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# *Intimate Partner Violence and the Justice System: An Examination of the Interface*

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*Women entering the court system face a challenging experience, in part, because a courtroom can be an intimidating and difficult place for any person, and in part because women victimized by crimes in which the offender is known to them face distinctive difficulties when they seek the court's remedies. The interface is also made more challenging for women as the literature offers disparate findings as to the efficacy of criminal justice responses and civil remedies. This article briefly explores the unique characteristics of intimate partner violence cases that influence the interface of these victims with the court system. A review is provided of research on the criminal justice interventions in cases of intimate partner violence; and research on the efficacy of civil protective orders.*

**Keywords:** *intimate partner violence; women; criminal justice system; civil protective orders*

**Victims of intimate partner violence (IPV)** entering the court system face a challenging experience, in part, because the experience can be intimidating and difficult for any person, and in part because of the nature of intimate partner violence cases. There is substantial evidence that women victimized by crimes in which the offender is known to them face distinctive difficulties with they seek the court's remedies (e.g., Byrne, Kilpatrick, Howley, & Beatty, 1999). The interface is also made more challenging for women as the literature offers disparate findings as to the efficacy of criminal justice responses and civil remedies. This article explores the unique circumstances encountered by victims of IPV as they enter the court system and reviews the findings with regard to the efficacy of the remedies they find there.

### UNIQUENESS OF IPV CASES

Court systems are, by their nature, adversarial. Through civil and criminal rules of procedure, they set out legal proceedings that give little control to a victim and expose her directly to the offender. In addition, victims are “asked to recount a violent episode, not in the supportive or safe environment of a therapy session, but rather to a defense attorney whose role it is to question their credibility, dispute their memory, or even to challenge whether they are telling the truth” (Jordan, Nietzel, Walker, & Logan, 2004, p. 135). Above and beyond those challenges, women who reach out to the court for protection may have some ambivalence about having a partner arrested and may be fearful regarding the ability to financially provide for herself and her children if she is financially dependent on the offender (Fagan, 1996). If these factors do not prevent her from entering the justice system, they may change her goals for legal intervention from those traditionally designed for criminal justice involvement (e.g., protection or mandatory treatment rather than punishment) or may cause her to drop the proceedings after they have begun. Bennett, Goodman, and Dutton (1999) studied the reasons for high drop-out rates and found that the lack of social support by family or friends and abuse severity to have a significant impact on a victim’s ability to follow through on prosecution. Other obstacles included confusion and frustration with the slow pace of with the process, paralyzing fear, and conflict in the mind of the victim as to whether the offender should go to jail (Bennett et al., 1999).

The reasonableness of fear experienced by many women was evidenced in the findings of Ford and Regoli’s study in which 27% of offenders arrested on victim complaints reassaulted the victim prior to trial (Ford & Regoli, 1998). Women often experience threats or actual retaliation from the offender when they reach out to the court. Fischer and Rose (1995) found that women had been threatened with harm if they sought civil protective orders, and Klein (1996) found that nearly one half of the victims in his study reported that the offender had physically threatened them if they proceeded further in obtaining temporary restraining orders. Numerous studies have now reported that one of the primary barriers to victims seeking help or intervention is the fear of retaliation by the offenders (Ferraro, 1997; Mears, Carlson, Holden, & Harris, 2001; Zoellner et al., 2000). In a study of reporting behavior among victims of sexual assault, Bachman (1998) found that more than 1 in 10 victims who did not report their victimization to police said they did not do so because they feared reprisal by the offender. Threats from intimate partner offenders are more easily delivered by an offender who, by virtue of being in the relationship, knows how to access her and may be more believable as they come from an offender who often has historically acted on

those threats (Fagan, 1996). In addition, women often seek court action against an offender at the time they physically separate from the relationship, and there is substantial evidence that this is the point at which they are at greatest risk of harm (Bachman & Saltzman, 1995; Campbell, 1992; Campbell, Webster, et al., 2003; Stout, 1993; Wilson & Daly, 1993). Notably, femicide studies show that the murder of the woman is frequently preceded by a history of physical and other domestic abuse and often involves a recent attempt at or completion of separation by the victim (Arbuckle et al., 1996; Browne & Williams, 1993; Campbell, 1992; Ellis & DeKeseredy, 1997; Sev'er, 1997; Stark & Flitcraft, 1996; Wilson & Daly, 1993).

