a very short time period.¹⁰³

IPV disproportionately affects people living in poverty, so many survivors face the possibility of losing an hourly job by missing shifts.¹⁰⁴ In some circumstances, employers are prohibited by law from firing an employee for absence due to court appearance,¹⁰⁵ but invoking these protections necessarily requires that the employee disclose the existence of a court case. Survivors often struggle to maintain employment as a result of being subjected to violence,¹⁰⁶ so any further barriers affecting their ability to work only exacerbate this common aspect of IPV.

Interacting with the carceral state also carries an emotional and psychological toll. A survivor may need to repeat their story many times over the life of a case, from the initial call for help, to interviews with officers, meetings with advocates, and interviews with prosecutors and their staff.¹⁰⁷ Survivors of intimate partner violence experience high rates of post-traumatic stress disorder (PTSD).¹⁰⁸ Symptoms of PTSD include reexperiencing the traumatic events, along with “persistent avoidance of memories, feeling, people, places or situations that arouse recollection of the trauma.”¹⁰⁹ Survivors must necessarily deal with these symptoms when they are forced to talk about their experiences of IPV. This trauma is heightened if survivors need to testify in court. In this circumstance, not only is the survivor forced to relive their abuse, they must also do so in public, likely in front of their partner, and face cross-examination that will probe their motivations and any inconsistencies in their testimony.¹¹⁰ In the face of the emotional and psychological

102. See Ferraro, *supra* note 58, at 172.

103. For example, in Maryland, petitioners can seek an interim protective order from a commissioner if the courts are not open. MD. CODE ANN. FAM. LAW § 4-504.1(a). If an interim protective order is granted, a temporary protective order hearing must be held on the first or second day on which a judge is sitting, absent good cause. *Id.* § 4-504.1(e)(1)(ii). If a temporary order is granted, the court must set a final protective order hearing within 7 days. *Id.* § 4-505(c).

104. See Lisa D. Brush, *Battering and the Poverty Trap*, 8 J. POVERTY 23, 38 (2004); see generally Holly Bell, *Cycles Within Cycles: Domestic Violence, Welfare, and Low-Wage Work*, 9 (10) VIOLENCE AGAINST WOMEN 1245 (2003).

105. GOODMARK, DECRIMINALIZING DOMESTIC VIOLENCE, *supra* note 3, at 127–28.

106. *Id.* at 39–40.

107. See Andrea J. Nichols, *No-Drop Prosecution in Domestic Violence Cases: Survivor-Defined and Social Change Approaches to Victim Advocacy*, 29 J. INTERPERSONAL VIOLENCE 2114, 2129–30 (2014) [hereinafter Nichols, *No-Drop Prosecution*]; Costello & Durfee, *supra* note 54, at 309–10 (“Moving through the PO process is an emotionally taxing time that brings forward past incidents of abuse and forces the petitioner to relive their trauma in detail and repeat it to multiple service providers and legal actors.”).

108. Denise Hein & Lesia Ruglass, *Interpersonal Partner Violence and Women in the United States: An Overview of Prevalence Rates, Psychiatric Correlates and Consequences and Barriers to Help Seeking*, 32 INT’L J.L. & PSYCHIATRY 48, 49 (2009) (discussing studies that show “significantly higher rates of PTSD (ranging from 33% to 84%) among female survivors of intimate partner violence compared to women in the general public”).

109. *Id.* at 50.

110. Nichols, *No-Drop Prosecution*, *supra* note 107, at 2129–30; Anoosha Rohanian, *A Call for Change: The Detrimental Impacts of Crawford v. Washington on Domestic Violence and Rape Prosecutions*, 27 B.C. J.L. & Soc. JUST. 1, 21–22 (2017) (describing the impact of the right to cross-

toll of this re-traumatization, some survivors choose to simply not engage with the system.¹¹¹

Survivors who are members of subordinated communities, particularly immigrants and people of color, face additional practical barriers to engaging with the criminal legal system. Many survivors who are members of immigrant communities face language barriers in interacting with law enforcement and the court system.¹¹² There is also a lack of culturally specific services in the criminal legal system, and many survivors do not feel comfortable speaking to police or prosecutors who do not understand their cultural practices and the context of their personal and community relationships.¹¹³

Practical barriers extend beyond the criminal legal system. Seeking help from service providers, such as direct cash assistance programs, counseling, and medical care, also incurs costs of time, money, and re-traumatization.¹¹⁴ However, time spent obtaining non-criminal resources typically directly assists a survivor with the needs that they identify for themselves. By contrast, interaction with the criminal legal system is centered around the needs of the system itself to arrest and/or prosecute an identified offender.¹¹⁵ For many survivors, the practical barriers to reporting to law enforcement are not worth the tradeoff when the criminal legal system does not meet their needs.¹¹⁶

3. *Mismatch of Needs and Solutions*

The previous two sections identify ways in which engaging the criminal legal system may be harmful to some survivors. However, others may not want to interact with the system simply because it does not meet their needs.

examination elucidated in *Crawford v. Washington* on survivors as victim-witnesses in criminal prosecutions).

111. A study of women seeking CPOs found that 65% were afraid to take out an order, and many emphasized the emotional aspects of appearing in court in interviews. JAMES PTACEK, *BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSES* 145–50 (1999).

112. Natalie Nanasi, *A Fraught Pairing: Immigrant Survivors of Intimate Partner Violence and Law Enforcement*, in *THE POLITICIZATION OF SAFETY: CRITICAL PERSPECTIVES ON DOMESTIC VIOLENCE RESPONSES* 206 n.23 (Jane K. Stoeber ed., 2019).

113. Sarah R. Robinson, Kristen Ravi & Rachel J. Voth Schrag, *A Systematic Review of Barriers to Formal Help Seeking for Adult Survivors of IPV in the United States, 2005-2019*, 22 *TRAUMA, VIOLENCE & ABUSE* 1279, 1291 (2020) (“Survivors stated that they were unsure whether their experiences constituted IPV and whether services would be culturally sensitive, inclusive, and LBGTQ friendly.”).

114. *See id.* at 128992 (summarizing barriers survivors identified in seeking help from social services).

115. Theorists of domestic violence emphasize the “conflict between the goal of protecting individual victims seeking help and the state’s interest in sanctioning domestic violence as a crime against the state whereby the victim is treated as a mere witness, but one whose security could be compromised by aggressive state actions.” David A. Ford, Ruth Reichard, Stephen Goldsmith & Mary Jean Regoli, *Future Directions for Criminal Justice Policy on Domestic Violence*, in *DO ARRESTS AND RESTRAINING ORDERS WORK?* 243, 248 (Eve S. Buzawa & Carl G. Buzawa eds., 1996).

116. *See* Thomas, Goodman & Putnins, *supra* note 92, at 3; *LAW ENFORCEMENT EXPERIENCE REPORT*, *supra* note 68, at 68.

When survivors are asked about what they need or want in response to IPV, many focus on material and emotional needs, along with their safety and the safety of their children.¹¹⁷ In a 2008 survey of 3,410 women entering domestic violence shelters, the most commonly identified needs were “[s]afety for myself” (85%), “[f]inding housing I can afford” (83%), “[l]earning about my options and choices” (80%), and “[p]aying attention to my own wants and needs” (75%).¹¹⁸ By contrast, only 25% identified a “[p]rotective/restraining order” and only 16% identified “my abuser’s arrest” as needs.¹¹⁹ Another study found that while 83% of women seeking refuge at shelters needed help with protection from their partner, even more (88%) needed help healing emotionally from their experiences, and 73% and 81% needed help understanding the causes of domestic abuse and the impacts on them and their children, respectively.¹²⁰ High percentages also indicated survivors’ need for help with housing (87%), health care (87%), “benefits/finances” (67%), “jobs/work” (57%), and making decisions about their future (85%).¹²¹

The carceral state provides its own set of solutions. Arrest can “interrupt a violent situation” and provide a temporary state of physical safety by removing an abusive partner from a home or other location such as work or school, and stay-away orders issued in criminal cases or as part of CPOs can lengthen the period of forced separation.¹²² Some survivors may have access to funds through the carceral system via restitution, funding from victim-witness programs, and crime victim compensation.¹²³ Successful prosecution can, for some survivors, provide a sense of accountability for abuse and name the abuse as unacceptable social behavior.¹²⁴ When they are successfully enforced, CPOs can prohibit contact between parties if so desired and can order distribution of an abusive partner’s income or shared assets to materially support the survivor.¹²⁵

When we look at what survivors identify as their needs or goals and what the carceral state can provide, there is little overlap. Even when the carceral response

117. See, e.g., KRISTIN BUMILLER, IN AN ABUSIVE STATE: HOW NEOLIBERALISM APPROPRIATED THE FEMINIST MOVEMENT AGAINST SEXUAL VIOLENCE 120–21 (2008) (summarizing interviews with survivors who expressed goals focused on maintaining an independent private life, including home and car ownership and stable employment).

118. Eleanor Lyon, Shannon Lane & Anne Menard, MEETING SURVIVORS’ NEEDS: A MULTI-STATE STUDY OF DOMESTIC VIOLENCE SHELTER EXPERIENCES, FINAL REPORT 49, 62–63 tbl.11 (2008).

119. *Id.* at 6263 tbl. 11.

120. Cris M. Sullivan, Isabel Baptista, Sharon O’halloran, Lydia Okroj, Sarah Morton & Cheryl Sutherland Stewart, *Evaluating the Effectiveness of Women’s Refuges: A Multi-Country Approach to Model Development*, 32 INT’L J. COMPAR. & APPLIED CRIM. JUST. 291, 302 (2008).

121. *Id.*

122. See GOODMARK, *supra* note 3, at 15–16.

123. See *infra* Part II.A.

124. GOODMARK, *supra* note 3, at 15–16.

125. See *supra* Part I.B for further discussion of CPOs. Note that these benefits of CPOs are only effective if the order can be safely enforced, and material support is limited by the financial position of the abusive partner, which means that it is less available to low-income survivors.

purports to provide for a survivor's material needs, those resources are frequently limited and inaccessible to many survivors who do not fit the model of a "good victim."¹²⁶ Messaging to survivors tells them that the carceral response is necessary and will protect them, but in many cases, these promised outcomes do not occur, and they instead face continued abuse and harassment.¹²⁷

This mismatch between survivor-identified needs and the solutions defined by the carceral system makes sense, given the structure and incentives that shape the system. Arrest, prosecution, and other actions of the criminal legal system are taken on behalf of the state, not the survivor.¹²⁸ Cheryl Hanna, a law professor, former prosecutor, and prominent advocate for mandated victim participation in prosecution, argued that prosecutors should be willing to force victims to testify, even if it requires jailing them, or if "the state response to domestic violence is unacceptably undermined."¹²⁹ Hanna recognizes that forced victim participation may result in financial, emotional, and legal harm to survivors, but weighs these costs against the "consequences for the state" resulting from dropped prosecution.¹³⁰ While this approach has largely diminished, forced "cooperation" still takes place today. A judge in Jackson County, Oregon ordered a 20-year-old survivor of sexual and physical assault to be jailed for ten days as a material witness leading up to the trial of the accused perpetrator due to concerns that she would not appear.¹³¹ Both the judge and the prosecutor described the situation as "unusual but necessary."¹³² Not only does forced victim participation in prosecution remove the survivor's choice over which avenues to pursue, as in the case of the Jackson County survivor, but it can also result in further dehumanizing and traumatizing experiences, including the survivor themselves being subjected to the coercive arm of the state.

While CPOs can theoretically provide relief that better meets survivors' needs and goals, including monetary compensation, custody orders, orders to surrender firearms, and orders for respondents to receive counseling, survivors often do not actually receive these types of relief even when they request it.¹³³ Additionally, many CPO petitioners do not have legal representation and may face difficulties

126. See *infra* Part II.A.

127. Ferraro, *supra* note 58, at 174.

128. See, e.g., Judith Lewis Herman, *Justice from the Victim's Perspective*, 11 VIOLENCE AGAINST WOMEN 571, 575 (2005).

129. Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849, 1892 (1996).

130. *Id.* at 1892, 1898. See *infra* Part III.A.1 on the harms of no-drop prosecution.

131. *Medford Man Guilty of Sex Crimes, Victim Released from Jail*, ASSOCIATED PRESS, Sep. 21, 2022, <https://apnews.com/article/religion-crime-oregon-sexual-abuse-by-clergy-medford-9f4716a36b5d8eb00f38bc6e0e83b088>. [<https://perma.cc/3DAG-5FWE>].

132. *Id.*

133. Alesha Durfee & Leigh Goodmark, *Re-envisioning Protective Orders for Domestic Violence*, in CIVIL COURT RESPONSES TO INTIMATE PARTNER VIOLENCE AND ABUSE 63, 70–72 (Ruth E. Fleury-Steiner, M. Kristen Hefner & Susan L. Miller eds., 2020).

completing court forms.¹³⁴ If a request for relief is not included in a petition, judges might not inquire about that form of relief.¹³⁵

While 75% of callers to the National Domestic Violence Hotline between March and May 2021 who had called the police indicated that they wanted “police involvement at the time they called,” 71% reported that “if other resources had been available, they would have preferred to use those resources instead of calling the police.”¹³⁶ Respondents listed alternative needs such as “mental health services,” “housing,” “mediators,” “faith community,” “peers,” and “financial assistance,” and at least one survivor wanted it to come from “literally anyone not involved with the criminal justice system.”¹³⁷ 55% “believed the police discriminated against them in one or more ways,” and 39% actually felt “less safe after making the call.”¹³⁸ When survivors’ needs do not match the solutions offered by the criminal legal system, and when those solutions may in fact materially harm them, it is unsurprising that they may not want to interact with that system.¹³⁹

4. *Dangers of Police Interaction*

For many survivors, particularly those from subordinated communities, the criminal legal system is not just inaccessible or ineffective, it is actively dangerous. Survivors may not engage the carceral response because of practical barriers or because the means or goals of carceral interventions do not match their needs, as discussed above. But they may also not engage with the system because they are afraid of *state* violence against themselves, their partners, or other members of their community.¹⁴⁰ The risk of state violence is highly racialized and greater in subordinated communities that have historically experienced over-policing and police violence, including immigrant communities, communities of color, and the LGBTQIA+ community.¹⁴¹

The complexities of these harms are explored further in Part III.A.4. But in considering the impact of carceral entanglements, it is essential to frame any

134. A 2003 study of 142 women seeking civil protective orders in Baltimore found that “only thirty-six had legal representation for the protective order court hearing,” even though there was a VAWA-funded legal clinic on site. See 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, 50506, 511 (2003).

135. See Durfee & Goodmark, *supra* note 133, at 70–72.

136. LAW ENFORCEMENT EXPERIENCE REPORT, *supra* note 68, at 6, 11.

137. *Id.* at 11.

138. *Id.* at 8.

139. See Brown, *Ain’t I a Victim?*, *supra* note 62, at 168 (discussing a requirement in Miami-Dade County that an abuser’s employer be informed of their domestic violence conviction, and noting that “[i]ncreasing criminal sanctions against the batterers which do not benefit the battered victim alienate both abuser and the victim from the system”).

140. See generally ANDREA J. RITCHIE, *INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR* (2017).

141. *Id.* at 4369.

analysis around an understanding that the carceral response is not just ineffective, but actively harmful to many survivors.

II.

CARCERAL ENTANGLEMENTS: CREATING THE CIVIL-CARCERAL STATE

The carceral response is still the centerpiece of the social response (and especially the *state* response) to IPV.¹⁴² Scholars and advocates increasingly criticize the intense criminalization of this response, particularly as it relates to the experiences of women of color and other subordinated communities.¹⁴³ As part of this critique, the modern anti-IPV movement has partially shifted to advocating for remedies addressing the material needs of survivors in the community response to domestic violence.¹⁴⁴

This shift in strategies has corresponded with some expansion of the non-criminal response to IPV, with jurisdictions enacting policies to address the needs of survivors, such as access to safe housing,¹⁴⁵ family law protections,¹⁴⁶ direct financial assistance,¹⁴⁷ and immigration relief for some survivors.¹⁴⁸ However, many of these remedies are conditioned directly or indirectly upon engagement with police, maintaining the primacy of the carceral state in the response to IPV. Dorothy Roberts identifies and discusses numerous “carceral entanglements” between the family policing system and law enforcement.¹⁴⁹ Carceral entanglements also exist in the legal and social response to IPV.

These are not the only carceral entanglements related to IPV. Some state family law provisions link IPV-related custody presumptions to the existence of an

142. GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE*, *supra* note 3, at 33 (“Criminalization is the default response that policymakers and some antiviolenace advocates are loath, even afraid, to abandon. [...] The United States has developed a robust response to intimate partner violence. That response relies heavily on the effective operation of the criminal legal system.”); *see also generally* GRUBER, *supra* note 3 (analyzing and critiquing the historical and political development of the criminal legal system as the primary social response to IPV).

143. 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, 3233 (Jane K. Stoeber ed., 2019); GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE*, *supra* note 3; *see* RITCHIE, *supra* note 140, at 186–202. While these critiques are increasing and becoming more mainstream, some advocates, particularly Black and Brown women, have been critical of the carceral response since its incipience. DAVIS, DENT, MEINERS & RITCHIE, *supra* note 3, at 5173.

144. *See, e.g.*, Margaret E. Johnson, *Changing Course in the Anti-Domestic Violence Legal Movement: From Safety to Security*, 60 *VILL. L. REV.* 145, 148 (2015); ELEANOR LYON, SHANNON LANE & ANNE MENARD, *MEETING SURVIVORS’ NEEDS: A MULTI-STATE STUDY OF DOMESTIC VIOLENCE SHELTER EXPERIENCES* 115–118, 126 (2008).

145. *See infra* Part II.C.

146. *E.g.*, MD. CODE ANN. FAM. LAW §9-101.1 (West 2022) (requiring courts to consider evidence of abuse in making custody determinations and arrangements).

147. *See infra* Part II.A.

148. *See infra* Part II.B.

149. Roberts, *TORN APART*, *supra* note 51, at 191–220.

arrest, conviction, or CPO.¹⁵⁰ Federal programs that provide increased eligibility or waive certain requirements for survivors, such as Temporary Assistance for Needy Families (TANF), leave states and implementing agencies broad discretion to determine what circumstances merit these accommodations and how claimants can prove eligibility, so policies and individual caseworkers can require interaction with police in some cases.¹⁵¹ Remedies for survivors who have experienced coerced debt may be contingent upon reporting to police.¹⁵² This Part focuses on and analyzes four specific examples of carceral entanglement: (1) crime victim compensation programs; (2) immigration relief; (3) residential lease break provisions; and (4) institutional entanglements between agencies serving survivors and arms of the carceral state.

