

PUNISHING VICTIMS FOR BEING VICTIMS: AIDING AND ABETTING VIOLATIONS OF PROTECTIVE ORDERS

EMILY C. JESKE†

I. INTRODUCTION AND BACKGROUND

In the United States, over a third of women have experienced rape, physical violence, or stalking by an intimate partner,¹ and nearly half of all men and women will experience psychological aggression by an intimate partner in their lifetimes.² The impact of these types of interactions can be vast and long-lasting and may include psychological, sociological, and legal consequences for victims.³ Despite a greater understanding of domestic violence in the past thirty years, just over half of domestic violence victimizations are reported to police,⁴ and the percentage of females killed by an abusive partner remains constant.⁵ Legal reforms in this area have failed to change the fact that the “single largest cause of injury to women in the United States” is domestic violence, which accounts for more injuries to women than car accidents, muggings, and rape combined.⁶

† Emily C. Jeske is an Executive Editor of Volume 7 of the *Wake Forest Journal of Law and Policy* and will graduate from the Wake Forest University School of Law in May 2017. She would like to thank her family, friends, Olivia, and the Editorial Board of the *Journal* for their help and patience during the publication process. Special thanks is also reserved for Professor Rebecca Morrow for her guidance and support.

1. NAT'L CTR. FOR INJURY PREVENTION & CONTROL, NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 39 (2011).

2. *Id.* at 46. It is important to note that domestic violence occurs across all genders and sexual orientations. However, for the purposes of this article, victims will typically receive feminine pronouns while abusers will typically receive masculine pronouns. All of the cases analyzed in this comment have female victims and male abusers, so those delineations will remain constant for the purpose of clarity.

3. *See, e.g.*, NAT'L CTR. FOR INJURY PREVENTION & CONTROL, *supra* note 1.

4. JENNIFER L. TRUMAN & LYNN LANGTON, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, CRIMINAL VICTIMIZATION, 2014, at 7 (2015).

5. Michael T. Morley et al., *Developments in Law and Policy: Emerging Issues in Family Law*, 21 YALE L. & POL'Y REV. 169, 208 (2003).

6. *Id.* at 208–09.

Despite widespread laws and policies to protect victims of domestic violence, many jurisdictions still permit victims to be charged and convicted with aiding and abetting the violation of protective orders that those victims entered against their abusers.⁷ Because domestic violence is a complicated and pervasive issue, it is inappropriate for victims to be criminally punished for what ultimately amounts to their victim status. Such charges represent an intense misunderstanding of abusive relationships and the impact that domestic violence can have on a victim.

This Comment will analyze the social and legal issues surrounding the charge of aiding and abetting the violation of a domestic violence protective order against a victim of domestic violence, with a particular focus on how these implications play out in North Carolina in lieu of direct case law on the subject. The remainder of Section I discusses domestic violence generally and the protections that can be awarded to victims. Section II investigates the rationale of punishing a victim of domestic violence for voluntarily contacting her abuser. Section III considers the reasoning used by courts to protect victims of domestic violence faced with criminal charges of complicity. Section IV explains the plethora of reasons why a victim of domestic violence may stay with or return to her abuser. Section V discusses the challenges that are unique to victims of domestic violence. Finally, Section VI examines the current state of affairs of domestic violence policy in North Carolina and how aiding and abetting charges of this kind contravene public policy.

There are multiple patterns of domestic violence.⁸ Situational couple violence is that which does not arise out of a pattern of control, but rather occurs in response to specific and individual stresses.⁹ Intimate terrorism, on the other hand, is a *pattern* of domestic violence that is more likely to escalate over time and involve serious injury.¹⁰ Its primary motivation is for one partner to exercise control over the other.¹¹ Violent resistance is typically used by the victim as a defense mechanism in response to

7. See, e.g., *Henley v. Iowa Dist. Court*, 533 N.W.2d 199 (Iowa 1995).

8. Nancy Sugg, *Intimate Partner Violence: Prevalence, Health Consequences, and Intervention*, 99 MED. CLINICS N. AM. 629, 630 (2015).

9. *Id.*

10. *Id.*

11. *Id.*

a partner's abuse, and mutual violent control occurs when both partners attempt to exercise control over the other.¹² Any of these patterns may result in legal action against one or both of the parties, as long as the violence fits the given statutory definition for domestic violence.¹³

One way in which domestic violence victims are protected under the law is through protective or restraining orders. Since 1989, every state has had some form of protective or restraining order to protect victims of domestic violence.¹⁴ These orders vary from state to state in their terms, but typically include orders for the abuser to stay a certain distance from the victim, to refrain from hitting or otherwise abusing the victim, and to refrain from contacting the victim in any way.¹⁵ In North Carolina, these are commonly referred to as Domestic Violence Protective Orders ("DVPO").¹⁶ These DVPOs last for one year and may be set aside or extended as the victim requests.¹⁷ If the defendant on a DVPO violates the terms of the order, he can be arrested and charged with a Class A1 misdemeanor.¹⁸ The theory surrounding this transition from a civil matter to a criminal matter is that the law should protect victims of domestic violence; a civil order, in and of itself, has no power over abusers unless legitimate consequences accompany its violation.¹⁹ All states have adopted some sort of criminal enforcement to civil protective orders, and DVPOs enacted in any state are recognized and enforced across the country.²⁰ These measures have been put into place because failing to enforce DVPOs can increase the likelihood that serious or deadly violence will occur by an abuser who is not held responsible for his actions.²¹

12. *Id.*

13. *See, e.g.*, N.C. GEN. STAT. § 50B-1 (2015).