Finally, the court experience of a victim of IPV may also be unique in that there is little question of who allegedly committed the offense, rather the dispute centers around what was done (Colb, 2001; Scheppele, 1992). As a result, women victimized by an intimate partner often find their cases seeming to focus more heavily on whether, for example, sexual intercourse was consensual, or what behavior she engaged in prior to the violent act rather than on the offender's behavior (Jordan, Nietzel, et al., 2004). Moreover, as has been pointed out,

Because the defendant and victim had an intimate relationship with each other, the defendant, and therefore the defense attorney, has substantially more knowledge about the victim compared to cases in which the defendant and victim are not intimately acquainted. Thus, the defense has a great deal more "ammunition" available to discredit the victim's testimony during trial. (Hartley, 2003, p. 415).

## CRIMINAL JUSTICE RESPONSE

### Police Response to Violence Against Women

Empirical examination of police responses to violence against women has generally been explored in three areas of research: factors that influence help seeking by victims, patterns of arrest, and the effectiveness of arrest practices by law enforcement officers.

Any exploration of the response of law enforcement agencies to IPV must begin with the fact that not all victims seek help from the police. In fact, there is evidence that less than one half of all incidents of violence against women by intimates are ever reported (Bachman, 1994; U.S. Department of Justice, 1994). Similarly, the majority of sexual assaults are not reported (Gartner & Doob, 1994), and in fact rape continues to be one of the most unreported crimes (e.g., Koss, 1992). The Rape in America study reported that only 16%

of rapes are reported (Kilpatrick, Edmunds, & Seymour, 1992), and the National Violence Against Women Survey (NVAW; Tjaden & Thoennes, 2000) reported that less than one fifth (17.2%) of the women raped by an intimate said their most recent rape was reported to a law enforcement agency. At least two studies have found that stalking is reported more often than other forms of violence against women. Blaauw, Winkel, Arensman, Sheridan, and Freeve (2002) found that 89% of stalking victims turned to police, the NVAW Survey reported a 51% reportage rate for intimate partner stalking (Tjaden & Thoennes, 2000).

There are numerous factors that influence a woman's decision to contact police in response to suffering physical, sexual, or stalking victimization at the hands of a partner. First, fear of reprisal from the offender, a victim's perception of social stigma attached to victimization, and a belief that nothing may be accomplished in doing so tend to decrease help seeking from victims (Bachman, 1994). In addition, women appear to be less likely to contact police when the offender is known to them (Bachman, 1998; Tjaden & Thoennes, 2000) often using alternative or informal resources rather than reaching out to the justice system (Kaukinen, 2002). When abuse is severe and frequent, however, reportage rates are greater; and, in fact, severity and frequency of violence have been found to positively correlate with police contact (e.g., Johnson, 1990). The same association of severity and frequency and victim help-seeking behavior is also found in stalking cases (Cupach & Spitzberg, 2000; Mechanic, Weaver, & Resick, 2000). When rape (Kaukinen, 2002) or domestic violence (Bachman & Coker, 1995) result in injury, reporting to police also increases; and when a child or other relative witnesses an abuse incident, police are also called more often (Berk, Berk, Newton, & Loseke, 1984; Johnson, 1990). Alcohol and drug involvement and weapons have also been reported to be associated with police reportage in physical violence and rape cases (Bachman, 1998; Brookoff, O'Brien, Cook, Thompson, & Williams, 1997; Hutchison, 2003; Johnson, 1990).

Although findings regarding the influence of severity and frequency of violence on help seeking by victims are fairly consistent across studies, the same is not true for the factors of relationship length, race, and socioeconomic status. In general, studies seem to suggest that abuse early in a relationship is more likely to be reported (e.g., Bachman & Coker, 1995; Johnson, 1990), and that women in longer term relationships are less likely to contact police for assistance (e.g., Abel & Suh, 1987); however, not all research supports the finding that the longer a woman stays in a relationship, the less likely she is to reach out. For example, Pahl (1985) found that victims sought help only after suffering a sequence of violent acts, and after first turning to numerous other formal and informal resources. In addition, studies

show disparate findings with respect to the experiences of lower socioeconomic class and minority women. Some studies report that women from lower socioeconomic and minority groups may be more likely to call police, resulting in disproportionately higher arrest of men in these groups (Hutchinson, Hirschel, & Pesackis, 1992). For example, Bachman (1998) found that African American women were more likely to report their sexual victimization to police than other women. Conversely, Rasche (1995) reported that African American women were reticent to report their partners to a system perceived as dealing more harshly with men who were non-White, and Iovanni and Miller (2001) suggested that lower income women refuse to seek police help if they believe their partner would lose his employment by arrest, thereby risking her ability to care for her family.