C. Crime Victim Compensation

IPV causes tangible and intangible harms to survivors. Remediating these harms costs money. Many survivors experience physical injuries and incur medical expenses for both immediate and long-term treatment.¹⁵³ In the aftermath of a violent incident, a survivor may also need to repair or replace personal property or secure their home if they have decided to separate from an abusive partner.¹⁵⁴

Perhaps even more prevalent is the emotional and psychological harm caused by IPV. Survivors may seek counseling to deal with trauma and other emotional harm for years.¹⁵⁵ Free support groups or counseling programs are available for survivors of IPV in some areas,¹⁵⁶ but these resources may not fit an individual

150. For example, Minnesota shifts the burden to the parent seeking custody or parenting time to prove that custody or parenting time is in child's best interests by clear and convincing evidence if the parent has been convicted of a crime from a specified list of felonies against a household member, making it harder for perpetrators of IPV to gain custody only in the case of a conviction. MINN. STAT. § 518.179 (2022).

151. States may but are not required to waive program requirements where applicants have been subject to IPV or are at risk of further violence upon "good cause", including the requirement that custodial parents seek child support from the non-custodial parent to reimburse the state. Federal law does not provide any guidance on how states should determine whether an applicant has "good cause." 42 U.S.C. § 602(a)(7).

152. See *infra* Part IV.B.

153. See Njeri Mathis Rutledge, *Looking a Gift Horse in the Mouth—The Underutilization of Crime Victim Compensation Funds by Domestic Violence Victims*, 19 DUKE J. GENDER L. & POL'Y 223, 242 (2011) (discussing potential medical costs incurred by survivors); GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE*, *supra* note 3, at 5253 (discussing urgent and chronic medical issues caused by intimate partner violence, and considering IPV as a public health issue).

154. Rutledge, *supra* note 153, at 227. See also PEGGY TOBOLOWSKY, DOUGLAS BELOOF, MARIO GABOURY, ARRICK JACKSON & ASHLEY BLACKBURN, *CRIME VICTIM RIGHTS AND REMEDIES* 165 (3rd ed. 2016).

155. See Rutledge, *supra* note 153, at 228, 269.

156. The National Domestic Violence Hotline maintains a directory of local resources for survivors of IPV, including legal advocacy, counseling, and shelter services, that can be filtered by specific population. However, not all of these services are available in every area. For example, a search for domestic violence counseling services in North Dakota specific to Black survivors returned no results. *Local Resources: Help where you need it*, NATIONAL DOMESTIC VIOLENCE

survivor's therapeutic or cultural needs, or they may simply have an established relationship with a provider or prefer a particular provider.

In addition to direct out-of-pocket expenses, IPV often results in the loss of time and opportunity. Seeking help itself takes time, which may mean missed work, increased childcare expenses, and additional transportation costs.¹⁵⁷ Some survivors may find themselves temporarily unable to work because of emotional and/or physical injury.¹⁵⁸ If a survivor chooses to report abuse to the police or seek judicial relief, they may lose additional work and incur costs in order to get to court.¹⁵⁹

Some of the costs associated with IPV may be recovered through restitution, which can be ordered against a criminal defendant after conviction.¹⁶⁰ However, restitution is only available if a defendant is charged and convicted, so this remedy is explicitly tied to the carceral state. It is also not immediately available to survivors; a conviction may take months or years, and even after the end of adjudication, the survivor and/or the state must engage in collection efforts.¹⁶¹ Particularly if a defendant is incarcerated, actually collecting restitution may take years, and many restitution awards are never paid.¹⁶² Scholars have also criticized the regressive and counter-productive nature of restitution awards. A defendant who does not have the ability to pay may be unable to gain employment, pay child support obligations, or otherwise support their family and community after incarceration, and the economic burden of restitution largely falls on already marginalized communities.¹⁶³ Since most instances of IPV occur between persons in similar

HOTLINE, <https://www.thehotline.org/get-help/domestic-violence-local-resources/> [<https://perma.cc/MX2R-L8EV>] (last visited July 18, 2022).

157. See Robinson, Ravi & Schrag, *supra* note 113, at 1288–89.

158. TOBOLOWSKY, BELOOF, GABOURY, JACKSON & BLACKBURN, *supra* note 154, at 165.

159. *Id.*

160. A defendant must be convicted of a crime for a court to order restitution, but some states permit orders of restitution for uncharged or unconvicted conduct if the defendant admits guilt to such conduct or agrees to restitution as part of a plea agreement. *Id.* at 169–74.

161. In 2016, the national “average time [from charging] to disposition was 256 days for a felony case and 193 days for a misdemeanor.” BRIAN J. OSTROM, LYDIA E. HAMBLIN, RICHARD Y. SCHAUFFLER, & NIAL RAAEN, NAT’L CENTER FOR STATE COURTS, TIMELY JUSTICE IN CRIMINAL CASES: WHAT THE DATA TELLS US 6, https://www.ncsc.org/_data/assets/pdf_file/0019/53218/Timely-Justice-in-Criminal-Cases-What-the-Data-Tells-Us.pdf [<https://perma.cc/5PNU-M6DY>]. The length of cases running through the courts has only been exacerbated by massive delays and backlogs during the COVID-19 pandemic. See Griff Witte & Mark Berman, *Long After the Courts Shut Down for COVID, the Pain of Delayed Justice Lingers*, WASHINGTON POST (Dec. 19, 2021, 6:00 AM), https://www.washingtonpost.com/national/covid-court-backlog-justice-delayed/2021/12/18/212c16bc-5948-11ec-a219-9b4ae96da3b7_story.html [<https://perma.cc/PQ8P-FE9T>].

162. TOBOLOWSKY, BELOOF, GABOURY, JACKSON & BLACKBURN, *supra* note 154, at 184–88.

163. E.g., Cristina Rodrigues, *The Cost of Justice: The Importance of a Criminal Defendant’s Ability to Pay in the Era of Commonwealth v. Henry*, 10 NE. UNIV. L. REV. 204, 265–75 (2018) (discussing the economic impact of court debt, including restitution, on defendants’ families and communities); Alexes Harris, Heather Evans, & Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115(6) AM. J. SOCIOLOGY 1753, 1777–85 (2010) (discussing economic and opportunity costs incurred by defendants as a result of legal debt, including restitution, fees, and fines).

economic positions, and frequently in the same household, survivors experiencing poverty are less likely to actually receive compensation through restitution.¹⁶⁴

To alleviate these limitations, “crime victim compensation” (CVC) “programs exist in all fifty states, the District of Columbia, and U.S. territories.”¹⁶⁵ CVC programs are typically available to victims of various types of violent crime resulting in injury or death.¹⁶⁶ CVC programs are generally considered more accessible than restitution because they do not depend upon the prosecution of a perpetrator.¹⁶⁷

CVC programs are administered by states, but they receive significant federal funding through the Victims of Crime Act (VOCA), which provides funding based on a percentage of awards made to claimants in the prior year.¹⁶⁸ Programs vary in eligibility and coverage provisions, but many provide coverage for medical expenses, lost work for court appearances, and counseling expenses.¹⁶⁹ While each program sets its own eligibility criteria, they must comply with VOCA requirements to receive funding.¹⁷⁰ VOCA requires programs to “promote[] victim cooperation” with law enforcement, but does not explicitly require them to set cooperation with law enforcement as an eligibility criterion.¹⁷¹ In practice however, almost all programs are only available to those who report to police and cooperate with prosecution.¹⁷² Most programs require that victims report to police within a specified time period, which may be as short as 48 hours after the crime.¹⁷³ Many also bar claimants if they are found to have contributed to the crime.¹⁷⁴ This is

164. See GOODMARK, A TROUBLED MARRIAGE, *supra* note 35, at 191 (reviewing research regarding economic factors that contribute to men committing abuse and finding that court-involved men typically have low incomes and levels of education).

165. Rutledge, *supra* note 153, at 230; TOBOLOWSKY, BELOOF, GABOURY, JACKSON & BELOOF, GABOURY, JACKSON & BLACKBURN, *supra* note 154, at 197 (“Crime victim compensation provides government compensation to a victim in circumstances in which a victim has not received or will not receive recompense from an offender or another source for crime-related losses.”).

166. TOBOLOWSKY, BELOOF, GABOURY, JACKSON & BLACKBURN, *supra* note 154, at 202.

167. VICTIMS COMM. OF THE CRIM. JUST. SECTION OF THE AM. BAR ASS’N, RESTITUTION FOR CRIME VICTIMS: A NAT’L STRATEGY 44 (2004).

168. 34 U.S.C. § 20102(a). State programs currently receive 60% of the amounts awarded to claimants “during the preceding fiscal year, other than amounts awarded for property damage.” *Id.*

169. For example, Connecticut provides compensation for loss of earning power, lost wages, uninsured medical expenses, losses to the family of a deceased victim, and any other related loss deemed to be reasonable. CONN. GEN. STAT. ANN. § 54-210 (West 2019). Pennsylvania permits payment of awards for “out-of-pocket loss, together with loss of past, present or future earnings or support resulting from such injury,” not to exceed \$35,000, except for additional amounts set aside for counseling, crime scene clean-up, and forensic rape examination. 18 PA. STAT. ANN. § 11.707 (West 2022). North Carolina allows expenses for “economic loss,” differentiating and disallowing “noneconomic detriment,” which includes “pain, suffering, inconvenience, physical impairment, or other nonpecuniary damage.” N.C. GEN. STAT. §§ 15B-2, 15B-4 (2022).

170. 34 U.S.C. § 20102(a)–(b).

171. *Id.* § 20102(b).

172. TOBOLOWSKY, BELOOF, GABOURY, JACKSON & BLACKBURN, *supra* note 154, at 202.

173. *Id.*

174. For example, South Carolina provides that CVC awards may be reduced or denied if the victim’s conduct “contributed to the infliction of his injury.” S.C. CODE ANN. § 16-3-1200 (2022).

particularly burdensome in jurisdictions with mandatory arrest or dual arrest policies.¹⁷⁵ In addition, because “contributory misconduct” and “fail[ure] to cooperate” are determined largely by police investigation and reports, existing racial bias and systemic inequities in policing result in higher rates of denial for Black victims of crime.¹⁷⁶

Even in jurisdictions that do not specifically require cooperation with police, many survivors are required to obtain and *keep in place* CPOs, regardless of their desire to do so, in order to access CVC awards. For instance, in the D.C. Superior Court CVC program, if a survivor dismisses a CPO, they are terminated from receiving assistance.¹⁷⁷ In order to receive funds in jurisdictions with this practice, a survivor must separate from their partner or, if they do not want to separate, open their partner up to carceral consequences if they continue to have contact.¹⁷⁸ Additionally, in some states, funding is limited for claimants who do not separate from their partners under the rationale that an offender may be unjustly enriched if the survivor receives funds.¹⁷⁹

The structure of VOCA funding whereby states receive funds based upon a percentage of awards paid in the previous year further entangles CVC with the carceral state. VOCA funds do not come out of the general federal revenue, but instead come mostly from fines and fees collected from federal criminal cases.¹⁸⁰ This means that the existence of VOCA funding relies structurally upon the

Many other states prohibit awards based upon contributory misconduct. *E.g.*, MINN. STAT. § 611A.53(2)(4) (2022) (prohibiting awards if “the victim or claimant was in the act of committing a crime at the time the injury occurred”); OHIO REV. CODE ANN. § 2743.60 (West 2022) (prohibiting awards based on various types of misconduct, including if the claimant was an accomplice to the crime, and directing the board to reduce an award based upon contributory misconduct); W. VA. CODE § 14-2A-14 (2022) (prohibiting an award if the claimant was an accomplice or offender or if they were incarcerated when the injury occurred, and directing the board to reduce awards based upon contributory misconduct).

175. *See infra* Part III.A.3.

176. A recent study by the Associated Press found that 33% of Black applicants denied CVC funds were denied for “behavior-based reasons like contributory misconduct,” compared to only 18% of denials to white applicants. In addition, “[t]he AP found disproportionately high denial rates [for Black applicants] in 19 out of 23 states willing to provide detailed racial data, the largest collection of such data to date.” Claudia Lauer and Mike Catalini, *Every State Offers Victim Compensation. For the Longs and Other Black Families, it Often Isn’t Fair*, A.P. NEWS, May 17, 2023, <https://apnews.com/article/crime-victims-compensation-racial-bias-58908169e0ee05d4389c57f975eae49b>.

177. Epstein & Goodman, *supra* note 61, at 430.

178. In the District of Columbia, violation of a protection order is punishable as a crime. D.C. CODE § 16-1005(f)-(g)(1). If a claimant is required to obtain and keep a protection order in place as a condition of receiving funds, they must therefore subject their partner to potential criminal consequences if they continue to have contact in violation of the protection order they were required to obtain.

179. TOBOLOWSKY, BELOOF, GABOURY, JACKSON & BLACKBURN, *supra* note 154, at 202. (“Although prohibited by VOCA from automatically excluding family members or cohabitants of the offender from compensation, many states do exclude such persons or others to the extent necessary to prevent unjust enrichment of an offender, as permitted by VOCA.”).

180. Fines and fees from federal criminal cases go into a general VOCA fund; funds are not linked to a specific defendant or victim.

continued prosecution of federal crimes. Ironically, the VOCA funding structure has also led to disinvestment in CVC programs at the state level. Since programs began relying on VOCA funding, fewer than fifteen states now use general revenue sources to contribute to their CVC programs.¹⁸¹

In those states that still provide funding from their general revenue, programs may seek reimbursement for funds paid out to claimants through restitution as part of a criminal prosecution.¹⁸² Even if programs interpret VOCA's cooperation requirements leniently or provide exceptions for certain crimes and situations, these funding structures mean that the entire CVC system is inextricably entangled with the carceral state on an institutional level.

Many survivors need direct monetary compensation in order to leave a relationship if they choose, repair the harms of past violence, and provide for continued economic stability, which may also serve to prevent future violence.¹⁸³ Advocates of transformative justice (discussed further in Part IV.B) emphasize that access to direct funds is essential to providing for the material needs of survivors, and that such funds must not be conditional.¹⁸⁴ Reporting and cooperation requirements, structural funding issues, and other limitations on receipt of CVC funds impede access and make it difficult or impossible for survivors to meet their material needs if they do not wish to or cannot engage with the carceral state.

B. Immigration Relief

IPV disproportionately impacts immigrant populations, in part due to other intersecting vulnerabilities.¹⁸⁵ Congress has enacted specific forms of immigration relief for victims of crime, including survivors of IPV, attempting to alleviate

181. TOBOLOWSKY, BELOOF, GABOURY, JACKSON & BLACKBURN, *supra* note 154, at 202.

182. Minnesota grants the state subrogation rights from any collateral source for funds paid out by its CVC program and requires claimants to assist the state in pursuing subrogation rights. MINN. STAT. ANN. § 611A.61 (2022). The Court of Appeals of Washington has upheld the statutory requirement that a convicted defendant be ordered to pay costs paid by the state's crime victim's compensation fund. *See State v. McCarthy*, 313 P.3d 1247, 125253 (Wash. Ct. App. 2013). Similarly, the Superior Court of Pennsylvania has upheld the state's right to collect restitution for funds paid out to victims through the Crime Victim's Compensation Fund. *Commonwealth v. Solomon*, 25 A.3d 380, 39091 (Pa. 2011).

183. *See generally*, GOODMARK, DECRIMINALIZING DOMESTIC VIOLENCE, *supra* note 3, at 123–30 (proposing economic policies such as direct cash transfer programs and microfinancing programs to address economic causes and harms of IPV); Coker, *Shifting Power for Battered Women*, *supra* note 80, at 1020–23 (discussing how lack of financial resources prevents survivors from making uncoerced choices regarding how to deal with violence and increase likelihood of future violence).

184. Coker, *supra* note 21, at 149 (“Transformative justice should address the material needs of the victim whether through unencumbered access to crime victim compensation programs or through direct transfers of money or services from the abuser or his family to the victim.” (citation omitted)).

185. Nanasi, *A Fraught Pairing*, *supra* note 112, at 205 (“The interplay and intersection of immigration laws, language barriers, social and familial isolation, financial constraints, and cultural issues leave many immigrant women vulnerable to exploitation with few options to remedy their situations.”); Rachel Gonzalez Settlage, *Uniquely Unhelpful: The U Visa's Disparate Treatment of Immigrant Victims of Domestic Violence*, 68 RUTGERS U. L. REV. 1747, 175455 (2016).

some of this harm. Particularly relevant to this Article are the U-visa and the T-visa. The U-visa is available to victims of a specified list of crimes committed in the U.S. or that violated U.S. law, and victims who have suffered “substantial physical or mental abuse as a result.”¹⁸⁶ Importantly, applicants are not eligible for relief simply because they have been subjected to violence; rather, they must possess information about the crime and prove their helpfulness in investigating and/or prosecuting the crime.¹⁸⁷

Applicants must prove helpfulness by submitting a certification form “signed by a federal, state, or local law enforcement official, prosecutor, judge, or any other entity that has criminal investigative jurisdiction” over specified crimes.¹⁸⁸ An applicant has an ongoing obligation to assist police and prosecutors, and the certification can be revoked if they fail to do so.¹⁸⁹ Agencies are not required to sign U-visa certification forms under federal law, even if an applicant “reports and is fully cooperative” with an investigation, leaving significant discretion to individual law enforcement agencies in determining an applicant’s eligibility.¹⁹⁰

A similar form of relief, the T-visa, is available for victims of trafficking.¹⁹¹ Like the U-visa, the T-visa provides status and a potential path to citizenship for eligible undocumented persons who have been subjected to various forms of trafficking.¹⁹² The T-visa application requires compliance with “any reasonable request for assistance” from law enforcement or prosecutors.¹⁹³ Importantly, while the T-visa requires applicants to comply with reasonable requests from law enforcement, it does *not* require them to affirmatively report to law enforcement, unlike the U-visa.¹⁹⁴ This allows trafficking survivors to determine the approach that works best for them, rather than dictating interaction with the carceral state as the first and only means to access relief. Similarly, the Violence Against Women Act (VAWA) self-petition process, which is available to spouses of U.S. citizens and lawful permanent residents who have been abused by their spouse, does not

186. 8 U.S.C. § 1101(a)(15)(U)(i).

187. *Id.*

188. Nanasi, *A Fraught Pairing*, *supra* note 112, at 204; 8 U.S.C. § 1101(a)(15)(U)(i).

189. A certification must attest that the applicant “has been helpful, is being helpful, or likely to be helpful” in an investigation or prosecution, and “since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested.” 8 C.F.R. § 214.14(b)(3) (2020). Even after a petition has been approved, it may be revoked if “the certifying official withdraws the U nonimmigrant status certification [...] or disavows the contents in writing.” 8 C.F.R. § 214.14(h)(2) (2020). Through this revocation mechanism, law enforcement officers and prosecutors can continue to hold the threat of immigration consequences over the heads of survivors if they do not continue to cooperate.