*Arrest patterns in cases of IPV.* A woman's decision to reach out to police for assistance often does not mean the offender will be arrested. Bachman (1998) found that only 23% of reported rapes resulted in arrest. Historically, studies have shown low rates of arrest of domestic violence offenders, ranging from 5% to 18% of cases (Baker, Cahn, & Sands, 1989; Ferraro, 1989). In a sample of sheltered women, Coulter, Kuehnle, Byers, and Alfonso (1999) found that more than one half of the women contacted police but less than one fourth of the offenders were arrested. Low arrest rates are documented even when victims have received physical injury from the abuse (Baker et al., 1989). For example, Smith (2001) found low arrest rates in a study in which more than 60% of the cases involved physical injury to the victim; however, only 28% resulted in arrest. More recently, higher rates of arrest have been reported, including 29% (Bourg & Stock, 1994), 33% (Mignon & Holmes, 1995), 34% (Buzawa & Hotaling, 2000), and 36% (Robinson & Chandek, 2000).

As noted above, women are less likely to contact law enforcement when the offender is known to them, and similarly, studies show that officers are less likely to arrest intimate partner-offenders than nonintimate partners who commit physical assault or rape (Bouffard, 2000; Connolly, Huzurbazar, & Routh-McGee, 2000; Fyfe, Klinger & Flavin, 1997). Avakame, Fyfe, and McCoy (1999) studied cases of aggravated assault, rape, and sexual assault committed by known offenders and found that police were less likely to make an arrest if the offender was an intimate of the victim. Notably, not all studies find lower arrest rates for known offenders. Klinger (1995) concluded that the net probability of arrest in domestic violence cases is not different than other types of criminal cases. In addition, some authors have reported that rapes by known offenders are more likely to result in arrest than stranger rape cases, (Bachman, 1998; Kerstetter & Van Winkle, 1990), a finding that may

be explained by the fact arrest is easier when victims are able to identify the offender for investigating officers.

Research also points to the role of extralegal factors in likelihood of arrest, including injury to the victim (Bachman & Coker, 1995); the presence of a witness or the presence of a child (Buzawa & Austin, 1993; Felson & Ackerman, 2001); drug or alcohol use of the offender and victim (Feder, 1997; Mignon & Holmes, 1995); and the victim's preference for arrest (Buzawa & Austin, 1993; Rigakos, 1997). Using data from the National Crime Victimization Survey, Bachman and Coker (1995) also found a greater likelihood of arrest in cases in which African American men had victimized African American women as compared to White victims and offenders, cases involving unmarried women (single, divorced, separated), and cases involving first-time offenders. The fact that offenders with a history of prior violence were less likely to be arrested is troubling in relation to victim safety but is consistent with research by LaVoie, Jacob, Hardy, and Martin (1989) that found that a history of abuse by the offender had no significant effect on police attributing responsibility in vignettes representing domestic violence. Bachman and Coker (1995) suggest that one factor at play may be that prior offenders may have learned how to comport themselves with proper deference to the police at the scene of arrest, a supposition supported by other research suggesting that the demeanor of an offender is a factor in arrest practices (Fyfe et al., 1997; Klinger, 1996).

*The effectiveness of arrest.* The first examination of the deterrent effect of arrest in cases of IPV was conducted by Sherman and Berk (1984) in a study analyzing more than 300 cases assigned randomly to arrest, mediation, or couple separation options. This early study documented recidivism rates of 10% for the arrest option, 19% for the mediation option, and 24% for the separation option. Within 5 years of the study, and before adequate replication studies were reported, 84% of all major police departments in jurisdictions serving a population of more than 100,000 had adopted a preferred arrest practice (McFarlane, Willson, Lemmey, & Malecha, 2000), leading some authors to describe the phenomenon as an unprecedented, swift application of social sciences research to practice (Gelles, 1996). Subsequent reviews of the study found methodological problems, including questions regarding whether assignment to the three options within the study were, in fact, random. Gelles (1996) pointed out that officers could have violated random assignment either by avoiding the domestic disturbance call or by considering the call to be a felony rather than misdemeanor assault; and that the vast majority of cases were the work of only a few police officers in two precincts.

In addition, the study suffered from incomplete or missing data (Gelles, 1996).

Following the Minneapolis police study, five replication studies were conducted producing inconsistent findings as to whether arrest deters IPV. Two of the studies reported arrest as a deterrent to future violence (Berk, Campbell, Klap, & Western, 1992; Pate & Hamilton, 1992); one found no difference between arrest and warning (Sherman et al., 1992); and two found that arrest was not a deterrent to future domestic violence (Dunford, Huizinga, & Elliot, 1990; Hirschel, Hutchinson, & Dean, 1992). To develop a coherent evaluation of the effectiveness of arrest as evidenced in the five studies, the National Institute of Justice pooled the studies' findings, computed comparable independent and outcome measures, and standardized the experimental designs and statistical models (Maxwell, Garner, & Fagan, 2001). The key findings from the collective study include that arresting domestic violence offenders is consistently related to reduced subsequent violence, although not always at levels of statistical significance; the deterrent effects of arrest were not as robust as those for criminal record and age of the offenders; the size of the deterrent effect did not differ by the jurisdictions within the five sites; regardless of the option selected (arrest, mediation, or separation), most offenders had no subsequent criminal offenses against the victim, and most victims reported no subsequent victimization; and the combined data found no association between arrest of the offender and an increased risk of subsequent violence toward the victim. One factor that may influence offender behavior subsequent to arrest is whether the offender has "something to lose" by the arrest. Sherman, Schmidt and Rogan (1992) found, for example, that men who were arrested by police and who were employed were less likely to recidivate than unemployed offenders.

Outside of the replication studies, research has continued to show conflicting findings as to arrest efficacy; however some studies have found positive effect (e.g., Langan & Innes, 1986; Wiist & McFarlane, 1998; Willson, McFarlane, Lemmey & Malecha, 2001). In a study of 90 abused women, McFarlane and colleagues (2000) found a less positive outcome, with no change in future violence based on arrest of the offender. One of the more troubling findings of this study was that more than one third of the women in the study had insufficient evidence from which police could make arrests, and yet these women experienced levels of violence comparable to women whose cases resulted in arrest of the offender.

Early evaluation studies on arrest practices led quickly to development of mandatory arrest policies within police agencies across the country. Within 5 years, 13 states had enacted mandatory arrest policies for domestic violence

offenders (Roberts & Kurst-Swanger, 2002). Studies on the impact of those policies, not unlike findings on arrest itself, are inconsistent. For example, Sirles, Lipchik, & Kowalski (1993) found that 62% of the arrested men in their study indicated that the proarrest law would deter them from violence in the future. On the negative side, there is evidence that mandatory arrest policies result in the arrest of women, either by dual arrest or sole arrest, even in jurisdictions that require officers to identify a primary aggressor prior to making an arrest (Martin, 1997; Saunders, 1995; Zorza, 1994). It may be that the effectiveness of primary aggressor policies are particularly challenged by the complexity of domestic violence cases in which the self-defense actions of a battered woman are not immediately preceded by the violent act of the offender.

*Summary of IPV and police response.* Although not all studies are consistent in their findings, it appears that fear of reprisal, perceived social stigma, and a belief that nothing may be accomplished by reporting decrease help seeking from victims, whereas severity and frequency of violence are positively correlated with police contact. Most studies appear to show that victims of known offenders reach out less often than are stranger offenders, a trend also shown in arrest patterns. As to arrest efficacy, it appears that arresting domestic violence offenders is consistently related to reduced subsequent violence, although not always at levels of statistical significance. In addition, one factor that may influence offender behavior subsequent to arrest is whether the offender has something to lose by the arrest, suggesting that tailoring police response to the type of offender rather than instituting policies that do not allow officer discretion may be more advisable.

Before evaluative research can be used to effectively inform law enforcement policy, certain methodological challenges must be addressed. For example, cross-study comparisons are presently hampered by the fact that not all studies define *domestic violence* in the same manner and, as a result, include different populations in study samples. Some studies include only intimate partners, others include all familial or blood relationships, and still others do not control for the gender of the parties. Furthermore, many studies do not control for certain factors that would require an officer to make an arrest, such as injury and weapon, and they do not control for whether the victim signed a complaint or whether the victim preferred that an arrest be effected (Felson & Ackerman, 2001). Comparisons across state lines are difficult simply because state laws affect officer action and discretion across jurisdictions. All states have passed laws expanding police powers with respect to arrest on a determination of probable cause; however, some of

those laws prescribe officer discretion and others do not. In addition, some studies do not distinguish between cases where an arrest can and cannot be made. Some studies have addressed this by restricting cases to be analyzed to those in which the offender is present at the scene (Felson & Ackerman, 2001). Finally, most studies fail to measure incremental or dosage effects of arrest or other interventions (Sherman, 1992). Finally, although continued evaluation of arrest efficacy is important for victim safety, it should also be noted that the purpose of arrest is, above and beyond the findings of evaluation research, a societal punishment for criminal conduct.