190. Nanasi, *A Fraught Pairing*, *supra* note 112, at 210.

191. 8 U.S.C.A. § 1101(a)(15)(T) (West). The T-visa is available to victims of both sex trafficking and labor trafficking.

192. See Denise Brennan, *Key Issues in the Resettlement of Formerly Trafficked Persons in the United States*, 158 U. PA. L. REV. 1581, 158586 (2010).

193. 8 U.S.C.A. § 1101(a)(15)(T)(i)(III) (West).

194. See *id.*

inherently require engagement with law enforcement.¹⁹⁵ The fact that evidence outside of criminal reporting and cooperation is acceptable in the T-visa and VAWA self-petition contexts shows this could be a feasible policy solution for the U-visa.

In the context of T-visas and VAWA self-petition, because law enforcement cooperation requirements are less stringent than in the U-visa process, survivors can obtain evidence that they have experienced abuse from a wide range of sources, increasing the opportunities for them to access culturally and linguistically appropriate resources.¹⁹⁶ When they are required to obtain a certification from law enforcement, by contrast, accessibility becomes drastically more limited. Undocumented survivors are particularly vulnerable to police and face the additional fear of deportation in encounters with state actors.¹⁹⁷ Language is also a frequent barrier for immigrants that makes access to law enforcement resources more difficult.¹⁹⁸ Specifically requiring evidence from law enforcement only heightens these barriers.

In addition to these more tangible barriers, the various forms of immigration relief available to survivors also create more normative and existential problems that pervade other carceral entanglements. The fact that some remedies are only available to survivors willing to cooperate with the state in the pursuit of its punitive aims reveals an implied goal to further the reach of the carceral state, rather than to stop violence. Scholars Pooja Gehi and Soniya Munshi argue that the purpose of many forms of immigration relief for survivors of domestic violence is to

195. 8 U.S.C.A. § 1154(1)(A)(iii) (2022); Natalie Nanasi, *The U Visa's Failed Promise for Survivors of Domestic Violence*, 28 YALE J. L. & FEMINISM 273, 282 (2018) [hereinafter Nanasi, *The U Visa's Failed Promise*].

196. See Nanasi, *The U Visa's Failed Promise*, *supra* note 195, at 31415 (discussing the less stringent requirements of the T-visa and VAWA self-certification processes). A non-citizen survivor married to a U.S. citizen may self-petition for citizenship “if the alien demonstrates to the Attorney General that—(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been battered or has been the subject of extreme cruelty perpetrated by the alien’s spouse or intended spouse.” 8 U.S.C.A. § 1154(1)(A)(iii) (2022). The VAWA self-petition mechanism does not prescribe any particular source or method of proof to demonstrate such eligibility. See *id.* Applicants for T visas must have “complied with any reasonable request for assistance” with an investigation or prosecution related to trafficking, but may be excused from this requirement if they are “unable to cooperate [...] due to physical or psychological trauma” or if they are a minor. 8 U.S.C.A. § 1101(a)(15)(T)(i)(III) (West). “Moreover, law enforcement certification is not required to obtain a T visa. Applicants may instead submit ‘secondary evidence of compliance with reasonable requests for assistance.’” Nanasi, *The U Visa's Failed Promise*, *supra* note 195, at 31415. This means that T-visa applicants are not at the mercy of law enforcement officers to certify their compliance. While these requirements are more stringent than those of the VAWA self-certification mechanism, they allow for a broader range of sources of proof and more flexibility in required interactions with law enforcement than U-visa requirements.

197. Gehi & Munshi, *supra* note 45, at 31; Nanasi, *A Fraught Pairing*, *supra* note 112, at 208–210; Robinson, Ravi & Schrag, *supra* note 113, at 1289.

198. Coker, *Shifting Power for Battered Women*, *supra* note 80, at 1031; Robinson, Ravi & Schrag, *supra* note 113, at 1288.

delineate “good immigrants” as compared to “bad immigrants.”¹⁹⁹ Gehi and Munshi argue that these remedies have “furthered neoliberal ideals of good, cost-effective, self-reliant citizenry in which uncooperative immigrants would be disciplined and excluded but cooperative immigrants whose victimization is recognizable by the state are subject to exception.”²⁰⁰ Carceral entanglements in these remedies only deepen the insidious effects of policies separating “good” and “bad” immigrants by allowing the carceral state to dictate what it means to be “good” or “bad.”

C. Residential Lease Break Provisions

A lack of stable and affordable housing is one of the economic factors most closely associated with IPV.²⁰¹ Independent, stable housing can be a source of power and dignity for survivors of IPV, even if they choose to maintain a relationship with an abusive partner.²⁰² On the other hand, eviction and other forms of housing loss are common and debilitating problems for survivors.²⁰³

In addition to its self-petition process in the immigration context, VAWA also provides protections to survivors who are tenants or prospective applicants of covered federal housing programs.²⁰⁴ The most recent iteration of VAWA grants survivors the right to not be denied admission, be evicted, or have their assistance terminated because of violence against them;²⁰⁵ request that an abuser be removed from a lease and have the opportunity to establish eligibility for a housing program if the abuser was the sole recipient of assistance;²⁰⁶ continue to receive Housing Choice Voucher assistance (subject to availability) in the case of the need to move in an emergency;²⁰⁷ and seek an emergency transfer to another unit in covered public housing programs.²⁰⁸

Tenants can certify their eligibility for these protections by producing one of several document types, including a document signed by a victim service provider, attorney, medical professional, or mental health professional or a record of a law enforcement agency, court, or administrative agency.²⁰⁹ Importantly, a tenant can also self-certify their eligibility status using a form approved by the Department of Housing and Urban Development.²¹⁰ The form states that the tenant is a victim

199. Gehi & Munshi, *supra* note 45, at 18–19.

200. *Id.* at 15, 16.

201. GOODMARK, DECRIMINALIZING DOMESTIC VIOLENCE, *supra* note 3, at 41–45 (2018).

202. See Margaret E. Johnson, *A Home with Dignity: Domestic Violence and Property Rights*, 2014 BYU L. REV. 1, 15–17 (2014).

203. GOODMARK, DECRIMINALIZING DOMESTIC VIOLENCE, *supra* note 3, at 41–42, 44.

204. 34 U.S.C. § 12491(b)(1).

205. *Id.*

206. *Id.* § 12491(b)(3)(B).

207. *Id.* § 12491(f).

208. *Id.* § 12491(e).

209. *Id.* § 12491(c)(3).

210. *Id.* § 12491(c)(3)(A).

of “domestic violence, dating violence, sexual assault, or stalking”; that the incident of violence meets the requirements of VAWA’s housing protections; and asks the tenant to provide the name of the person who committed the violence, “if the name is known and safe to provide.”²¹¹

VAWA housing protections provide an avenue for recipients of federally funded housing assistance to retain access to stable and affordable housing if they choose to leave an abusive relationship. However, these protections are unavailable to tenants in privately leased properties.²¹² In 2016, 40.6 million Americans were living in poverty.²¹³ In that same year, approximately 5.1 million units of housing were federally subsidized, including only about one million units of public housing.²¹⁴ Due to the lack of federally owned or subsidized affordable housing, the vast majority of tenants in the United States live in privately owned and leased properties and are unable to access federal housing protections for victims of IPV.²¹⁵ Waitlists for subsidized housing programs are frequently years long, and the wait disproportionately impacts households with extremely low incomes.²¹⁶ Additionally, even if a survivor has access to federally subsidized housing programs, some VAWA housing protections are subject to availability of units.²¹⁷ Since subsidized housing is in such high demand, many survivors may be forced out of their subsidized housing and into the private rental market if they need to flee an unsafe housing situation and no unit is available.

211. *Id.*; U.S. DEP’T HOUS. & URB. DEV., Form HUD-5382, *Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation* (2016).

212. 34 U.S.C. §§ 12491(a)(3), (b)(1).

213. JESSICA L. SEMEGA, KAYLA R. FONTENOT & MELISSA A. KOLLAR, U.S. CENSUS BUREAU, *INCOME AND POVERTY IN THE UNITED STATES: 2016, CURRENT POPULATION REPORTS 12* (2017).

214. CONG. RSCH. SERV., RL34591, *OVERVIEW OF FEDERAL HOUSING ASSISTANCE PROGRAMS AND POLICY 40* (2019).

215. Deborah Weissman, *In Pursuit of Economic Justice: The Political Economy of Domestic Violence Laws and Policies*, 2020 UTAH L. REV. 1, 16 (2020) (“[H]ousing assistance and safeguards apply only to those who demonstrate that they meet VAWA’s narrow crime-related definition and reside in certain federally-funded units; but VAWA does not apply such protections or safeguards to or otherwise encumber private housing markets.”); SONYA ACOSTA & ERIK GARTLAND, CTR. ON BUDGET & POL’Y PRIORITIES, *FAMILIES WAIT YEARS FOR HOUSING VOUCHERS DUE TO INADEQUATE FUNDING 2* (2021) (“Despite the demonstrated benefits of rental assistance and effectiveness of vouchers specifically, resources fall far short of need. Only 1 in 4 households eligible for rental assistance receive it due to funding limitations.”); *see also id.* at 2–6, 11–12.

216. *See* ACOSTA & GARTLAND, *supra* note 215, at 2–6, 11–12 (documenting wait times ranging from eight months to eight years on waitlists for the 50 largest housing agencies in the country, and noting the predominance of extremely low-income households on those lists); *see also* Lillian Reed, *Baltimore To Stop Taking Public Housing Applications, Citing Average 5-Year Delay for Those on Wait List*, THE BALTIMORE SUN (Nov. 12, 2019), <https://www.baltimoresun.com/maryland/baltimore-city/bs-md-ci-housing-authority-20191112-20191112-to7xezy6s5bn3afcou4wtrqz14-story.html> [https://perma.cc/7KNY-29UH].

217. Emergency transfers to another unit must be allowed “when a safe unit is immediately available.” 24 C.F.R. § 5.2005(e)(5). Providers must have an emergency transfer plan for when a safe unit is not immediately available, which must include policies to assist with internal and external transfers. 24 C.F.R. §§ 5.2005(e)(6), 2005(e)(7). However, this does not guarantee a move to a safe unit.

To address the discrepancy between protections available to tenants in federally subsidized and those in privately owned housing, some states have enacted policies that apply to the private housing market.²¹⁸ In response to the risk of landlords taking adverse action against tenants upon learning about violence in the home, “some states have enacted legislation making it unlawful for landlords to terminate tenancies, refuse to renew leases, or refuse to enter rental agreements as a result of intimate partner violence.”²¹⁹ Advocates have also recognized that a person subjected to IPV may need to flee unsafe housing with short notice, and they could face long-lasting financial obligations and barriers to obtaining housing in the future if they face eviction proceedings because they are unable to break their lease without penalty.²²⁰ In response, at the time of this writing, 29 states and the District of Columbia have enacted statutory provisions permitting a tenant who has been a victim of IPV to terminate a lease early.²²¹

While the specific aspects of each lease-break provision vary, most allow a tenant who fears IPV to provide their landlord notice, accompanied by some form of documentation, to be relieved from the continuing obligation to pay rent.²²² The most burdensome jurisdictions explicitly require tenants to produce a police report or CPO. Indiana requires a tenant to produce a criminal no-contact order or CPO *and* a safety plan approved by an accredited service provider which recommends relocation.²²³ This requires the tenant to interact with police or go to court to obtain a CPO, which puts them and their partner at risk for future interaction with law enforcement²²⁴ and also requires them to seek services from an additional state-approved provider, which must approve their decision to move.

Nine states with lease-break provisions require a tenant to provide a CPO, criminal no-contact order, police report, criminal complaint, proof of a condition

218. See GOODMARK, *DECriminalizing Domestic Violence*, *supra* note 3, at 128–29.

219. *Id.*

220. *Id.*

221. See *infra* notes 222, 223, 225–232 and accompanying text.

222. Unlike other states with lease-break provisions, Illinois, Missouri, and Wyoming allow tenant-survivors to raise providing notice to a landlord as an affirmative defense in an action to recover rent due to breach of lease, but not to formally terminate their lease. 765 ILL. COMP. STAT. 750/15 (2018); MO. REV. STAT. § 441.920 (2019); WYO. STAT. ANN. § 1-21-1303 (West 2011). This may leave some tenants vulnerable to other collection methods for past-due rent. Other states permit tenant-survivors to affirmatively terminate their lease, rather than raising the issues as a defense. *E.g.*, ARIZ. REV. STAT. ANN. § 33-1318 (2018) (permitting tenant to terminate lease and avoid liability for future rent); CAL. CIV. CODE § 1946.7 (West 2021) (providing that tenant-survivor is released from obligation to pay rent no more than 14 days after providing notice); IND. CODE § 32-31-9-12 (2007) (permitting tenant-survivor to terminate lease and releasing them from liability to pay rent after termination); ME. REV. STAT. ANN. tit. 14, § 6002(4) (West 2019) (permitting tenant to terminate lease and releasing them from liability for rent after termination); MINN. STAT. ANN. § 504B.206 (West 2022) (permitting tenant-survivor to terminate lease and releasing them from liability for rent after termination); OR. REV. STAT. ANN. § 90.453 (West 2022) (permitting tenant-survivor to terminate lease upon 14 days’ notice and releasing them from liability for rent after termination).

223. IND. CODE §§ 32-31-9-7, 32-31-9-12.

224. See *infra* Part III.A.2.

of release including a no-contact provision, or proof of a conviction for IPV.²²⁵ Only two states, Delaware and North Dakota, permit tenants to terminate their leases due to IPV without requiring any documentation.²²⁶ Additionally, Vermont requires a tenant to provide documentation of their reasonable belief that they must vacate the unit due to abuse, but permits self-certification of the tenant's status as a victim of IPV, signed under the penalty of perjury on a standardized form, as an acceptable form of documentation.²²⁷

The remaining fifteen states with lease-break provisions and D.C. require documentation of a tenant's status as a victim, but will accept alternative documentation such as a statement by a "qualified third party" attesting that the tenant is a victim.²²⁸ The definition of a "qualified third party" varies widely across jurisdictions.²²⁹ Some states permit a wide range of people to serve as a qualified third party, such as New York, whose list of qualified third parties includes:

[A]ny law enforcement officer; employee of a court of the state; attorney, physician, psychiatrist, psychologist, social worker, registered nurse, therapist, or clinical professional counselor licensed to practice in any state; person employed by a government or non-profit agency or service that advises or provides services to persons regarding domestic violence; or any member of the clergy of a church or religious society or denomination.²³⁰

This expansive list enables tenants to seek assistance from a diverse range of service providers, such as social workers, counselors, medical professionals,

225. ARIZ. REV. STAT. ANN. § 33-1318 (2018); IND. CODE §§ 32-31-9-7, 32-31-9-12 (2007); KY. REV. STAT. ANN. § 383.300 (West 2017); MD. CODE ANN. REAL PROP. § 8-5A-03 (West 2011), § 8-5A-04 (West 2011); NEV. REV. STAT. § 118A.345(3) (2017); N.C. GEN. STAT. ANN. § 42-45.1 (West 2005); UTAH CODE ANN. § 57-22-5.1 (West 2020); VA. CODE ANN. § 55.1-1236 (West 2019); WIS. STAT. ANN. § 704.16 (West 2014).

226. Delaware permits "a tenant who is the victim of domestic abuse, sexual offenses, stalking, or a tenant who has obtained or is seeking relief from domestic violence or abuse from any court, police agency, or domestic violence program or service" to terminate their lease early upon 30 days' written notice. DEL. CODE ANN. tit. 25, § 5314 (West 2023) (emphasis added). Although North Dakota does not require a tenant-survivor to provide their landlord with *documentation* of their status, tenants may only terminate their lease under this provision if they fear "imminent domestic violence from a person named in a court order, protection order . . . ex parte temporary protection order, order prohibiting contact, restraining order, or other record filed with a court." N.D. CENT. CODE § 47-16-17.1 (2015).

227. VT. STAT. ANN. tit. 9, § 4472 (West 2019).

228. CAL. CIV. CODE § 1946.7 (West 2021); COLO. REV. STAT. § 38-12-402(2) (West 2017); CONN. GEN. STAT. § 47a-11e (2019); D.C. CODE § 42-3505.07 (2009); HAW. REV. STAT. § 521-80 (2021); 765 ILL. COMP. STAT. 750/15 (2018); LA. REV. STAT. ANN. § 9:3261.1 (2015); ME. REV. STAT. tit. 14, §§ 6001(6)(H), 6002(4) (2019); MASS. GEN. LAWS ANN. ch. 186 § 24 (2013); MICH. COMP. LAWS ANN. § 554.601b (West 2010); MINN. STAT. ANN. § 504B.206 (West 2010); MO. REV. STAT. § 441.920 (2019); N.Y. REAL PROP. LAW § 227-c (McKinney 2019); OR. REV. STAT. ANN. § 90.453 (West 2016); TEX. PROP. CODE ANN. §§ 92.016 (2019), 92.0161 (2021); WASH. REV. CODE § 59.18.575 (West 2019); WYO. STAT. ANN. § 1-21-1303 (West 2011).

229. *Id.*

230. N.Y. REAL PROP. LAW § 227-c(2)(c)(iv)(A).

members of the clergy, and attorneys, which broadens access for those who may not have safe access to, or simply do not want to interact with, certain system actors.

Of the jurisdictions that allow tenants to use a statement by a qualified third party to document their eligibility, several limit the third party to an employee of a particular agency. For instance, Connecticut requires a tenant to submit a copy of a police report or court record or “a signed written statement from an employee of the Office of Victim Services within the Judicial Department or the Office of Victim Advocate detailing an act of family violence or sexual assault against the tenant or the tenant’s dependent.”²³¹ This limits the tenant’s options and requires them to interact with an agent of the state closely associated with law enforcement. Similarly, Louisiana defines a qualified third party as “the executive director, program director, or another employee of a community-based shelter contracted with the Department of Children and Family Services . . . provided the employee is a Licensed Clinical Social Worker (LCSW) or possesses a master’s degree in Social Work (MSW).”²³² Many survivors, particularly people of color, are hesitant to interact with child welfare services due to those agencies’ history of disproportionately removing children from homes for reasons steeped in racial and socioeconomic bias.²³³

Lease-break provisions are specifically intended for emergency situations where a tenant must leave a housing situation quickly due to potential imminent violence. However, a jurisdiction like Indiana, which requires a tenant-survivor to produce both a criminal no contact order or CPO *and* a safety plan from an accredited organization recommending relocation in order to terminate their lease, forces the tenant to interact with multiple systems of state actors, attend hours of appointments with service providers, and expose private information to their landlord, all on a time-sensitive basis while the tenant also makes the practical arrangements necessary to move to a new home.²³⁴ As discussed above, a small number of jurisdictions reduce the barriers to this essential civil remedy by permitting a tenant to self-certify their status as a victim and need to relocate. Apart from these examples, while some jurisdictions such as New York give tenants more flexibility, all put in place some practical barriers to lease-breaking through documentation requirements, and to varying extents force tenants to interact with the state in a manner wholly unrelated to their contractual relationship with their landlord.