### **Prosecution and Court Response to Domestic Violence and Rape**

Police response directly affects the next step in the criminal justice process, as at least one study has shown that more than three fourths of cases prosecuted are police initiated rather than coming from victims of IPV themselves (Rebovich, 1996). As noted by Iovanni and Miller (2001), however, "Despite over a decade of changes in police arrest policies, prosecutorial reforms are best characterized by how little is known about their effectiveness" (p. 310). Empirical examination of prosecution and court responses to violence against women has generally been explored in three areas of research: patterns of prosecution, the effectiveness of prosecution, and sentencing trends by the court. Each will be reviewed in the following sections.

*Prosecution patterns.* There is evidence that victims of domestic violence face low rates of prosecution, estimated by some at less than 10% of cases (Fagan, 1989; Sherman, 1992). Similarly, studies show that more than one half of reported rape cases are filtered out of the criminal justice system rather than being fully prosecuted (Frazier & Haney, 1996; Frohmann, 1991). Data from the NVAW survey show a better prosecution rate for stalking cases with female victims, that of 24%. Some of the same factors reported in the arrest literature have been identified as influencing prosecution, including a prior arrest record of the offender and severe injury to the victim (Schmidt & Steury, 1989). On the flip side, prosecution has been found less likely in instances where the victim has drug or alcohol problems (Rauma, 1984). The characteristics of rape victims have been shown to influence the likelihood of prosecution. Madigan and Gamble (1991) argued that the criminal justice system distinguishes between good victims and bad victims, the former being more likely to show visible, expressive signs of trauma and more willingness to work with police and prosecutors.

*Effectiveness of prosecution patterns.* The effectiveness of prosecution varies based on the outcome measure being evaluated. For example, prosecution does not appear to significantly reduce recidivism (Davis, Smith, & Nickles, 1998; Ford & Regoli, 1992; Tolman & Weisz, 1995); however, some studies report that victims report feeling more secure and in control of their lives when given the opportunity to have their case prosecuted (e.g., Ford & Regoli, 1992). Conversely, there is evidence that dissatisfaction with the legal system is highest for victims denied the opportunity to go forward with prosecution. In a study of 102 rape victims who reported a negative experience with the justice system, those whose cases were declined for prosecution were most likely to feel harmed (Campbell, Wasco, et al., 2001).

As in the case of police practice, a number of jurisdictions have responded to the complexity of IPV cases by instituting no-drop policies, in fact at least one study reports that fully 66% of prosecutor's offices across the country report adopting no-drop policies (Rebovich, 1996). The effectiveness of these policies has been evaluated in the research with two primary outcome measures: process measures related to prosecution and recidivism on the part of the offender. In the case of process evaluation, Davis, Smith, and Davies (2002) studied the effects of no-drop prosecution on conviction rates and found that case-processing time declined, dismissals and acquittals dropped, and the proportion of cases resulting in trials increased. Limited research is available to evaluate the impact of no-drop prosecution; however, at least one study found that victims who file charges against the offender under a drop-permitted policy being less likely to experience future violence than were victims whose offenders were prosecuted without their input (Ford & Regoli, 1993).

*Court processing and sentencing.* Rape cases evidence low conviction rates in most studies, with some authors suggesting 12% or less of cases (Frazier & Haney, 1996; McGregor, 1992). In addition, when compared to other violent offenses, rape convictions are lower. For example, 45.6% of sexual assaults that proceed to trial result in acquittal versus 31.8% for other violent crimes (Myers & LaFree, 1982). Studies also indicate that the sentencing of offenders convicted of IPV is quite lenient, with few domestic violence offenders being sentenced to time in jail (Sherman et al., 1992). The NVAW Survey found stalking cases with female victims ending in conviction just more than one half the time; often, however, the final conviction was not for stalking but for some other criminal offense (Tjaden & Thoennes, 1998). Jordan, Logan, Walker, and Nigoff (2003) found that dismissal was the most

common disposition of felony and misdemeanor stalking criminal cases in one state. Data such as these and other reports (e.g., Tjaden & Thoennes, 1998, 2000; Violence Against Women Grants Office, 1998) have led some authors to suggest that stalking cases arising in the context of IPV are more difficult for the courts to adjudicate (Jordan, Quinn, Jordan, & Daileader, 2000).

*Summary of prosecution and court response.* Studies evaluating the effectiveness of prosecution with the measure of offender recidivism have reported little effect of this type of sanction; however, when the effectiveness measure is the experience of the victim, at least one study found that victims reported that they felt more secure and in control of their situation after court action (e.g., Ford & Regoli, 1992). Similarly, of rape victims who reported a negative experience with the justice system, those whose cases were declined for prosecution were most likely to feel harmed. As to the effectiveness of no-drop prosecution policies, studies indicate that, when evaluated by case-processing time and dismissal rates, these policies are effective. When offender recidivism is the efficacy measure, however, the limited research available finds less positive effects. Finally, conviction rates and sentencing recommendations, at least in the limited studies available, have shown extremely low rates of conviction and little jail time in IPV cases.

### **Coordinated Community Responses to Intimate Partner Violence**

To fully assess the effectiveness of police, prosecution, and court practices, it is important to consider the context within which criminal justice responses take place. Numerous studies have now documented that arrest is more effective as a deterrent when it is undertaken in conjunction with other interventions, such as other legal interventions, social services, providing transportation to shelters, involving victims more directly in the decision to arrest (e.g., Sherman et al., 1992), and mandated treatment by the courts (Syers & Edleson, 1992). Community approaches to the prosecution of IPV cases also appear to have a positive effect, with at least one study finding lower criminal recidivism associated with successful prosecution, probation, monitoring, and court-ordered counseling (Murphy, Musser, & Maton, 1998). Similarly, Buzawa, Hotaling, & Klein (1998) reported a positive influence of a model or full-enforcement court response to domestic violence that included coordinated services and court-mandated treatment.

### CIVIL PROTECTIVE ORDERS

Although most aspects of the criminal justice system are distinct from civil law, domestic violence is unique in that the response crafted by advocates and legal professionals to this area of the law includes a combination of civil and criminal remedies. The addition of civil remedies has been important, in part, to emphasize the public nature of these crimes, and to address the relative ineffectiveness of the traditional criminal justice system in ensuring the protection of women and children. As pointed out by Chaudhuri and Daly (1992), "On a symbolic level, passage of TRO legislation reflects a significant shift from the traditional policy of state nonintervention in the reputedly 'private' familial sphere; and in principle, it offers battered women state protection from violent men" (p. 228). The other identified problem with criminal remedies was the reticence of some victims to participate in criminal proceedings out of fear that the offender would retaliate (Hart, 1996), a fear that appears to be less present with the civil protective order process (e.g., Wallace, 1996).

The limited research available on the number of victims of IPV who receive a protective order show that only 16.4% of rape victims, 17.1% of physical assault victims, and 36.6% of stalking victims obtain protective orders (Tjaden & Thoennes, 2000). There appear to be major differences between women who obtain orders and those who do not. For example, Linares and colleagues (1999) found that women who had ever filed for a protective order had higher rates of current IPV, worse health, and worse mental health than the nonprotective order group. Similarly, Wolf, Holt, Kernic, and Rivara (2000) found that women who sought protective orders were more likely to be employed full-time, to be married or have been married to the offender, to be separated from the offender at the time of the issuance of the order, to report injury from abuse, to have experienced sexual coercion by the offender, and to be more likely to be severely depressed and display more serious symptoms of mental health problems than women who did not seek protective orders.