D. Institutional Entanglement: Forced Cooperation Between Community Agencies and Law Enforcement

The specific remedies discussed above create carceral entanglements by requiring individual survivors to interact with the carceral state. However, the social

231. CONN. GEN. STAT. § 47a-11e(b)(2).

232. LA. REV. STAT. § 9:3261.1(B)(6).

233. *See infra* Part III.A.5.

234. IND. CODE § 32-31-9-7, 32-31-9-12.

and legal response to IPV also creates institutional entanglements between agencies serving survivors and the carceral state. These entanglements are imposed externally by funding conditions requiring partnership with law enforcement agencies, as well as internally within the advocacy community in the form of voluntary programmatic partnerships with law enforcement and, in some cases, shared resources.

The passage of VOCA in 1984 and VAWA in 1994 led to the rise of a massive funding structure for the provision of services to survivors of IPV, including large investments in the apparatuses of the carceral state.²³⁵ Like all grant funding, this money does not come without strings. VAWA and VOCA grant recipients are strongly pressured to interact with law enforcement in order to receive funding.²³⁶ These interactions may include participating in coordinated community response teams,²³⁷ joint training with law enforcement,²³⁸ and sharing resources with law enforcement as partners.²³⁹

In addition to (both coerced and voluntary) collaborations with law enforcement, many agencies serving survivors also share literal physical space and resources. The advent of Family Justice Centers, which are frequently marketed as a “one stop shop” for survivors to obtain resources including law enforcement assistance, means that to access some of these services, survivors must go to a physical place where police are present.²⁴⁰ Family Justice Centers receive funding

235. In fiscal year 2020, \$3.8 billion of funding was awarded to 7,209 subgrantees under VOCA’s Victim Assistance Formula Grant Program. The second most common subgrantee type (after nonprofit organizations) was government agencies, 2,089 of which received funds, and the most common designation for government agencies was “prosecutor services.” By far the most common service provided using VOCA funds in FY 2020 (provided 10,862,389 times) was “notification of criminal justice events.” OFF. OF VICTIMS OF CRIME, U.S. DEP’T OF JUST., VICTIMS OF CRIME ACT VICTIM ASSISTANCE FORMULA GRANT PROGRAM (2021), <https://ovc.ojp.gov/program/victims-crime-act-voca-administrators/performance-reports/fy-2020-voca-assistance-performance-report.pdf> [https://perma.cc/G8D2-L88D]; see also Leigh Goodmark, *Hands Up at Home: Militarized Masculinity and Police Officers Who Commit Intimate Partner Abuse*, 2015 BYU L. REV. 1183, 1223–28 (2015) (discussing increases in funding for law enforcement through VAWA) [hereinafter Goodmark, *Hands Up at Home*].

236. State recipients of the STOP Violence Against Women formula grant must allocate 25% to law enforcement, 25% to prosecutors, 30% to victim services, 5% to state and local courts, and 15% to discretionary distribution. In 2020, 56 STOP awards totaling over \$152.9 million were distributed. OFF. ON VIOLENCE AGAINST WOMEN, U.S. DEP’T OF JUST., FORMULA GRANT PROGRAMS, <https://www.justice.gov/ovw/page/file/1117621/download> [https://perma.cc/67YR-NUZM]. Recipients providing legal assistance must complete training developed in collaboration with service providers and coalitions, as well as appropriate law enforcement officials, and must inform those entities about their work. 34 U.S.C. § 20121(d).

237. See GOODMAN & EPSTEIN, *supra* note 27, at 82–87.

238. 34 U.S.C. § 20121(d)(2).

239. 34 U.S.C. § 10461(b)(10) (authorizing grants to fund family justice centers to bring together various service providers and law enforcement representatives “in order to improve safety, access to services, and confidentiality for victims and families”).

240. See Mimi Kim, *Dancing the Carceral Creep: The Anti-Domestic Violence Movement and the Paradoxical Pursuit of Criminalization, 1973-1986*, at 1–2 (Oct. 14, 2015) (U.C. Berkeley ISSI Fellows Working Papers Series 2013-2014.70), <https://escholarship.org/uc/item/804227k6>

through VAWA, and most prioritize the carceral response to IPV.²⁴¹ At some Family Justice Centers, survivors cannot seek help without risking consequences including denial of services or worse, arrest, if there is a chance they have an outstanding warrant. One advocate noted, “Any person who goes to get help at Family Advocacy Center—which by design is the only place in town where rape victims can receive medical treatment—must pass a background check. If the person has a warrant, the police will be called. If they don’t ‘pass’ the check, they will be denied services.”²⁴²

Since funding contingent on interaction with law enforcement was first offered, some members of the anti-IPV community have identified the lure of such funding and argued that it is harmful to survivors and their communities. When funding linking services for survivors with law enforcement was first offered through the Law Enforcement Assistance Administration (LEAA) in the 1970s, a wing of the feminist movement urged community organizations not to accept it.²⁴³ Sociologist Mimi Kim cites a newsletter published by the National Communication Network, which argued “anyone who has been involved in the anti-rape movement knows how federal funds have coopted the grassroots, community-based women’s groups that initially brought attention to the problem.”²⁴⁴

Funding opportunities encourage agencies to participate in coordinated community response (“CCR”) (the various methods by which agencies communicate about their responses to IPV), but many agencies also see participation in these responses as an opportunity to influence reform of the criminal legal system to better account for the needs and experiences of survivors.²⁴⁵ However, while CCR teams and networks attempt to bring together the voices of those responding to domestic violence, in practice, police and other criminal legal system actors tend to dominate and are often deferred to.²⁴⁶

These institutional entanglements further entrench reliance on the carceral state for the provision and enforcement of civil remedies and services. As an advocate, it is naturally harder to argue against mandatory interventions (discussed at length in Part III.A) and carceral entanglements in individual remedies when

[<https://perma.cc/ZFC6-8ELB>] (2015); Goodmark, *Hands Up at Home*, *supra* note 235, at 1225; Jane K. Stoeber, *Mirandizing Family Justice*, 39 HARV. J. L. & GENDER 189, 190–205 (2016).

241. See Goodmark, *Hands Up at Home*, *supra* note 235, at 1225.

242. Donna Coker, Sandra S. Park, Julie Goldscheid, Tara Neal & Valerie Halstead, *Responses from the Field: Sexual Assault, Domestic Violence, and Policing* 29 (U. Miami Legal Stud., Research Paper No. 16-2, 2015), <http://www.ssrn.com/abstract=2709499> [<https://perma.cc/VU73-WKMU>].

243. Kim, *supra* note 240, at 7–8.

244. *Id.*

245. Members of CCR teams, including advocacy groups, lawyers, criminal legal system actors, and judges, use the teams to influence each other and provide perspective on issues within their areas of expertise and experience. “Coordinated community responses continue to be the centerpiece of reform efforts for the domestic violence criminal justice system nationwide.” GOODMAN & EPSTEIN, *supra* note 27, at 84.

246. BUMILLER, *supra* note 117, at 165 (“Although these programs have opened up new sources of funding for shelters and direct services for women, they also make increased prosecution rates the first priority of program success.”); see also GOODMAN & EPSTEIN, *supra* note 27, at 86.

law enforcement is your “partner.”²⁴⁷ Entangled funding structures divert funding from services towards law enforcement, entrenching the criminal legal response even if agencies are receiving funds for non-criminal services and remedies.²⁴⁸ Institutional entanglements with the carceral state also impact the credibility of organizations in communities that have historically experienced over-policing and police violence. Since the continued funding and operation of many programs is dependent upon relationships with law enforcement, these problems are nearly impossible to solve on the ground. Any solution requires the decoupling of ostensibly non-criminal institutional responses to IPV from the apparatus of the carceral state.²⁴⁹

III.

INDIVIDUAL AND STRUCTURAL HARMS

A. Individual Harms

Carceral entanglements harm individual survivors in myriad ways that contravene the intentions of remedies and services and discriminate against members of subordinated groups who frequently are most in need. The looming shadow of the carceral state makes non-carceral remedies ineffective and inequitable in their design and implementation.

Part I.C laid out some of the reasons why survivors may not desire or be able to engage with the carceral state. However, to access remedies entangled with the carceral state, survivors are coerced into doing so. These entanglements harm survivors through (1) limits on autonomy; (2) underenforcement of certain legal protections; (3) overenforcement of criminal law against survivors, their partners, and their community; (4) police violence; and (5) opening the door to further state control, including the family policing system and other regulatory apparatuses of the state.

1. Limiting Autonomy

Feminist scholars emphasize the importance of providing survivors of violence with an arsenal of options they may deploy based on their own individual

247. Collaborations between law enforcement and service providers “have also led to what one advocate characterized as ‘co-optation and collusion.’ Through collaboration, domestic violence service providers develop personal and professional relationships with law enforcement officers that make it difficult to criticize their behavior. Such criticism not only has the potential to jeopardize those personal relationships, but could also affect the assistance provided to clients.” Goodmark, *Hands Up at Home*, *supra* note 235, at 1227; *see also* Elizabeth L. MacDowell, *Empowerment Politics and Access to Justice*, in *THE POLITICIZATION OF SAFETY, CRITICAL PERSPECTIVES ON DOMESTIC VIOLENCE RESPONSES* 62, 67 (Jane K. Stoever ed., 2019).

248. BUMILLER, *supra* note 117, at 145.

249. *See infra* Part IV for a discussion on how to disentangle the civil-carceral state and avoid new entanglements.

needs and preferences.²⁵⁰ This is valuable for both practical and normative reasons. Practically, remedies are more effective if survivors have control over which options to use, when to use them, and how they are enforced. A hallmark of survivor-centered advocacy and practice is a recognition that survivors are the experts on their own lives.²⁵¹ Research shows that interventions are more likely to be successful when survivors choose them based upon their own individualized circumstances, considering the complex backdrop of their lived experiences and goals.²⁵²

Valuing autonomy as a practical matter demands that we measure “success” based on the goals of the survivor. Most accounts of the carceral response to IPV consider interventions to be “successful” when they result in “safety,” which typically means a cessation of violence, often achieved through voluntary or forced separation and measured by a lack of recidivism on the part of the perpetrator.²⁵³ However, not all survivors rank safety as their highest priority, and safety may have a different meaning to some survivors than it does to system actors.²⁵⁴ For many, safety may mean preventing or stopping violence and facilitating separation.²⁵⁵ For others, it may mean protecting children from abuse or exposure to abuse, finding stable employment, having the resources to provide for their basic needs, or maintaining the support of their community.²⁵⁶ The carceral response addresses only some of these goals, and it imposes its own goals regardless of the survivor’s actual goals and circumstances. If we measure success based on meeting an individual survivor’s needs rather than the state’s prescribed goals, interventions entangled with carceral systems are much less successful.²⁵⁷

In addition to the practical value of autonomy, many feminist scholars, advocates, and survivors themselves point to the normative moral good of autonomy and the related concept of dignity as inherently valuable.²⁵⁸ Some feminist theorists have criticized the idea that individual autonomy is a realistic or desirable goal for the anti-violence movement, arguing that women cannot exercise

250. *E.g.*, Goodmark, *Autonomy Feminism*, *supra* note 85, at 46.

251. Ferraro, *supra* note 58, at 173.

252. *See* Weissman, *Gender Violence*, *supra* note 3, at 818–19.

253. Legal actors often wrongly assume that “women’s use and full cooperation with legal remedies increases their safety.” Coker, *Shifting Power for Battered Women*, *supra* note 80, at 1018.

254. Thomas, Goodman & Putnins, *supra* note 92, at 3.

255. *See id.* at 5.

256. *See id.* at 6.

257. Coker, *Shifting Power for Battered Women*, *supra* note 80, at 1019–20 (“Making safety a primary way of assessing intervention strategies frequently results in policies that undermine women’s abilities to evaluate various strategies for themselves because it invites law and policymakers to determine what women *should* do to be safe.”) (emphasis in original). Coker discusses the primacy of safety as a guiding principle behind policies encouraging or coercing separation. For a discussion of how remedies entangled with carceral systems frequently require separation, see *supra* Part I.C.1.

258. *See* Margaret E. Johnson, *A Home with Dignity*, 2014 BYU L. REV. 1, 8–11 (2014); Natalie Nanasi, *Disarming Domestic Abusers*, 14 HARV. L. & POL’Y REV. 559, 580 (2020); Pamela Lauffer-Ukeles, *Reproductive Choices and Informed Consent: Fetal Interests, Women’s Identity, and Relational Autonomy*, 37 AM. J. L. & MED. 567, 610–13 (2011).

autonomy within a patriarchal system in which their options are determined by a state which systematically subordinates them.²⁵⁹ Supporters of mandatory interventions argue that survivors are unable to make autonomous decisions because of coercion from abusive partners and patriarchal social systems, so dictating their choices serves the broader goal of changing these systems regardless of the individual survivor's goals or desires.²⁶⁰ However, these critiques assume that survivors are incapable of exercising agency even within the context of abusive relationships and a patriarchal society, and they subordinate an individual survivor's goals and material needs below a state-determined goal of preventing IPV, which usually means preventing severe physical violence.²⁶¹ Prominent scholar of IPV and anti-carceral feminist Leigh Goodmark refers to this approach as "maternalism," which "is fundamentally at odds with one of the foundational goals of the battered women's movement—empowerment."²⁶² Both IPV and the carceral state rob survivors of choices and control. Within the framework of multiple structures of oppression through domination enhancing autonomy and dignity are worthwhile aims in and of themselves.

Some advocate for non-criminal remedies specifically because they provide a range of options suited to the survivor's individual circumstances, thereby enhancing autonomy.²⁶³ When these options are contingent upon engaging with the carceral state, survivors' autonomy is limited. Goodmark argues that autonomy-enhancing policies should be under the control of survivors, rather than aiming to control them.²⁶⁴ Carceral entanglements complicate the ability of non-criminal actors to offer autonomy-promoting solutions to survivors.

While the expanding array of civil legal options and other services available to survivors of violence may create an appearance of more choice, when those options explicitly or practically require engagement with the carceral state, they are not *real* options for many survivors. Police involvement often results in no assistance at best, and severe negative consequences for the survivor at worst. But even when police believe and do not mistreat survivors, contact with the criminal

259. GOODMARK, A TROUBLED MARRIAGE, *supra* note 35, at 119–22 (discussing feminist critiques of autonomy frameworks).

260. *Id.* at 121–22; *see also* Hanna, *supra* note 129, at 1887–91.

261. GOODMARK, A TROUBLED MARRIAGE, *supra* note 35, at 122–30.

262. *Id.* at 124.

263. *See* Coker, *Shifting Power for Battered Women*, *supra* note 80, at 1019–20 (discussing the harm of assessing policies based on whether they are safety-enhancing and arguing "resources should be made available to women so that, with assistance, they can make a determination about the best course of action based on their own set of circumstances"); Stoeber, *supra* note 38, at 320–21 (discussing the importance of autonomy in allowing survivors to "shift the power in the relationship, reconstruct or exit relationships, and decrease violence," and pointing to autonomy as one of the goals of the civil protection order system).

264. Goodmark, *supra* note 85, at 43. ("A guiding principle for domestic violence law and policy that seeks to honor the autonomy of women who have been battered must be to enact only policies that women can control. If we truly value the empowerment of women who have been battered, we should not advocate for policies that operate upon women, rather than at their behest—policies that deprive them of self-determination and of choice.")

legal system initiates a process that often cannot be stopped once it has begun. Legal mechanisms including no-drop prosecution policies and enforcement of CPOs can rob a survivor of control over their own life and cede it the punitive arm of the state.

Carceral entanglements force survivors to enter a system where they may relinquish their control over their person, resources, children, and safety. Based partially on the belief that any request to withdraw a criminal complaint was coerced, jurisdictions began implementing no-drop prosecution policies in the late 1980s and 1990s.²⁶⁵ Advocates for no-drop policies argue that they are good for society since the prosecutor represents the state rather than the victim of a crime, that they enhance victim safety, and (ironically) that women would feel validated or empowered by participation in the criminal justice process, even under protest.²⁶⁶ They also argue that the state's interest in deterring violence, or if violence is not actually deterred, in sending a message that it is unacceptable, should outweigh a victim's choice or preference.²⁶⁷

In jurisdictions with these policies, once survivors report to police, they lose control over what happens in the prosecution. Some proponents of no-drop policies go so far as to advocate for the jailing of unwilling survivors to compel their testimony, even while recognizing the potential direct harm caused to the survivor.²⁶⁸ Survivors who happen to reside in jurisdictions whose prosecutorial bodies adhere to this philosophy not only lose the ability to control the trajectory of prosecution, but may face severe consequences themselves if they choose not to cooperate with the prosecution. By seeking help through carceral entangled civil remedies, survivors may unwittingly be triggering a retributive cycle from which they cannot escape.

Survivors clearly lose their autonomy to choose which actions they wish to take (and when they wish to take them) in jurisdictions where no-drop prosecution policies apply. They also lose some of the utility of prosecution. Many survivors use the threat of prosecution as leverage in their relationship to regain some of their lost control and restore a level of peace to a relationship which they cannot or do not want to escape for financial, emotional, or various other reasons.²⁶⁹ In many cases these threats are successful.²⁷⁰ Limiting a survivor's ability to

265. Houston, *supra* note 25, at 265.

266. Goodmark, *supra* note 85, at 12–13.

267. See Hanna, *supra* note 129, at 1890–92 (describing the necessity of a public education approach to signal that society does not tolerate domestic violence and advocating for mandatory participation of victims in court proceedings to bolster the state response to intimate partner violence).

268. *Id.* at 1892 (arguing that it is occasionally necessary for the state to detain victims of domestic violence in order to take the issue seriously, exemplified in the Maudie Wall case).

269. David A. Ford, *Prosecution as a Victim Power Resource: A Note on Empowering Women in Violent Conjugal Relationships*, 25 LAW & SOC'Y REV. 313, 330–32 (1991).

270. See *id.*; Brown, *supra* note 62, at 169 (“[M]any battered women have orders of protection removed and refuse to cooperate with prosecutors because the threat of state intervention was successful in ending the abuse.”).

withdraw charges robs them of control and the ability to gain some leverage in an unequal relationship.²⁷¹ Carcerally entangled civil remedies in no-drop jurisdictions add another level of autonomy harm to the equation. Not only is a survivor restricted from gaining leverage over their partner by reporting to police as a means to meet their needs, but if they try to meet their needs through the civil legal system instead, they are forced to cede huge amounts of control over their life to the state should a police report lead to criminal charges.

Many feminist advocates and scholars have theorized IPV as a relationship of power and control.²⁷² By starting a process a survivor cannot stop, mandatory interventions essentially substitute state control for the control of an abuser.²⁷³ Ironically, state control over the actions of survivors may make them *less* likely to want to report to law enforcement or other arms of the carceral state.²⁷⁴

Advocates for autonomy-enhancing solutions to IPV recognize the harm of replacing a survivor's judgment with the state's judgment, both to the practical effectiveness of those solutions and to the inherent dignity and autonomy of the survivor. Carceral entanglements transform what might be framed as autonomy-enhancing options into mandatory interventions by limiting access to those survivors who are willing to be pulled into the unstoppable processes of the carceral state, or by unwittingly coercing them into these processes.

2. *Underenforcement*

Many survivors weigh the costs and benefits of involving the carceral state in their lives and choose to report to police, whether to access services and remedies conditioned on reporting or because they simply believe that police involvement

271. See Goodmark, *supra* note 85, at 41 (discussing how mandatory arrest policies limit the ability of survivors to use the threat of prosecution as a “power resource”).

272. Domestic violence service providers around the country use the Power and Control Wheel, developed by the Domestic Abuse Intervention Project in Duluth, MN, as a tool to explain the dynamics of abuse. E.g., NAT'L DOMESTIC VIOLENCE HOTLINE, *Power and Control*, <https://www.thehotline.org/identify-abuse/power-and-control/> [<https://perma.cc/FH7Y-D4CY>] (last visited Feb. 25, 2023); NAT'L CTR. ON DOMESTIC AND SEXUAL VIOLENCE, “Wheels” *Adapted from the Power and Control Wheel*, http://www.ncdsv.org/publications_wheel.html [<https://perma.cc/W8DG-AJR3>] (last visited Feb. 25, 2023); LOVE IS RESPECT, *Power & Control*, <https://www.loveisrespect.org/everyone-deserves-a-healthy-relationship/power-and-control-dating-abuse/> [<https://perma.cc/HHB3-7UZ3>] (last visited Feb. 25, 2023). Scholars have also adopted this framework and/or recognized it as the “traditional” narrative of intimate partner violence. Johnson, *supra* note 88, at 8 (“The exercise of power and control is central to domestic violence.”); GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE*, *supra* note 3, at 132 (“The traditional feminist narrative explains intimate partner violence as a function of a person’s desire to have power and control over the intimate partner.”); Joan S. Meier, *Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice*, 21 HOFSTRA L. REV. 1295, 1317–18 (1993) (“In the last few years, there has been a growing emphasis in the literature and community on understanding battering not as violence, per se, but rather, as a larger pattern of dominance and control.”).

273. See Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 586–96 (1999).

274. Nanasi, *supra* note 258, at 572–73.

is the best way to achieve their goals. However, what happens *after* reporting to the police is almost totally out of the individual survivor's hands. Particularly for members of historically subordinated groups, including people of color, immigrants, and members of the LGBTQIA+ community, reporting to police does not guarantee police *action*.

The anti-IPV movement of the 1970s and 80s responded to the prevailing conception of IPV as a private family issue by arguing that it should be a matter of public concern and treated like any other crime.²⁷⁵ Even if criminal laws explicitly covered or could be construed to cover violence between spouses, police often considered it a private matter and refused to make arrests, and prosecutors often declined to prosecute.²⁷⁶ Members of the carceral wing of feminism advocated for mandatory interventions including mandatory arrest and no-drop prosecution to address the lack of belief and action by law enforcement.²⁷⁷ These advocates eventually sought to reverse the private vs. public framing of IPV to require survivors to make their experiences of abuse a public matter through mandatory interventions.²⁷⁸

While mandatory interventions are intended to remove discretion and force police to act when encountering IPV, the pervasive disbelief of survivors and resulting inaction continues today, particularly when women of color, LGBTQIA+ identifying persons, sex workers, and members of other subordinated communities seek help from law enforcement.²⁷⁹ As feminist scholar Donna Coker argues:

The racist and classist beliefs of state actors may support intervention as well as non-intervention, but neither choice derives from beliefs about protecting family privacy. For example, the practice of police to refuse intervention when violence is 'horizontal'—e.g., involving two persons of similar (and devalued) race and/or class better explains police refusal to assist battered women of colour than does their desire to guard family privacy.²⁸⁰

The historically prevalent attitude that IPV is a "private family matter" has largely dissipated from modern rhetoric. However, survivors are still disbelieved

275. The "psychological theory" of domestic violence, dominant through the 1960s, led law enforcement officers to focus on conflict resolution and framed family violence as "domestic disturbance," eschewing criminal legal interventions for mental health responses. "Feminists argued that this kept domestic violence in the 'private' realm of the family, free from 'public' state intervention, and thus guaranteed its perpetuation." Houston, *supra* note 25, at 225–27.

276. Early statutes criminalizing domestic violence "required police officers to witness a crime before making a warrantless arrest" for a misdemeanor and permitted discretion in whether to arrest for either a felony or misdemeanor. Despite laws criminalizing domestic abuse, officers were frequently still reluctant to arrest, and prosecutors used their discretion not to charge, in some cases due to lack of victim participation. *Id.* at 253–55.

277. *Id.* at 263–71.

278. See, e.g., Hanna, *supra* note 129.

279. See, e.g., RITCHIE, *supra* note 140, at 189–90.

280. Coker, *Transformative Justice*, *supra* note 21, at 132 (citations omitted).

and refused assistance from police based on beliefs and attitudes that discount the credibility of subordinated persons.²⁸¹ Most system actors view physical harm as “real” abuse, but many survivors view the psychological harm of abuse as “far more damaging.”²⁸² As Deborah Epstein and Lisa Goodman argue, “[W]hat may feel to victims like the most insidious and intimate brand of abuse can come across to legal gatekeepers as something that doesn’t really count as abuse at all.”²⁸³ The neurological effects of trauma also mean that survivors may tell stories that seem inconsistent, leading police to disbelieve and discount their stories.²⁸⁴

Gender, race, class, and other structural biases inherent in policing also impact who is believed and what action police take.²⁸⁵ Policing is dominated by men, and there is often a culture of machismo or toxic masculinity that pervades police culture.²⁸⁶ Epstein and Goodman argue that this impacts the credibility of survivors, who largely identify as women, in interactions with police due to “belief perseverance”—“the process by which people tend to hold onto a set of beliefs as true, even when ample discrediting evidence exists”—if officers’ perceptions come into conflict with survivors’ articulated experiences.²⁸⁷ These attitudes pervade police treatment of survivors and interpretation of who qualifies as a “victim.”²⁸⁸ Even when mandatory arrest policies are in place, individual officers in the field who are responsible for enforcing those policies impose their personal and cultural ideas of what IPV looks like and who is a victim to deny assistance to certain subsets of survivors.²⁸⁹

281. Epstein & Goodman, *supra* note 61, at 399; *id.* at 420 (discussing “‘belief perseverance’—the process by which people tend to hold onto a set of beliefs as true, even when ample discrediting evidence exists” and how it leads male authority figures to discount the experiences of women).

282. *Id.* at 418.

283. *Id.*

284. *See, e.g., id.* at 409–10.

285. *E.g.,* RITCHIE, *supra* note 140, at 186–95.

286. Goodmark, *Hands Up at Home*, *supra* note 235, at 1214–15; Anne Sparks, *Feminists Negotiate the Executive Branch: The Policing of Male Violence*, in *FEMINISTS NEGOTIATE THE STATE: THE POLITICS OF DOMESTIC VIOLENCE* 35, 37–40 (Cynthia R. Daniels ed., 1997).

287. Epstein & Goodman, *supra* note 61, at 420.

288. RITCHIE, *supra* note 140, at 189–190. (“Racial profiling informs not only officers’ perceptions of who is committing violence but also of who is a victim. Black women, Indigenous women, and other women of color are defined as inherently existing outside the bounds of womanhood—rendering the status of ‘good victim’ unattainable.”)

289. *See, e.g.,* Rutledge, *supra* note 153, at 243. (“Possible officer bias against domestic violence cases may impact how police reports are drafted Women of color may be particularly vulnerable for failing to meet an administrator’s definition of an innocent victim.”). This bias is not limited to women of color—the parents of Gabby Petito, a white woman who was killed by her boyfriend, filed a lawsuit after learning that an officer who responded when Petito called for help had allegedly threatened to kill his own ex-girlfriend. Petito’s parents alleged that the officer was biased to sympathize with Petito’s boyfriend, Brian Laundrie, due to his own history. The officer identified Petito as the primary aggressor in responding to a call that a man was slapping a woman and separated the couple for the night rather than arresting one or both of them. Courtney Tanner, *Moab Officer Was ‘Biased’ Against Gabby Petito Because of Her Past, Her Parents Claim in New LawsUIT*, SALT LAKE TRIB. (Nov. 3, 2022), <https://www.sltrib.com/news/2022/11/03/moab-officer-was-biased-against/> [<https://perma.cc/6HCK-5CBE>]. Officers are required to make an arrest or issue

The state does not pursue the goals of all survivors equally when they choose to seek help from police. When survivors, particularly those from subordinated groups, seek help from police after experiencing IPV, they cannot guarantee that police will believe them, that they will respond in the manner that survivors request, or that further action such as prosecution will be taken.²⁹⁰ Remedies entangled with carceral systems, therefore, are not as accessible or effective for populations whom police do not traditionally believe or for whom the criminal legal system will not act, including failing to document abuse, arrest, or prosecution.

This leads to a two-tiered system where options are only available to a certain subset of survivors—most notably, white, wealthy, cisgender women—thereby exacerbating the disproportionate impact of IPV on marginalized and subordinated communities. As feminists and critics of policing have long recognized, “[p]olice are gate-keepers of the law enforcement and criminal justice systems.”²⁹¹ When they disbelieve survivors or refuse to act when survivors report to them, and that action is a predicate for non-criminal remedies and services, police are not just gatekeepers to the criminal legal system, but to justice as a whole. It may seem natural to assume that the solution to underenforcement is to *require* police to act upon reports. After all, many survivors do choose to engage with the criminal legal system, even if they are not coerced to do so by requirements of other carceral entangled remedies.²⁹² But, as discussed below, efforts to make the carceral state work for survivors have failed and caused more harm than good.²⁹³

3. *Overenforcement*

A corollary problem is *overenforcement* of criminal law against survivors, which also disproportionately harms survivors of color, LGBTQ+ survivors, and other survivors who belong to subordinated communities. Racially inflected policing and policies intended to remove discretion from charging decisions in domestic abuse cases mean that in order to seek out these resources, survivors, not just their partners, may be at risk of criminal action.

Jurisdictions began enacting mandatory arrest policies in the 1980s and 90s in response to criticism that police did not take abuse seriously.²⁹⁴ These laws were intended to address the belief that IPV was a private matter and to remove

a citation to any person the officer “has probable cause to believe has committed an act of domestic violence” in Utah. UTAH CODE ANN. § 77-36-2.2(2).

290. 75% of respondents to a National Domestic Violence Hotline survey who had never called the police, and 68% of those who had called the police in the past, were afraid the police would blame or not believe them. LAW ENF’T EXPERIENCE REP., *supra* note 68, at 4–5.

291. Sparks, *supra* note 286, at 37.

292. *See supra*, note 136 and accompanying text.

293. *See infra*, Part III.A.3 (discussing criminalized survivors); Part III.A.4 (discussing police violence against survivors and their communities); Part III.A.5 (discussing family policing in the context of IPV).

294. *E.g.*, GOODMAN & EPSTEIN, *supra* note 27, at 72–74.

discretion from officers in determining whether they should make an arrest when responding to abuse.²⁹⁵ In practice, however, mandatory arrest policies can result in “dual arrests” where both parties are arrested in response to IPV calls.²⁹⁶ Officers are required to arrest someone, but they maintain discretion on *whom* to arrest.²⁹⁷ While they may have been intended to reduce officer discretion and enforce criminal laws against abusers, in actuality, mandatory arrest laws lead to significantly increased rates in the arrests of women for IPV.²⁹⁸ “Battered women have become female offenders.”²⁹⁹

When a survivor defends themselves against physical abuse, or an abusive partner tells responding officers that the survivor started it, many officers simply arrest both partners to comply with mandatory arrest policies rather than investigate further and make a determination of the primary aggressor.³⁰⁰ In other cases, officers may identify the survivor as the primary aggressor and arrest them rather than the abusive partner, particularly in instances when the abusive partner has more social capital or connections to police.³⁰¹ Since the criminal legal system has stark delineations between “victim” and “perpetrator,” survivors who are arrested for IPV may lose protections intended for victims, including access to crime victim compensation and custody presumptions.³⁰²

Overenforcement does not affect all survivors equally. Like most arrests, dual arrests for IPV are disproportionately made against people of color.³⁰³ Mandatory arrest policies also disproportionately affect survivors with limited English proficiency, LGBTQ+ survivors, and people perceived by police to be the same gender as their partner.³⁰⁴ In addition to the danger of being arrested for IPV, required

295. Evan Stark, *Mandatory Arrest of Batterers: A Reply to Its Critics*, in DO ARRESTS AND RESTRAINING ORDERS WORK? 115, 127–28 (Eve S. Buzawa & Carl G. Buzawa eds., 1996).

296. GOODMARK, DECRIMINALIZING DOMESTIC VIOLENCE, *supra* note 3, at 19–20; Sylvia I. Mignon & William M. Holmes, *Police Response to Mandatory Arrest Laws*, 41 CRIME & DELINQUENCY 430, 435–37 (1995).

297. RITCHIE, *supra* note 140, at 205–07.

298. *Id.*; GOODMARK, DECRIMINALIZING DOMESTIC VIOLENCE, *supra* note 3, at 19–20; Alesha Durfee, *Situational Ambiguity and Gendered Patterns of Arrest for Intimate Partner Violence*, 18 VIOLENCE AGAINST WOMEN 64 (2012); Mena Chesney-Lind, *Criminalizing Victimization: The Unintended Consequences of Pro-Arrest Policies for Girls and Women*, 81 CRIMINOLOGY & PUB. POL’Y 82 (2002).

299. RITCHIE, *supra* note 140, at 196 (quoting Susan Miller, *The Paradox of Women Arrested for Domestic Violence: Criminal Justice Professionals and Service Providers Respond*, 7 VIOLENCE AGAINST WOMEN 1339, 1369 (2001)).

300. *Id.* at 195–98.

301. See Brown, *Ain’t I a Victim?*, *supra* note 62, at 167–68; Coker, *Transformative Justice*, *supra* note 21, at 133–34; Susan L. Miller & Michelle L. Meloy, *Women’s Use of Force: Voices of Women Arrested for Domestic Violence*, 12 VIOLENCE AGAINST WOMEN 89 (2006).

302. Coker, *Transformative Justice*, *supra* note 21, at 134.

303. RITCHIE, *supra* note 140, at 197. (“A significant majority (66 percent) in the New York City study who had been arrested along with their abusers (dual arrest) or arrested as a result of a complaint lodged by their abuser (retaliatory arrest) were African American or Latinx.”).

304. *Id.* at 196–97 (describing increases in arrests of survivors under mandatory arrest policies, including specific demographic increases in arrests of LGBTQ people and people perceived to be

interaction with law enforcement increases the risk of arrest for other crimes, such as crimes related to substance abuse and sex work, which are often directly related to experiencing IPV.³⁰⁵

Survivors and advocates understand the risk of overenforcement against specific populations, which impacts their individual and community relationships with police, as well as their willingness to seek out help that requires interaction with the police. Respondents to a study of IPV advocates conducted by the ACLU reported that their clients were reluctant to interact with police because of fear of arrest or other consequences, including removal of their children.³⁰⁶ This fear is borne out by data from individual survivors. 21% of callers to the National Domestic Violence Hotline feared that “police would threaten them or report them to Child Protective Services.”³⁰⁷ Police actually did call CPS in 15% of cases, and “in 19% of the cases where police called CPS, the child was removed from the survivor parent’s care.”³⁰⁸

Carceral entanglements ironically put many survivors in danger of facing criminal consequences themselves. While they may be intended to connect survivors with resources, remedies contingent upon interaction with the carceral state actually put many survivors at greater risk and deepen the effects of racially disproportionate policing.

4. *Police Violence*

Interacting with police is not simply a matter of whether someone will be arrested or whom that person will be for many survivors.³⁰⁹ The prison and police abolition movement has increasingly viewed police violence as inherent in the structures of policing, rather than as an unfortunate problem that can be solved through reform.³¹⁰ When carceral entanglements coerce survivors into interacting with the carceral state, they are drawn into a system where they, their partners, their children, and their communities may experience or witness police violence.

The murder of George Floyd and the resulting uprisings in the summer of 2020 have brought racialized police violence into stark public view,³¹¹ but police

the same gender as their partner; discussing arrests of survivors with limited English proficiency as a result of a partner’s manipulation of the legal system).

305. Coker, *Transformative Justice*, *supra* note 21, at 133–34.

306. Coker, Park, Goldscheid, Neal & Halstead, *supra* note 242, at 25–29; *see infra* Part III.A.5.

307. LAW ENFORCEMENT EXPERIENCE REPORT, *supra* note 68, at 9.

308. *Id.* at 10.

309. *See generally* RITCHIE, *supra* note 140; ALEXANDER, *supra* note 22.

310. *See* Akbar, *supra* note 9, at 1802; PURNELL, *supra* note 9, at 5–8; VITALE, *supra* note 9, at 27–30.

311. *See, e.g.*, Kat Stafford & Hannah Fingerhut, *AP-NORC Poll: Sweeping Change in US View of Police Violence*, ASSOCIATED PRESS (Jun. 17, 2020), <https://apnews.com/article/us-news-ap-top-news-racial-injustice-politics-police-728b414b8742129329081f7092179d1f> [<https://perma.cc/2S9U-D4C6>] (reporting on polling that suggests “the death of George Floyd and the weeks of nationwide and global protests that followed have changed perceptions in ways that previous incidents of

violence is not a new phenomenon. Policing has been a violent affair since the founding of the American colonies.³¹² While police violence has always existed, it has attracted increased attention in recent years as easy access to video recording has led to wider publicity of the killings of (primarily Black and Brown) people at the hands of police, including Philando Castile, Michael Brown, and Breonna Taylor.³¹³

Police violence is particularly targeted against already subordinated groups across racial, class, gender, and economic lines.³¹⁴ Social scientists have been aware of these discrepancies for decades, although some dismissed concerns that police targeted particular groups, ascribing disproportionality to the racist “subculture of violence” theory that members of minority groups simply committed more crime due to their inherent nature.³¹⁵ Contradicting this theory, recent public attention has been paid to evidence that police treat white perpetrators of violent crime, particularly mass shootings, quite differently (and less violently) in comparison to Black suspects. For instance, accused mass shooter Payton Gendron, who is white, was arrested without injury after killing 10 people at a supermarket in Buffalo, New York, using an AR-15 rifle, wearing body armor and a high-grade military helmet, and carrying handguns.³¹⁶ He was carrying the rifle at the time of his arrest.³¹⁷ The same department that arrested Gendron without incident had shot

police brutality did not”); Sam Levin, ‘No Progress’ Since George Floyd: US Police Killing Three People a Day, *GUARDIAN* (Mar. 30, 2022), <https://www.theguardian.com/us-news/2022/mar/30/us-police-killing-people-high-rates> [<https://perma.cc/4ENT-6ACS>].