Research indicates that women typically seek orders of protection after serious levels of victimization. For example, studies show that most women seeking orders have experienced physical assault (e.g., Carlson, Harris, & Holden, 1999; Gondolf, McWilliams, Hart, & Steuhling, 1994; Zoellner et al., 2000); beating and choking (e.g., Keilitz, Davis, Efkeman, Flango, & Hannaford, 1998); threats of harm or death (e.g., Keilitz, Davis, et al., 1998; Klein, 1996; Zoellner et al., 2000); sexual abuse (e.g., Ptacek, 1999); threats with a weapon, stalking, and harassment (e.g., Keilitz, Davis, et al., 1998); and assault of their children (e.g., Gondolf et al., 1994). Studies also indicate

that civil protection is most often sought, not the first time violence happens, but rather after lengthy exposure to abuse. For example, Keilitz, Davis, and colleagues (1998) found that more than 40% of women had experienced severe physical abuse at least every few months, and nearly one fourth had suffered abuse for more than 5 years. Harrell and Smith (1996) revealed that the duration of abuse for a woman before she sought court assistance was a median of 2.4 years, and Zoellner and colleagues (2000) reported that most of the women said the most recent episode was not the first incident of abuse (81%), and only about one third (36%) indicated that it was the worst.

When considering the effectiveness of protective orders, it is important to evaluate whether women complete the entire process of obtaining civil orders, as laws generally provide for an initial order of temporary duration with issuance of a final or permanent order only after a court hearing. Research indicates that between 24% and 63% of women seeking protective orders do obtain one (Gist et al., 2001; Gondolf et al., 1994; Harrell & Smith, 1996; Klein, 1996; McFarlane, Malecha, et al. (2004); Zoellner et al., 2000), a variance in percentages that calls for additional research. When orders are not issued, it is typically because the victim did not meet statutory eligibility to obtain an order, or she requested withdrawal of the petition for the order. For example, Harrell and Smith (1996) found that 40% of the women in their study did not return to the court to request that the order be made permanent. More important, studies indicate that factors external to the victim often act as barriers to her seeking the permanent order, including and a perception that the protective order process was too difficult or inconvenient (e.g., McFarlane, Malecha, et al., 2004). Zoellner and colleagues (2000) studied factors associated with persistence in seeking a permanent order and found that 100% of women who did not want the partner back, irrespective of whether he changed, went on to obtain the permanent protective order. Women who perceived themselves as under threat also went on to seek final protection; however, if her fear was too great, she was less likely to go forward. In contrast, when the women perceived a threat to the children if they pursued the protective order, they were deterred from seeking court help, with 85% of the women whose children were threatened not obtaining a permanent order (Zoellner et al., 2000).

*The effectiveness of civil orders of protection.* As with the other areas of justice response addressed in this article, the relative efficacy of civil protective orders differs dependant on the measure by which the evaluation is made. Three primary measures can be identified in the literature: victim satisfaction, offender recidivism, and the process measure of arrest by law enforcement officers for violations of orders. The latter measure is of importance, for

proponents of civil protective orders have argued that part of their effectiveness lies in the fact that, unlike traditional restraining orders, most states provide an enforcement provision in protective order statutes (i.e., offenders who violate protective orders may be arrested or may face contempt of court, depending on the jurisdiction; Crowell & Burgess, 1996). Notwithstanding that fact, however, studies show that even when states have mandatory arrest laws for violations of protective orders, law enforcement officers do not always arrest for protective order violations. In one study looking at situations rated by researchers as low or high risk, only 44% of protective order violations resulted in arrest, that number increasing to 76% when considering only the highest risk situations (Kane, 2000). The likelihood of arrest decreased as the number of prior incidents of abuse increased and the factor most associated with the arrest of the offender was the officer's perception of risk to the victim (Kane, 2000). As to the measure of victim satisfaction, findings are somewhat mixed. Some studies found victims reporting life improvements, feeling better about themselves, and feeling safer after securing a protective order (e.g., Keilitz, Hannaford, & Efke, 1997), whereas others show that victims are discouraged by how time-consuming and difficult the process is for obtaining a protective order (e.g., Ptacek, 1999).

As to offender recidivism, several studies have reported that the issuance of protective orders is associated with lower rates of repeat violence. For example, Kaci (1994) found that 86% to 92% of victims reported that the violence stopped after the protective order was issued; Carlson and colleagues (1999) found a 66% decrease in violence 2 years following the issuance of the order; and Holt, Kernic, Lumley, Wolf, and Rivara (2002) found that having a permanent protective order in place was associated with a significant 80% reduction in police-reported physical violence in the 12 months following the initial incident. Finally, McFarlane, Malecha, and colleagues (2004) found that the 149 women in her study reported significantly lower levels of IPV for up to 18 months following issuance of the order. Notably, however, although reporting lower levels of overall violence, 44% of the women reported at least one violation during the 18 months studied.