312. RITCHIE, *supra* note 140, at 35–57.

313. Alia Chugtai, *Know Their Names: Black People Killed by the Police in the U.S.*, *AL JAZEERA*, <https://interactive.aljazeera.com/aje/2020/know-their-names/index.html> [<https://perma.cc/8NHS-YB7G>] (last visited July 18, 2022) (interactive tool displaying names and information about Black people killed by police in the U.S.); Nicol Turner Lee, *Where Would Racial Progress in Policing Be Without Camera Phones*, *BROOKINGS INST.* (June 5, 2020), <https://www.brookings.edu/blog/fixgov/2020/06/05/where-would-racial-progress-in-policing-be-without-camera-phones/> [<https://perma.cc/7J26-6449>] (discussing increased publicity of police violence since the advent of smartphones).

314. Akbar, *supra* note 9, at 1789–1800 (identifying a structural critique of police emerging in legal scholarship that police violence is “(1) authorized by law; (2) takes various, interconnected forms; (3) that occur in routine and common place ways, that are (4) targeted along the dimensions of race, class, and gender and (5) constitute and produce our political, economic, and social order”).

315. See John S. Goldkamp, *Minorities as Victims of Police Shootings: Interpretations of Racial Disproportionality and Police Use of Deadly Force*, 2 *JUST. SYS. J.* 169 (1976). In reviewing scholarly interpretations of data showing racial disproportionality in police shootings, Goldkamp discusses the “subculture of violence” school of thought, which postulated that “blacks are relatively different from and more violent than whites.” *Id.* at 174 (citing MARVIN E. WOLFGANG & FRANCE FERRACUTI, *THE SUBCULTURE OF VIOLENCE* (1967)).

316. Charlie Specht, *Buffalo Police Credited with Saving Lives, But Gunman’s Surrender is Questioned*, *BUFFALO NEWS* (May 15, 2022), https://buffalonews.com/news/local/buffalo-police-credited-with-saving-lives-but-gunmans-surrender-is-questioned/article_62d1ccf0-d482-11ec-8318-1fb2a0621b4c.html [<https://perma.cc/C2KL-XUV9>].

317. *Id.*

several Black men in recent years, including unarmed people experiencing mental health crises.³¹⁸

Police violence is particularly insidious when it involves survivors of other forms of interpersonal violence, including IPV. In her 2017 book *Invisible No More: Police Violence Against Women and Women of Color*, attorney and activist Andrea Ritchie identifies some of the ways in which survivors are more vulnerable to, and uniquely harmed by, police violence:

Police violence against survivors of violence often takes place away from public view, cameras, and cop watchers. Survivors of violence are less likely to be able to speak out, because they need the police to remain willing to respond to future calls for assistance or because of shame, silence, and fear of retaliation. As a result, racial profiling and police brutality in the context of responses to violence remains, quite literally, invisible.³¹⁹

Police violence against survivors does not only take the form of brutality while performing the typical functions of the job. Police officers also sexually abuse survivors.³²⁰ Police sexually abuse certain populations of survivors, including transgender people and sex workers, at particularly high rates, with one study finding that 86% of trans sex workers (or those who police perceived as sex workers) reported police harassment, attacks, sexual assault, and mistreatment.³²¹ Another study found that “a third of the violence young sex workers experienced came at the hands of the police.”³²² Recognizing the legal and physical vulnerability of sex workers, some officers demand sex to avoid arrest, steal from or assault sex workers, and even act as pimps themselves.³²³ Police sexual violence is disturbingly common—a study by the Associated Press found that over 1,000 officers lost their licenses between 2009 and 2014 as a result of sexual violence, and this number only includes incidents that were investigated and resulted in loss of licensure.³²⁴ Survivors in heavily policed communities know that police may abuse them—it should come as no surprise that they may be hesitant to report

318. *Id.*

319. RITCHIE, *supra* note 140, at 187.

320. *See id.* at 188–89; Gehi & Munshi, *supra* note 45, at 29 (“[R]ampant incidents of sexual violence perpetrated by law and immigration enforcement officials against survivors of color have been documented.”); PURNELL, *supra* note 9, at 185–87; Philip M. Stinson, Steven L. Brewer, Brooke E. Mathna, John Liederbach & Christine M. Englebrecht, *Police Sexual Misconduct: Arrested Officers and Their Victims*, 10 VICTIMS & OFFENDERS 117 (2015).

321. PURNELL, *supra* note 9, at 185–87.

322. VITALE, *supra* note 9, at 118 (citing JAZEERA IMAN, CATLIN FULLWOOD, NAIMA PAZ, DAPHNE W & SHIRA HASSAN, GIRLS DO WHAT THEY HAVE TO DO TO SURVIVE: ILLUMINATING METHODS USED BY GIRLS IN THE SEX TRADE AND STREET ECONOMY TO FIGHT BACK AND HEAL (2009)).

323. *Id.* at 116–17.

324. RITCHIE, *supra* note 140, at 107 (citing Matt Sedensky & Nomaan Merchant, *Hundreds of Officers Lose Licenses Over Sex Misconduct*, ASSOCIATED PRESS (Nov. 1, 2015)).

abuse to police when they might reasonably fear that they will only meet further abuse.

For some survivors, police violence and IPV are one and the same. Recent studies have found that police officers are significantly more likely than the general public to abuse their partners.³²⁵ For these survivors, carceral entanglements put them in an impossible bind: how can they report to the police when the abuser *is* the police?

Police violence against survivors clearly affects them directly, but so does violence against their abusers. Even if a survivor wants to engage the criminal legal system and wants their partner to face carceral consequences, few survivors want their abusers to face police violence. Many, if not most survivors, simply want to stop the violence, not to cause state violence against their abusers.³²⁶ Police violence against people of color is a part of the larger problem of racialized mass incarceration and police terrorism.³²⁷ Police rob communities of tangible and metaphysical resources by killing members of communities and terrorizing citizens with the constant risk of violence.³²⁸ When survivors live in communities that experience over-policing and disproportionate police violence, they run the risk of harming their communities and, in turn, their own families by engaging with the carceral state.

In addition to harming a survivor's community, the collateral consequences of police violence also harm survivors individually. If a survivor or their partner have children, those children may witness state violence against their parents. The state frequently takes action against parents who "fail to protect" their children from witnessing violence because it recognizes that witnessing violence can

325. Goodmark, *Hands Up at Home*, *supra* note 235, at 1189–96 (providing an overview and analysis of data showing police officers disproportionately commit IPV and are less frequently subject to disciplinary or criminal action).

326. PURNELL, *supra* note 9, at 176 (discussing studies showing that reports of IPV declined after the passage of VAWA and that more than half of survivors in the study "reported to the police because they wanted the violence to stop, not to send someone to prison"); Costello & Durfee, *supra* note 54, at 302 ("Women of color and undocumented women may not want to report abusive partners to police for fear that they or their partners will be treated unfairly, receive undue harsh punishment, or be deported."). A survey by the National Domestic Violence Hotline found that 36% of callers who had never called the police "feared negative consequences for their partners," and 29% feared "police violence against them or a partner." Even some of those who had called the police did not want to harm their partners—14% feared "negative consequences for their partners," seven percent feared the police "would be violent toward their partners," and six percent did not want their partners arrested. LAW ENFORCEMENT EXPERIENCE REPORT, *supra* note 68, at 7–9. Another study found that racism affected the decision of Black women to use external help including police "because they did not want to subject their community to further oppression." Lynette M. Renner & Carolyn Copps Hartley, *Women's Perceptions of the Helpfulness of Strategies for Coping with Intimate Partner Violence*, 37 J. FAM. VIOLENCE 585, 596 (2022).

327. See generally Coker & Macquoid, *supra* note 22; DAVIS, DENT, MEINERS & RICHIE, *supra* note 3; ALEXANDER, *supra* note 22; GRUBER, *supra* note 3.

328. VITALE, *supra* note 9, at 52–54 (discussing the role of police in decimating communities through mass incarceration and the collateral consequences of involvement with the carceral state, a system that creates "a culture of fear that it claims to be uniquely suited to address").

significantly harm children psychologically and emotionally.³²⁹ However, in responding to interpersonal violence, the state perversely may itself expose children to violence.³³⁰ The traumatic impact on children of witnessing state violence against their parents can last a long time.³³¹

Police violence can also cause survivors to lose support temporarily or permanently by injuring, killing, or involuntarily removing a partner from the home. Many survivors rely on their partners financially, which may inform a decision not to separate. If their partner is unable to work, their economic stability may be impacted, and research shows that instability in an abusive partner's employment further increases the risk of IPV.³³²

People experiencing racism, poverty, and other forms of subordination are at greater risk for both IPV and police violence. Requiring them to engage with the carceral state to access help only deepens both of these problems.

5. *Opening the Door to More State Control*

Survivors with children often rank their children's safety as among their primary concerns when seeking help.³³³ However, engaging with the carceral state, even to seek help when a parent has been a victim of a crime, often leads to an increase of surveillance by the family policing system and in some cases, the removal of children from the household. The family policing system holds not just perpetrators of violence, but those subjected to violence, responsible for its impact on children.³³⁴ Police departments may require reporting to child welfare agencies whenever a child is present at the scene of a crime.³³⁵ This automatically increases the level of state surveillance survivors are subjected to.³³⁶ Once the family policing system becomes involved, survivors are at risk of losing their children or being prosecuted for failure to protect them from exposure to domestic violence.³³⁷

329. ROBERTS, TORN APART, *supra* note 51, at 196–202.

330. For example, Jacob Blake and Atatiana Jefferson were both shot by police in front of children in their families. Those children continue to struggle with the effects of witnessing state violence against their parents. Elliott C. McLaughlin, *When Kids Witness Police Violence, the Trauma Doesn't End When the Gun is Holstered*, CNN (Aug. 29, 2020, 8:12 AM), <https://www.cnn.com/2020/08/29/health/trauma-children-jacob-blake-shooting/index.html> [<https://perma.cc/5JXN-7VTZ>].

331. *Id.*; Jonah Newman, *Trauma of Witnessing Police Violence is Not Lost on Children*, CHICAGO REP. (Aug. 22, 2016), <https://www.chicagoreporter.com/trauma-of-witnessing-police-violence-is-not-lost-on-children/> [<https://perma.cc/DMN2-EJA4>].

332. GOODMARK, DECRIMINALIZING DOMESTIC VIOLENCE, *supra* note 33, at 28.

333. See Sullivan, Baptista, O'Halloran, Okroj, Morton & Sutherland Stewart, *supra* note 120, at 302.

334. See, e.g., GOODMARK, DECRIMINALIZING DOMESTIC VIOLENCE, *supra* note 33, at 20; ROBERTS, TORN APART, *supra* note 51, at 196–202.

335. GOODMARK, DECRIMINALIZING DOMESTIC VIOLENCE, *supra* note 3, at 20.

336. Coker, *Transformative Justice*, *supra* note 21, at 133–34.

337. See Alisa Bierria & Colby Lenz, *Battering Court Syndrome: A Structural Critique of "Failure to Protect,"* in THE POLITICIZATION OF SAFETY: CRITICAL PERSPECTIVES ON DOMESTIC

In addition to the direct risk of child removal for failure to protect, increased engagement with the state also puts survivors, particularly those in subordinated communities, at risk of having their children removed from the home due to alleged neglect.³³⁸ Ironically, trying to access resources to improve their lives and the lives of their children forces survivors to interact with systems that remove children from homes because they do not have the resources they need.³³⁹ This is naturally traumatic for parents, but it is also concretely harmful to children, affecting emotional and physical health and worsening both short and long-term outcomes for children placed in foster care.³⁴⁰

Family policing disproportionately impacts communities of color.³⁴¹ This is one of the many ways in which people of color, and especially women of color, have their lives hyper-regulated.³⁴² Dorothy Roberts argues that many aspects of the welfare system serve as a means of behavioral modification, rather than social support, increasing state control over the lives of predominantly poor people of color.³⁴³ Roberts describes the “racial geography” of the family policing system, which she defines as the damage caused by the carceral system targeting Black communities and the overrepresentation of Black children and families in the system.³⁴⁴ Carceral entanglements lead to the “creep” of both the criminal legal system and other forms of state control, such as the family policing system, which are already heavily racialized, when survivors seek supportive resources.³⁴⁵

VIOLENCE RESPONSES 91 (Jane K. Stoeber ed., 2019); ROBERTS, TORN APART, *supra* note 51, at 196–202.

338. See Shanta Trivedi, *The Harm of Child Removal*, 43 N.Y.U. REV. L. & SOC. CHANGE 523, 534–41 (2019).

339. *Id.*; ROBERTS, TORN APART, *supra* note 51, at 66–70.

340. Trivedi, *supra* note 338, at 527–52.

341. See Alan J. Dettlaff, Stephanie L. Rivaux, Donald J. Baumann, John D. Fluke, Joan R. Rycraft & Joyce James, *Disentangling Substantiation: The Influence of Race, Income, and Risk on the Substantiation Decision in Child Welfare*, 33 CHILD. & YOUTH SERVS. REV. 1630, 1630 (2011); Sarah A. Font, Lawrence M. Berger & Kristen S. Slack, *Examining Racial Disproportionality in Child Protective Services Case Decisions*, 34 CHILD. & YOUTH SERVS. REV. 2188, 2188 (2012); ROBERTS, TORN APART, *supra* note 51, at 4 (“The removal of Black children at four times the rate of white children could not be justified by any matching discrepancy in rates of child abuse and neglect.”).

342. See Wendy A. Bach, *The Hyperregulatory State: Women, Race, Poverty, and Support*, 25 YALE J. L. & FEMINISM 318, 318–19 (2014); Dorothy Roberts, *Abolishing Policing Also Means Abolishing Family Regulation*, IMPRINT (June 16, 2020), <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480> [<https://perma.cc/96XD-YKP8>].

343. ROBERTS, TORN APART, *supra* note 51, at 121.

344. *Id.* at 52–62.

345. See Bach, *supra* note 342; Kim, *supra* note 240 at 24 (describing the “carceral creep”—how the relationship between the feminist anti-violence movement and the “masculinist, repressive arm of the state” can “undermine the goals of the movement and eventually subordinate movement actors and institutions to the greater aims of the movement’s prior targets”).

B. Structural Harms

IPV is not simply an individual problem affecting specific interpersonal relationships—it is also a structural problem. Correspondingly, carceral entanglements create structural harm in addition to the harms experienced by individual survivors. The structural impact of the “carceralization” of ostensibly non-criminal options for survivors highlights critiques commonly brought by the anti-carceral feminist movement and the police abolition movement more generally.

Both anti-carceral feminists and abolitionists emphasize movement away from the criminal legal response and toward supportive systems that prevent and mitigate the harms of violence.³⁴⁶ When these alternatives are carcally entangled, the carceral state becomes further entrenched in the response to IPV and in society as a whole. By valuing interaction with and evidence provided by the criminal legal system, carceral entanglements also further the specious principle that police officers are neutral sources of truth. In many ways, modern American society is dominated by police supremacy.³⁴⁷ Carceral entanglements bake both literal and rhetorical domination of police into how we respond to interpersonal violence, how private persons and the state are treated in individual legal matters, and how police shape the fabric of American society.

1. Entrenching the Supremacy of the Carceral State

Carceral entanglements in the civil response to IPV do not just make remedies inaccessible and inequitable for survivors trying to access remedies and services. They also entrench the carceral state’s supremacy in the social and legal response to IPV, as well as its supremacy in shaping American society as a whole.³⁴⁸

Through its emphasis on the carceral response, the anti-IPV movement has been complicit in the growth of the carceral state and the epidemic of mass incarceration in the United States. Increasingly, anti-carceral feminists argue that advocates for survivors of IPV should be concerned about mass incarceration, not just because it can harm individual survivors, but because it causes structural harm

346. Statement by Caroline Bettinger-Lopez, Donna Coker, Julie Goldscheid, Leigh Goodmark, Valli Kalei Kanuha, James Ptacek & Deborah Weissman, VAWA Is Not Enough: Academics Speak Out About VAWA (2012), <https://ssrn.com/abstract=3154638> [<https://perma.cc/ELF6-2F67>].

347. By “police supremacy,” I refer to the ways in which law enforcement officers act with impunity to determine facts, regulate conduct, and control people seen as subordinate to their power. Dr. Ezra E.H. Griffith, professor of psychiatry and African American studies at Yale, refers to police supremacy in the context of his experiences interacting with police in the wake of Officer Derek Chauvin’s murder of George Floyd, pointing to the power police possess and the fear and loss of dignity they can cause. Ezra E.H. Griffith, *The Knee on the Other’s Neck*, PSYCHIATRIC NEWS (May 20, 2021), <https://psychnews.psychiatryonline.org/doi/full/10.1176/appi.pn.2021.6.23> [<https://perma.cc/LZ5Y-R54Z>].

348. See Akbar, *supra* note 9, at 1813–14.

by *increasing* the prevalence of IPV and destroying (predominantly Black and Brown) communities.³⁴⁹

A burgeoning prison and police abolitionist movement advocates for the dismantling of the carceral state as a whole, arguing that the harms of mass incarceration are inherent in the structures of criminalization and cannot be solved through “reformist reforms” which leave those structures in place.³⁵⁰ While much of the conversation about mass incarceration focuses on drug offenses and other non-violent crime,³⁵¹ the centrality of the carceral state in the response to IPV is particularly harmful to the cause of abolition, given that even many otherwise progressive advocates have focused on the criminal legal response as the necessary or desirable method to address violence.³⁵² The effects of mass incarceration, including disinvestment in communities of color and loss of individual and community economic support, worsen conditions that contribute to IPV such as poverty, substance abuse disorder, trauma caused by incarceration, and unemployment.³⁵³ Collateral consequences of incarceration also disrupt family structures even outside the immediate relationship between the survivor and abusive partner by putting families living in public housing at risk of eviction if their family members who have been convicted of felonies live with or visit them.³⁵⁴ “Reformist reforms” that try to work around these existing structures while leaving them in

349. See generally GOODMARK, DECRIMINALIZING DOMESTIC VIOLENCE, *supra* note 3; GRUBER, *supra* note 33; DAVIS, DENT, MEINERS & RICHIE, *supra* note 33; Coker & Macquoid, *supra* note 22.

350. See generally Akbar, *supra* note 9; PURNELL, *supra* note 9; DAVIS, DENT, MEINERS & RICHIE, *supra* note 3; VITALE, *supra* note 9. Several law schools and law journals have played a role in increasing scholarly discourse surrounding abolition. See, e.g., Symposium, *Changing the Way We See Modern Policing: Abolition or Reform*, 27 CARDOZO J. EQUAL RTS. & SOC. JUST. 435 (2020); Dorothy Roberts, Amna Akbar, Monica C. Bell & Jocelyn Simonson, Panel Discussion at the University of Pennsylvania: Beyond Reform: Reenvisioning the Role of Police (June 24, 2020), <https://www.law.upenn.edu/live/news/10207-law-school-hosts-beyond-reform-reenvisioning-the> [https://perma.cc/9XEB-S5YD]; Symposium, *State Violence and Womxn: Defining the Reaches of Modern Policing*, CAL. W. L. REV. (2022); Colloquium, *Defund to Abolish*, N.Y.U. REV. L. & SOC. CHANGE (2021), <https://socialchangenyu.com/symposia/2021-colloquium-defund-to-abolish/> [https://perma.cc/HJU6-G7ZF].

351. See, e.g., ALEXANDER, *supra* note 22, at 5–19 (focusing, in introduction, on the “War on Drugs” as a driver of mass incarceration); 126–29 (arguing that violent crime is not the driver of mass incarceration).

352. See generally GRUBER, *supra* note 3 (criticizing feminist advocates who embrace carceral theories of IPV). See also Deborah Tuerkheimer, *Recognizing and Remediating the Harm of Battering: A Call to Criminalize Domestic Violence*, 94 J. CRIM. L. & CRIMINOLOGY 959 (2004) [hereinafter Tuerkheimer, *Recognizing and Remediating the Harm of Battering*] (calling for the increased use of the criminal legal system to address the harms of IPV). Tuerkheimer, a law professor and former prosecutor, has written about the need for criminal justice advocates and scholars to address the inequality caused by mass incarceration and wrongful convictions, but also advocates for increased prosecution and criminal penalties for IPV offenses. Deborah Tuerkheimer, *Criminal Justice for All*, 66 J. LEGAL ED. 24 (2016) (advocating a reformist approach to the criminal legal system).

353. Coker & Macquoid, *supra* note 22, at 610–14.

354. *Id.* at 600 (discussing public housing rules prohibiting tenants from inviting visitors with felony records on the premises).

place only serve to make those structures more endemic and necessary to the social response to violence.

These effects disproportionately fall on Black and Brown families and communities.³⁵⁵ One of the principal critiques abolitionists have raised of the criminal legal system is that it is essentially a hegemonic apparatus intended to preserve the status of white people while punishing and subordinating people who are not members of the in-group.³⁵⁶ The authors of *Abolition. Feminism. Now.* emphasize the carceral state's attitude that subordinated groups are "naturally inclined to criminality and belong in prison."³⁵⁷ Under this hegemonic view of the criminal legal system, racial subordination is a feature, not a bug.

Partially in response to critiques of mass incarceration, scholarly discourse and advocacy strategies in recent years have increasingly focused on the creation and expansion of supportive, practical solutions that meet the material needs of survivors.³⁵⁸ Many of these strategies are explicitly non-carceral or anti-carceral. Similarly, abolitionists encourage us to reduce our reliance on police and cultivate safety in our own communities through other means.³⁵⁹ But we cannot just shift reliance on police to reliance on other socially supportive means if those means are entangled with the carceral state. People concerned with eliminating or decreasing reliance on the carceral state should look critically at what it means to be carceral. If a remedy or service coerces the person seeking help to engage with the carceral state in order to access it, it is essentially furthering the reach and centrality of the carceral state and making abolition less attainable.³⁶⁰

355. See ALEXANDER, *supra* note 22, at 72–73 (discussing the racially disproportionate impact of Clinton-era “welfare reform” efforts and rules excluding people with criminal records from public housing).

356. See DAVIS, DENT, MEINERS & RICHIE, *supra* note 3, at 42.

357. *Id.*

358. THE CRITICAL RESISTANCE - INCITE! STATEMENT ON GENDER VIOLENCE AND THE PRISON-INDUSTRIAL COMPLEX, REFLECTIONS 2008, <https://incite-national.org/wp-content/uploads/2018/08/CR-INCITE-statement-2008discussion.pdf> [<https://perma.cc/8KYJ-UJQC>] (last visited Mar. 8, 2023) (“We seek to build movements that not only end violence, but that create a society based on radical freedom, mutual accountability, and passionate reciprocity. In this society, safety and security will not be premised on violence or the threat of violence; it will be based on a collective commitment to guaranteeing the survival and care of all peoples.”); see also Coker, *Shifting Power for Battered Women*, *supra* note 7; GOODMARK, DECRIMINALIZING DOMESTIC VIOLENCE, *supra* note 3.

359. PURNELL, *supra* note 9, at 126 (“Organizing and building community relationships to reduce the reasons why people think they need police could also help decriminalization campaigns.”); Rachel Herzing, *Standing Up for Our Communities: Why We Need a Police-Free Future*, TRUTHOUT (Mar. 7, 2017), <https://truthout.org/articles/standing-up-for-our-communities-why-we-need-a-police-free-future/> [<https://perma.cc/GV6P-PBHW>]; Akbar, *supra* note 9, at 1834–37 (discussing “everyday abolition”—methods to resolve conflict and address collective and individual harm in ways that do not involve the police).

360. The grassroots abolitionist collective Critical Resistance has created a graphic tool to help assess whether steps are “reformist reforms” or abolitionist steps. *Reformist Reforms vs. Abolitionist Steps to End Imprisonment*, CRITICAL RESISTANCE, https://criticalresistance.org/wp-content/uploads/2021/08/CR_abolitioniststeps_antiexpansion_2021_eng.pdf [<https://perma.cc/AU9T-QYEK>] (last visited July 19, 2022).

2. *Police as Gatekeepers to Truth: Epistemic Exceptionalism and Epistemic Injustice*

Carceral entanglements contribute to the supremacy of police in the response to violence, in the American legal system and in society as a whole. The preceding Parts have discussed at length the reasons survivors should not be coerced to participate in the carceral system, but carceral entanglements also further the troubling and specious principle that police are neutral arbiters of truth, and correspondingly, that survivors are not truthful.

Remedies and services entangled with carceral systems can be justified as attempts to encourage cooperation with police due to a belief that the criminal legal system is a socially valuable, efficient, or effective way to address violence, or through the belief that reporting to police “proves” the abuse (and impliedly, that services would be abused if victim survivors did not have to prove their status).³⁶¹ The professionalization of America’s police forces over the 20th century corresponds with a growing culture, particularly in the judiciary, of trusting police both as fact witnesses and as experts in investigation.³⁶² However, judicial dependency on police officers within the criminal justice system and current events show that unquestioning trust in the factual accounts of police officers is often misplaced.³⁶³

Police have status as members of the in-group of the criminal legal system that is not afforded to others.³⁶⁴ This status contributes to and amplifies the problem of misplaced credibility and reliance on police for both criminal and civil matters.³⁶⁵ James Steiner-Dillon coined the term “epistemic exceptionalism” to refer to the notion that “judges are more intellectually capable, more fair-minded, and less susceptible to a variety of cognitive fallacies and motivated reasoning than jurors.”³⁶⁶ A similar notion applies to police on both an individual and structural level. Individually, fact-finders often defer to police knowledge and

361. Nanasi, *The U Visa’s Failed Promise*, *supra* note 195, at 279–82 (discussing legislative history demonstrating Congress’ intent to strengthen law enforcement’s ability to investigate and prosecute crimes, as well as arguments that reporting requirements prevent fraud because law enforcement are best-positioned to determine the truth about claims of abuse).

362. Anna Lvovsky, *The Judicial Presumption of Police Expertise*, 130 HARV. L. REV. 1995, 2006 (2017) (“Pushing back against stereotypes of police incompetence in the 1930s, police executives insisted—and commentators increasingly acknowledged—that veteran officers ‘acquire a perception which the ordinary person lacks,’ attuned to ‘suspicion-arousing circumstances.’”) (citing LAWRENCE P. TIFFANY, DANIEL L. ROTENBERG & DONALD M. MCINTYRE, JR., DETECTION OF CRIME 40 (1967)).

363. See David N. Dorfman, *Proving the Lie: Litigating Police Credibility*, 26 AM. J. CRIM. L. 455 (1999).

364. Goodmark, *Hands Up at Home*, *supra* note 235, at 120–21.

365. See *id.*; DIANE WETENDORF, BATTERED WOMEN’S JUST. CTR., WHEN THE BATTERER IS A LAW ENFORCEMENT OFFICER: A GUIDE FOR ADVOCATES 33–34 (2004), <http://www.abuseofpower.info/wetendorf-advocate-guide.pdf> [<https://perma.cc/C62J-Z453>] (discussing difficulty in obtaining a civil protective order against a police officer, and enforcing orders when they are granted, due to officers’ status within the community).

366. James R. Steiner-Dillon, *Epistemic Exceptionalism*, 52 IND. L. REV. 207, 208 (2019).

expertise, and police are typically considered by legal actors to be more inherently credible than other fact witnesses.³⁶⁷ But carceral entanglement non-criminal systems also grant the police *structural* credibility. Police reporting requirements elevate police knowledge and investigative skill above that of the people who actually experienced or witnessed the events they are reporting.

This form of structural epistemic exceptionalism pervades society as a whole, not just the legal system. For example, the news media frequently defers to police, citing their statements verbatim as fact in reporting. A case in point is that of a ten-year-old girl forced to cross state lines to obtain abortion care after the Supreme Court's reversal of *Roe v. Wade* and the resulting chaos surrounding state abortion laws.³⁶⁸ Multiple reputable news sources initially cast doubt on the story and stated that it could not be fact-checked, and in some cases, that it was categorically false.³⁶⁹ After a man was charged with raping the girl in Ohio, these sources agreed that the story was true because law enforcement had confirmed it.³⁷⁰ This story reflects the prevalent attitude that the truth is determined by what the criminal legal system says it is.

Epistemic exceptionalism regarding the police is not based in reality. In fact, it is reasonable to argue that police are *less* truthful than the general public.³⁷¹ This

367. Lvovsky, *supra* note 362, at 2012; Geoffrey P. Alpert & Jeffrey J. Noble, *Lies, True Lies, and Conscious Deception: Police Officers and the Truth*, 12 POLICE Q. 237, 238 (2009) (stating that often, the word of police officers “and their ‘honesty’ is taken over that of a civilian in legal proceedings, and judges will most frequently award a ‘tie,’ a ‘he said, she said,’ or a ‘swearing contest’ to the officer”).

368. See Laura Bassett, *Washington Post, Wall Street Journal Walk Back Doubts About 10-Year-Old Rape Victim's Abortion Story*, JEZEBEL (July 13, 2022), <https://jezebel.com/washington-post-wall-street-journal-walk-back-doubts-a-1849176215> [<https://perma.cc/PUW5-BC8M>].

369. After President Biden spoke about the story, the Wall Street Journal published an editorial calling it “fanciful.” Although the doctor who performed the abortion spoke on the record, because she did not identify the girl, the Journal concluded, “There’s no evidence the girl exists.” *An Abortion Story Too Good to Confirm*, WALL ST. J., July 13, 2022, at A16. Similarly, Glenn Kessler of the Washington Post published an article questioning the veracity of the story because the girl’s doctor was the only source, stating, “If a rapist is ever charged, the fact finally would have more solid grounding.” Glenn Kessler, *A One-Source Story About a 10-year-old and an Abortion Goes Viral*, WASH. POST (July 9, 2022), <https://www.washingtonpost.com/politics/2022/07/09/one-source-story-about-10-year-old-an-abortion-goes-viral/> [<https://perma.cc/M8LF-JFVK>]. Fox News host Tucker Carlson went so far as to conclude, “Turns out the story wasn’t true.” Bassett, *supra* note 368.

370. After the arrest of a 27-year-old man for the rape of a ten-year-old in Ohio, the Post and the Journal updated their articles on the story. The Post’s update reads, “An arrest has been made in this case, providing additional confirmation.” Kessler, *supra* note 369. The Journal published a correction, noting that the alleged rapist had confessed to sexual assault, but continuing to note that the original story “was based on a single source and provided no confirmation.” Editorial, *Correcting the Record on a Rape Case*, WALL ST. J., July 14, 2022, at A16.

371. “Police officers can be expected to omit, redact, and even lie on their police reports, sworn or unsworn; they will conceal or misrepresent to cover up corruption and brutality; they are trained to deceive citizens during investigations as part of good police practice; and they will obscure facts, and even lie, to cover up for the misconduct of fellow officers. Additionally, command practice and policy gives officers every incentive to lie to cover for lack of productivity or to aggrandize

may be the result of intentional lying, biased observations and conclusions, or simple errors. But, contrary to the premise of police epistemic exceptionalism, there is no evidence that police officers in fact possess superhuman skills of observation, and like all humans, they make mistakes.³⁷² A stark example of fabrication and inconsistency on the part of law enforcement agencies is the aftermath of the tragic school shooting in Uvalde, Texas. Police initially reported that they did not know there were still children alive inside during their delay in entering the school, that they immediately engaged with the shooter, and that they could not enter the school because it was locked.³⁷³ These details, among many others, were later refuted.³⁷⁴ Extensive reporting and an investigation by the Texas legislature have since revealed massive systemic and individual failures and a campaign of misinformation by law enforcement regarding these failures.³⁷⁵ Criminologist Philip Stinson argues that these coordinated lies reveal a culture where police

control the narrative, and it's always written so things happen in a textbook fashion When we find out later on that they don't always do what they were trained to do, they act in ways inconsistent with their training and make up shit as they go They want to cover their own ass in the name of justice.³⁷⁶

On the other hand, police reporting requirements and the culture of epistemic exceptionalism lead to the devaluation of survivors' ability to know and tell their own stories. Scholars, beginning with political philosopher Miranda Fricker, have developed the theory of "epistemic injustice" as a framework to analyze harm to people in their capacity as "knowers."³⁷⁷ Particularly when access to remedies simply requires survivors to report to police rather than cooperate with an ongoing investigation, reporting requirements imply that police can "prove" that something happened where a survivor cannot. If a report is based exclusively on an officer's retelling of a survivor's story and/or the officer's observation of the survivor, the

themselves for recognition and promotion. And yes, police officers will commit perjury in our courts of law." Dorfman, *supra* note 363, at 460–61.

372. Lvovsky, *supra* note 362, at 2068–69 ("Even assuming that police expertise yields some criminological knowledge, scholars insist that it is offset if not overwhelmed by countervailing biases in the police profession, including excess suspicion, overzealousness in the pursuit of crime, and pervasive racial prejudice leading to disproportionate enforcement against minorities.").

373. Anya van Wagendonk & Steve Reilly, *12 Times Law Enforcement Misrepresented Key Details of the Robb Elementary School Shooting in Uvalde*, GRID (July 16, 2022), <https://www.grid.news/story/misinformation/2022/07/16/12-times-law-enforcement-misrepresented-key-details-of-the-robb-elementary-school-shooting-in-uvalde/> [<https://perma.cc/S2FT-NKQL>].

374. *Id.*

375. *Id.*; Zach Despart, "Systemic Failures" in Uvalde Shooting Went Far Beyond Local Police, *Texas House Report Details*, TEX. TRIB. (July 17, 2022), <https://www.texastribune.org/2022/07/17/law-enforcement-failure-uvalde-shooting-investigation/> [<https://perma.cc/3A3S-295F>].

376. Wagendonk & Reilly, *supra* note 373.

377. See MIRANDA FRICKER, *EPISTEMIC INJUSTICE: POWER & THE ETHICS OF KNOWING* (2007); S. Lisa Washington, *Survived & Coerced: Epistemic Injustice in the Family Regulation System*, 122 COLUM. L. REV. 1097 (2022).

officer's credibility supersedes and stands in the place of the survivor's credibility. The survivor's capacity as a knower is diminished when their narrative must be filtered through the supposedly objective lens of carceral state actors. This reflects and exacerbates existing biases and systems that discount and devalue the narratives of survivors, particularly those who are woman-identifying.³⁷⁸ When survivors must report to police in order to prove their own experiences, police act as gatekeepers of truth.

The dual issues of epistemic exceptionalism and epistemic injustice are harmful in the context of the response to IPV, but they also contribute to the larger entrenched supremacy of the carceral state and of police specifically. So long as carceral state actors are treated as inherently credible, and the credibility of the persons upon whom they act is discounted, the carceral state will remain deeply entrenched not just in the response to IPV, but in the fabric of American society.

IV.

DISENTANGLING THE CIVIL-CARCERAL STATE

The carceral response is woven into nearly every aspect of the American response to IPV. Advocates should begin looking for ways to disentangle the carceral state from the existing array of civil remedies for victims. At the same time, we should avoid the temptation to expand responses to IPV that further entrench the carceral state.

A. Remove Existing Carceral Entanglements

Advocates for effective, autonomy-enhancing, and non-discriminatory responses to IPV should work to identify places where reliance on the carceral state has been baked into the non-criminal response and advocate for the removal of carceral entanglements. For example, residential lease break provisions that require tenants to obtain a CPO or police report could be amended to allow for self-certification, following the model of North Dakota, Delaware, and Vermont.³⁷⁹ The U-visa and T-visa processes could be amended to permit applicants to submit evidence of eligibility from any source and to remove requirements for applicants to cooperate with law enforcement. Crime victim compensation funds could return to their original model—using funds from the general revenue, rather than criminal fines, fees, and restitution, to pay out awards to meet survivors' material needs without requiring them to engage with the carceral state. These reforms may be politically difficult. The rationale for many of the existing requirements is that services will be abused if survivors are not required to prove that they are eligible or that their abuse is "serious" by interacting with the criminal legal system or obtaining a CPO.³⁸⁰ Additionally, many advocates for the expansion of rights and

378. See Washington, *supra* note 377; Epstein & Goodman, *supra* note 27.

379. See *supra* notes 226–227 and accompanying text.

380. Coker, *Shifting Power for Battered Women*, *supra* note 80, at 1018.

remedies for survivors see carceral entanglements as a necessary and politically expedient, if slightly distasteful, way to make progress, since lawmakers tend to favor the carceral approach.³⁸¹ Some remedies, such as the U-visa and provisions of VOCA, were created with the specific purpose of incentivizing law enforcement reporting, so there is little political will to remove reporting requirements.³⁸²

It is tempting to see requirements to obtain a CPO as a less harmful alternative, but as discussed in Part I.B, they are in practice a part of the carceral system. CPOs are touted as a more flexible, individually tailored remedy, but when survivors are coerced to obtain them when they do not actually wish to do so, they eliminate survivor autonomy and, in many cases, force unwanted interaction with the criminal legal system.