Not all studies report low rates of offender recidivism associated with protective orders. In a meta-analysis of stalking studies, Spitzberg (2002) found that across 32 studies measuring use and violation of protective orders, the orders were violated approximately 43% of the time; and in nine studies, an escalation of violence or stalking followed issuance of a protective order approximately 21% of the time. Harrell and Smith (1996) reported a 60% rate of reabuse in a 2-year follow-up, including severe violence (29%), other physical violence (24%), threats of violence and acts of property damage (43%), and psychological abuse (57%). In a 2-year follow-up study of

offenders, Klein (1996) found that almost one half (48.8%) reabused the victim after the issuance of a protective order.

Several factors are associated with the risk of offender recidivism following issuance of a protective order including the severity and persistence in the pattern of violence inflicted (Harrell & Smith, 1996), and the level of resistance the offender evidenced to having the order entered (the latter being related, not only to reabuse but also to the severity of the reabuse, the likelihood of property damage, and the likelihood of future psychological abuse of the victim) (Harrell & Smith, 1996). The presence of children has also been identified as being positively related to revictimization (Carlson et al., 1999; Harrell & Smith, 1996). In the Carlson study, the odds of reabuse for women who have biological children with the offender was nearly 4 times higher than for couples without children, a disturbing finding for the protection of the victim and of the children who witness the abuse. Carlson and colleagues (1999) also found that women in short-term relationships had a greater risk of reabuse, suggesting that offenders in longer term relationships may perceive themselves as having more to lose from continuing abuse and thus may be less likely to violate the court's order. Finally, Harrell and Smith (1996) noted two contextual factors, including the victim living separately from the offender and the response of the police to the incident leading the victim to seek a protective order: If the police arrested the man at the time of the incident that led to the protective order, the likelihood of severe violence during the following year decreased.

*Summary of protective order effectiveness.* Civil protective orders are an important additional legal remedy available to victims of IPV. Studies show that only a minority of victims access orders, and that those who do typically do so after serious and sustained exposure to violence. Limited research makes it difficult to evaluate victim satisfaction with the protective order process, as present studies find greater satisfaction, a sense of security, and frustration with the protective order process among victims. Offender recidivism is the primary measure by which protective order efficacy has been measured, and numerous studies do indicate an apparent reduction in violence subsequent to issuance of a court's order. Notably, however, even in studies purporting to show success of orders, orders were violated 20% to 40% of the time. More important, research has begun to identify factors most closely associated with higher rates of order violations, including the severity and persistence in the pattern of violence inflicted by the offender, the presence of children, brevity of the relationship, living separately from the offender, and police response at the index incident that led the victim to request that an order be issued.

The ability to compare efficacy rates across studies is limited by the fact that protective order statutes are different state to state in the statutory protections offered and the persons eligible to access orders; and the court process itself differs across jurisdictions. In addition, studies are not standardized in the follow-up periods used, some using 2 or 4 months, while others use 6 months or longer. In addition, measuring protective order effectiveness strictly by temporary recidivism has the problematic artifact that the abuse may have ended for reasons other than the order.

### CONCLUSION

The interface of women experiencing IPV and the justice system is challenging because women victimized by crimes in which the offender is known to them face distinctive difficulties when they seek the court's remedies. The interface is also made more challenging as the literature offers disparate findings as to the efficacy of criminal justice responses and civil remedies. There is good news buried within all the complexities of the literature in this area, however, in that it appears that arrest and civil protective orders are often associated with reduced experience with subsequent violence. One's enthusiasm for arguing on behalf of either remedy must be somewhat tempered, however, for not all arrest studies show significant findings, and even those studies ostensibly showing success of protective orders report a 20% to 40% violation rate. The ability to make broad general statements regarding efficacy for either criminal or civil remedy is limited in recognition that the type of offender on whom the sanction is placed is a significant variable affecting outcome, making all the more important the research that has begun to identify offender characteristics and contextual factors most closely associated with higher rates of recidivism.

Improvement in the science of understanding violence against women can result from strengthening methods of research. This must include ensuring comprehensive outcome measures that encompass evaluation of the victim's experience, offender recidivism, and the impact on the court system. Methodological challenges such as operational definitions and follow-up periods must also be attended to. Finally, research questions that ultimately lead to an understanding of whether the justice system affords greater safety for women will only come from collaborative research efforts that encourage interdisciplinary research projects and an engagement of advocates and practitioners in research that evaluates the field of practice about which they maintain a wealth of expertise.

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