In an ideal world, many remedies intended to address the financial and social harms of IPV would be unnecessary. If widespread economic and social support were readily available to all, survivors would not need to consider whether they could afford to leave an abusive relationship. Adequate physical and mental health care would be available at little to no cost. Financial support for housing, child-care, and other basic needs would not be limited to those the state recognizes as “victims.” We can work toward a world of increased opportunity, security, fairness, and equity for all. However, while we work toward these broader ideals, survivors continue to have unmet needs that affect their safety, security, and autonomy.

In the world as it exists today, IPV disproportionately affects people experiencing poverty and other forms of social and cultural subordination. Given this reality, we should focus on providing resources to survivors without putting them at further risk, giving them options from which to choose based on their specific circumstances, goals, and lived experiences, and avoiding furthering the harmful reach of the carceral state. We can use examples of remedies such as VAWA housing protections³⁸³ and address confidentiality programs,³⁸⁴ which typically do not require survivors to engage with the carceral state, to show that this is possible.

381. Based on email discussions with domestic violence advocates, Margaret Johnson discusses concern within the advocacy community “that state legislatures will be reluctant to pass new laws that fail to link domestic violence to crimes, physical harm, or fear of physical harm, believing it will lead to imaginary, but actionable, harms.” Johnson, *supra* note 39, at 1162.

382. See GOODMARK, A TROUBLED MARRIAGE, *supra* note 35, at 101–04; TOBOLOWSKY, BELOOF, GABOURY, JACKSON & BLACKBURN, *supra* note 59, at 207 (describing one rationale of VOCA’s victim compensation funding as “a political tool to win public and crime victim support for the criminal justice system and greater cooperation in crime prevention and prosecution”).

383. VAWA housing protections permit tenants to self-certify their eligibility. See *supra* notes 210–211 and accompanying text.

384. 22 states and the District of Columbia administer address confidentiality programs for survivors, which consider an applicant’s sworn statement as sufficient evidence of program eligibility. D.C. CODE § 4-555.03 (2019) (permitting a sworn statement as one of several methods of evidence, including law enforcement records, court orders, and other forms of documentation); FLA. STAT. ANN. § 741.403 (West 1998); 750 ILL. COMP. STAT. ANN. 61/15 (West 2021); IND. CODE ANN. § 5-26.5-2-2 (West 2020) (requiring a sworn statement and copy of a protective order *if any*; Attorney General may request additional information to verify sworn statement); IOWA CODE ANN. § 9E.3

Ideally, self-certification should be sufficient to access all civil remedies and services for survivors. Some may argue that this opens the door for fraud, or that there are not enough resources to go around unless we require people to prove that they are “real victims.” Advocates should not concede these arguments that carceral entanglements are necessary. The success of self-certification in the case of some remedies,³⁸⁵ as well as research finding that fraud in the reporting of IPV is rare,³⁸⁶ demonstrate that concerns about potential fraud are overblown. Some argue that there are insufficient resources to serve the needs of all people who identify as survivors, and we should focus limited resources on “serious” cases.³⁸⁷ But this reflects a view of false scarcity: remember that hundreds of millions of dollars are appropriated each year to fund programs intended to increase arrest and prosecution for IPV.³⁸⁸ This is abundance, not scarcity. That money could be redirected to non-carceral support and services.

Even if these concerns were warranted, would they outweigh the harms and ineffectiveness of solutions that are entangled with carceral systems? I argue the answer is no. As this Article has discussed at length, carceral entanglements are ineffective at best and actively harmful at worst. They make support less available

(West 2021); LA. REV. STAT. ANN. § 44:52 (West 2007); 2021 MD. LAWS CH. 124 (S.B. 109) (amending MD. CODE ANN. STATE GOV'T § 7-304 to permit “a statement from the applicant about the applicant’s subjective fear” as evidence of eligibility); OKLA. STAT. ANN. tit. 22, § 60.14 (West 2008); 23 PA. CONS. STAT. ANN. § 6704 (West 2005) (applicant must file an affidavit with the Office of Victim Advocate; an affidavit of eligibility based on domestic violence must state the affiant’s eligibility for a protective order and fear of future violent acts); VT. STAT. ANN. tit. § 1152 (West 2013); VA. CODE ANN. § 2.2-515.2 (West 2020); WASH. REV. CODE ANN. § 40.24.030 (West 2019); W. VA. CODE ANN. § 48-28A-110 (West 2007) and W. VA. CODE R. § 153-37-4 (2013) (statute does not require any statement from applicant; implementing regulations require attestation that disclosure of address threatens applicant’s safety).

385. 38 states currently have address confidentiality programs, which typically permit a sworn statement or do not require proof of eligibility. *E.g.*, D.C. CODE § 4-555.03 (2019) (permitting a sworn statement as one of several methods of evidence, including law enforcement records, court orders, and other forms of documentation). VAWA housing protections and some residential lease break protections also permit self-certification. *See supra* Part II.C.

386. *See, e.g.*, Julie Bosman, *Domestic Abuse Fraud: It’s Rarely Suspected and Rarely Detected*, N.Y. TIMES (Oct. 23, 2009), <https://www.nytimes.com/2009/10/23/nyregion/23domestic.html> [<https://perma.cc/JWW2-XA33>].

387. *See, e.g.*, JANICE ROEHL, CHRIS O’SULLIVAN, DANIEL WEBSTER & JACQUELYN CAMPBELL, INTIMATE PARTNER VIOLENCE RISK ASSESSMENT VALIDATION STUDY: THE RAVE STUDY PRACTITIONER SUMMARY AND RECOMMENDATIONS: VALIDATION OF TOOLS FOR ASSESSING RISK FROM VIOLENT INTIMATE PARTNERS 2 (2005), <https://www.ojp.gov/pdffiles1/nij/grants/209732.pdf> [<https://perma.cc/8LR8-SQSG>] (“To respond to this increased demand for services, agencies dealing with victims and offenders have adopted a number of mechanisms to identify high-risk cases in order to direct scarce resources and intensive services to those most in need.”).

388. *See supra* Part II.D (discussing requirements of federal grant funding to engage with law enforcement and prosecutors). In FY 2019, Congress appropriated a total of \$558,930,000 in grants under VAWA, including \$215 million toward the STOP (Services, Training Officers, and Prosecutors) Violence Against Women Formula Grant Program and \$53 million toward the Grants to Encourage Arrest Policies or Arrest Program. LISA N. SACCO & EMILY J. HANSON, CONG. RSCH. SERV., R45410, THE VIOLENCE AGAINST WOMEN ACT (VAWA): HISTORICAL OVERVIEW, FUNDING, AND REAUTHORIZATION 12–14 (2019), <https://crsreports.congress.gov/product/pdf/R/R45410> [<https://perma.cc/NY8L-RC36>].

to survivors; put them, their families, and their communities at risk of negative consequences; and create an inequitable system where members of already subordinated communities are least able to access the resources they most need. If the choice is between these negative consequences and a system with a risk of fraud or limited resources, advocates should choose the latter.

If self-certification is not politically viable, remedies should allow the broadest possible array of forms of evidence to prove eligibility for services³⁸⁹ and, at a minimum, should not require interaction with the carceral state. The carceral response to IPV is not working, and yet huge amounts of money continue to fund it.³⁹⁰ If we really want to prevent and remediate IPV, we should remove carceral entanglements and focus funding on supportive, non-carceral, and non-coercive solutions.

B. Avoid New Entanglements

Greater public attention to the harms of IPV has led to some progress in the recognition of the range of its harms, including economic abuse, emotional abuse, and psychological abuse.³⁹¹ However, responses that expand the definition of IPV to incorporate other forms of abuse continue to revolve around the criminal legal response.³⁹² Advocates for the prevention and remediation of IPV should avoid apparent progress at the expense of recreating the retributive and discriminatory systems inherent in the carceral response.

The issue of coerced debt whereby an abusive partner obtains credit in the survivor's name via fraud or coercion³⁹³ has garnered recent legislative attention.³⁹⁴ Financial institutions typically do not provide relief from debt without a police report, and some officers will not produce reports for coerced debt.³⁹⁵ Legislatures have begun to take on this issue through various channels, including

389. For example, New York's lease-break provision allows a wide range of documentation. See *supra* note 230 and accompanying text.

390. See *supra* Part II.D.

391. See *supra* notes 38–40 and accompanying text.

392. See, e.g., TEX. PENAL CODE ANN. § 32.51(b)(1) (West 2022) (expanding the definition of identity theft to cover coerced debt by including credit obtained “without the person’s consent or effective consent”).

393. See Angela Littwin, *Escaping Battered Credit: A Proposal for Repairing Credit Reports Damaged by Domestic Violence*, 161 U. PA. L. REV. 363, 363 (2013); Adrienne E. Adams, Angela K. Littwin & McKenzie Javorka, *The Frequency, Nature, and Effects of Coerced Debt Among a National Sample of Women Seeking Help for Intimate Partner Violence*, 26 VIOLENCE AGAINST WOMEN 1324, 1325 (2020).

394. S.B. 975, ch. 989, 2021–2022 Cal. Stat. (creating a cause of action for a debtor to obtain relief if a particular debt is coerced debt); see *infra* notes 396–398 and accompanying text.

395. AMY DURRENCE, KIRKLEY DOYLE & SONYA PASSI, ASSET FUNDERS NETWORK, MAKING SAFETY AFFORDABLE: INTIMATE PARTNER VIOLENCE IS AN ASSET-BUILDING ISSUE 11 (2020), https://assetfunders.org/wp-content/uploads/AFN_2020_MakingSafetyAffordable_SINGLE_9_22_2020.pdf [<https://perma.cc/T966-ARZV>].

expanding existing CPO eligibility and relief,³⁹⁶ creating new remedies under consumer law,³⁹⁷ requiring courts to consider economic abuse in distributing property in divorces,³⁹⁸ and expanding criminal identity theft laws to capture coerced debt.³⁹⁹ Efforts to address this relatively newly recognized problem show the range of approaches available, some of which include carceral entanglements (e.g., criminal identity theft) and others that do not (e.g., consumer protections). To avoid the individual and structural harms discussed in Part III, advocates should focus their efforts on opposing carceral solutions when approaching newly identified issues related to IPV.

Recent advocacy efforts have also focused on expanding definitions of IPV to capture patterns of coercive control, either in criminal law or through CPO statutes.⁴⁰⁰ Criminal laws addressing IPV focus on specific instances of violence, rather than a pattern of power and control, which most scholars and advocates recognize as a hallmark of IPV.⁴⁰¹ In response, some feminists argue that criminal law should be expanded to capture patterns of coercive control, which often cause more harm to survivors than discrete instances of physical violence.⁴⁰² While this advocacy has not gained much traction in American criminal law, several states have incorporated concepts of coercive control into their CPO statutes.⁴⁰³

The problems inherent in the carceral response to IPV persist if we only make “progress” by expanding the reach of the carceral state. Recognizing new harms while continuing to address those harms with the same carceral response will only entrench the discriminatory and harmful effects of the carceral state. Remedies for

396. Maine recently amended its CPO statute, permitting courts to issue CPOs upon findings of economic abuse. ME. STAT. tit. 19-A, § 4007 (2022).

397. Maine now requires consumer reporting agencies to reinvestigate debts if a survivor provides documentation of economic abuse and requires debt collectors to cease collection efforts if a survivor provides such documentation. ME. STAT. tit. 10 § 1310-H (2022).

398. ME. REV. STAT. tit. 19-A § 953(1)(D) (2022) (requiring courts to consider economic abuse by a spouse as a factor in distributing property in a divorce).

399. MARISSA JEFFERY & ANN BADDOUR, TEX. APPLESEED, ABUSE BY CREDIT: THE PROBLEM OF COERCED DEBT IN TEXAS (2018), <https://report.texasappleseed.org/abuse-by-credit-the-problem-of-coerced-debt-in-texas/> [<https://perma.cc/2ZB2-3Z4K>] (arguing for expansion of criminal legal tools to allow victims of coerced debt to file a police report). The Texas legislature adopted this proposal. TEX. PENAL CODE § 32.51 (2021) (criminalizing the “fraudulent use or possession of identifying information” that is obtained “without the other person’s consent *or effective consent*”) (emphasis added).

400. See Alafair S. Burke, *Domestic Violence as a Crime of Pattern and Intent: An Alternative Reconceptualization*, 75 GEO. WASH. L. REV. 552 (2007); Tuerkheimer, *Recognizing and Remediating the Harm of Battering*, *supra* note 352; Erin Sheley, *Criminalizing Coercive Control Within the Limits of Due Process*, 70 DUKE L. J. 1321 (2021) (discussing potential frameworks and pitfalls in criminalizing coercive control).

401. See Tuerkheimer, *Recognizing and Remediating the Harm of Battering*, *supra* note 352, at 972–75.

402. See *id.*; Burke, *supra* note 400.

403. Johnson, *supra* note 39, at 1138 (finding that one-third of states recognize “emotional, psychological, or economic abuse without a threat of physical violence as domestic violence worthy of a civil remedy”). Several states, including California, have specifically recognized coercive control as a basis for a protective order. CAL. FAM. CODE ANN. § 6320(c) (West 2022).

these newly recognized harms are only practically available to people who are willing and able to interact with the carceral state, which excludes many of the people who need help the most.

Advocating for the availability of increased legal interventions divorced from the carceral state runs the risk of another kind of entrenchment. The state and agencies receiving funding from the state can provide survivors with access to resources, but this may not address the larger underlying problems of poverty, racism, and other forms of subordination.⁴⁰⁴ If we make remedies available only to people who fit the definition of “survivor,” are we simply co-signing the existence of systems of oppression by providing resources for some subordinated people but not others? In an ideal world, society would provide for everyone’s material needs, and survivors would not need to choose between physical safety and economic security. We should aspire to build a world where people have their basic needs met and do not need to consider how they will meet those needs when deciding how to prevent and respond to IPV.

We can try to avoid this entrenchment by moving focus away from legal interventions and services dependent upon the state altogether. Increasingly, members of the abolitionist and anti-IPV communities propose visions of alternatives to state problem-solving, including restorative justice and transformative justice processes. Restorative justice is often framed as a diversionary system to respond to criminal offending, which involves community actors working together to provide accountability and address ways to remediate harm.⁴⁰⁵ Critics of restorative justice emphasize that it ignores the structural causes of crime and focuses on restoring the victim to a prior state—given the structural causes of IPV, this focus risks maintaining the status quo that caused the harm in the first place.⁴⁰⁶ It also still relies on the carceral state as a looming threat in some iterations and, in communities where abusers have support, may enforce ideas of what is morally wrong, which continue to subordinate survivors.⁴⁰⁷

The related concept of transformative justice attempts to address these shortfalls by focusing on the structural causes of crime and linking the identified perpetrator’s harm-causing behavior to their own experience of subordination.⁴⁰⁸ Transformative justice aims to reintegrate the identified abuser into the

404. See generally GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE*, *supra* note 3; Coker, *Shifting Power for Battered Women*, *supra* note 80.

405. See Coker, *Transformative Justice*, *supra* note 21, at 138–43.

406. *Id.* at 139–43.

407. See *id.*; Mimi E. Kim & V. Kalei Kanuha, *Restorative Justice and the Dance with the Devil*, 37 *AFFILIA: FEMINIST INQUIRY SOC. WORK* 189, 190–91 (2022); GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE*, *supra* note 3, at 144 (discussing restorative justice as part of a “regulatory pyramid” which moves through levels of intervention before ultimately resorting to incarceration as a last alternative); Carolyn Hoyle & Roxana Willis, *The Challenge of Integrating Restorative Justice Into the “Deep-end” of Criminal Justice*, in *ADVANCING CRIMINOLOGY AND CRIMINAL JUSTICE POLICY* 324 (Thomas G. Blomberg ed., 2016).

408. Coker, *Transformative Justice*, *supra* note 21, at 143.

community, but not at the expense of promoting the survivor's autonomy.⁴⁰⁹ Transformative justice recognizes underlying systems of oppression and aims to transform them to create communities that support survivors' autonomy.⁴¹⁰

Advocates of problem-solving methods framed as alternatives to the criminal legal system should be cautious of tying them into the carceral state by framing them as methods of diversion from the criminal legal system.⁴¹¹ Transformative justice advocates and practitioners are already attentive to the goal of creating mechanisms for "safety, accountability, and healing untethered from the existing criminal legal system."⁴¹² An increased focus on mutual aid and other community-building support also aims to reduce societal reliance on state solutions to address the causes and effects of IPV.⁴¹³ In creating new systems and methods of community safety and support, we should be cognizant of the ways in which apparently non-criminal remedies can be entangled with and support the continued primacy of the carceral state.

The economic, racial, and patriarchal power structures currently dominating American society mean that mutual aid and other forms of community-based support cannot meet all the needs of survivors. We can continue to advocate for broader, longer-term social solutions while we still advocate for the needs of individual survivors within the existing system. Reliance on the carceral state is particularly harmful both to individual survivors and to the community. We should work to decrease the supremacy of the carceral state, both in the response to IPV and in American society as a whole, while we simultaneously work toward these longer-term transformative solutions.

CONCLUSION

The abolition movement has continued to gain (at least rhetorical) momentum, and the once highly carceral feminist approach to IPV has begun to gradually embrace opposition to the carceral approach. As we work to reimagine a world that does not rely on a militarized, often brutal approach to solving social and individual problems, we must recognize the ways in which the civil response to violence was built on and is still entangled with the carceral response. The carceral state exists not just in America's jails and prisons, but also in the barriers to services and remedies that require unnecessary interaction with mechanisms of the carceral state. The abolition movement and anti-IPV movement should work in tandem to identify and address these entanglements to succeed in the dual aims of dismantling the carceral state and providing more (and more effective) options to prevent and remediate harms caused by violence.

409. *Id.* at 145.

410. *Id.*; see also DAVIS, DENT, MEINERS & RICHIE, *supra* note 3, at 5–7.

411. See Kim & Kanuha, *supra* note 407.

412. DAVIS, DENT, MEINERS & RICHIE, *supra* note 3, at 5.

413. See ROBERTS, TORN APART, *supra* note 51, at 299–302; Caitlyn Garcia & Cynthia Godsoe, *Divest, Invest, & Mutual Aid*, 12 COLUM. J. RACE & L. 601 (2022).