14. COMM'N ON DOMESTIC VIOLENCE, AM. BAR ASS'N, REPORT TO THE HOUSE OF DELEGATES 1 (2005).

15. *Id.*

16. N.C. GEN. STAT. § 50B-2(a).

17. *Id.* § 50B-3(b).

18. *Id.* § 50B-4.1(a). North Carolina also recently passed legislation to create a "permanent" no-contact order that is available for victims of sex offenses. *Id.* § 50D. These no-contact orders are enforceable for the lifetime of the respondent, and violators are also subject to conviction for a Class A1 misdemeanor. *Id.* § 50D-6, 10.

19. COMM'N ON DOMESTIC VIOLENCE, *supra* note 14, at 2.

20. *Id.* at 2-3.

21. *Id.* at 2.

Critics claim that victims are somehow responsible for their own victimization and have gone so far as to suggest that victims enjoy abusive relationships.²² This so-called “antifeminist” camp has also indicated that victims who are offered legitimate opportunities to leave abusive relationships do not do so because they “welcome[] the intensity of their spouses’ feelings.”²³ These views merely offer a skewed perspective that “leav[es] out large parts of the landscape” of domestic violence by shifting the blame back to the victim rather than on the abuser, who is, in fact, the responsible party.²⁴ Victim-blaming with regard to domestic violence frequently occurs in the mass media; this, in turn, colors the common perception of domestic violence victims.²⁵ Placing so much emphasis on the victim, as those who hold these perspectives regarding victim-blaming often do, may also appear in the legal system when officers of the court disregard the reasons why a victim may reconnect with her abuser.²⁶ The legal system tends to function with a focus on the victim rather than on any punishment of the abuser.²⁷

By labeling someone a “victim,” society hopes to elicit some measure of sympathy from the general public.²⁸ This label is intended to “guide other people’s reaction[s]” to that individual and serves a practical purpose of assisting her in a particular way.²⁹ One of these purposes is to absolve the victim of responsibility.³⁰ This ideal of absolving a victim of responsibility is codified in the Model Penal Code.³¹ The Model Penal Code states that “a person is not an accomplice in an offense committed by another person if he is a victim of that offense.”³² As will be discussed throughout the remainder of this Comment, though, domestic violence is an arena in which victims are frequently held responsible for the

22. NANCY BERNS, FRAMING THE VICTIM: DOMESTIC VIOLENCE, MEDIA, AND SOCIAL PROBLEMS 109 (2004).

23. *Id.*

24. *Id.* at 127.

25. *Id.* at 156.

26. *Id.*

27. *Id.*

28. *Id.* at 152–53.

29. *Id.*

30. *Id.*

31. MODEL PENAL CODE § 2.06(6)(a) (AM. LAW INST. 2015).

32. *Id.*

actions of their abusers—in direct conflict with established legal theory.³³

In some states, the violation of a DVPO may also carry criminal consequences for the victim.³⁴ In North Carolina, as well as many other jurisdictions, a victim of domestic violence who receives a DVPO against her abuser but who later willfully engages in contact with him may be charged with aiding and abetting the violation of the DVPO.³⁵ There is no explicit statute that condemns this behavior; victims who are arrested in this way are charged under the same statute as their abuser.³⁶ Although judges and courts may have legitimate reasons for such charges,³⁷ they fly in the face of a true understanding of domestic violence and the nature of abusive relationships.

II. GUILT BY ASSOCIATION: PUNISHING VICTIMS

There are undoubtedly many state interests in holding victims accountable for willfully contacting their abuser after the court enters a DVPO. By enforcing DVPOs equally against both parties, a judge may anticipate a reduction in litigation, thus decreasing court costs and opening up valuable time to hear other matters.³⁸ DVPOs tend to deter defendants from repeated physical and psychological abuse.³⁹ When victims have a DVPO in place, they are less likely to experience abuse by the defendant.⁴⁰ It follows that because enforcing DVPOs may result in fewer instances of abuse, fewer court proceedings will occur, thus reducing the strain on jurisdictions that are already producing thousands of DVPOs every year.⁴¹ Judges may feel that they are doing a service to their court in punishing victims by theoretically

33. See *infra* Parts II, IV, V, VI.

34. See, e.g., *Henley v. Iowa Dist. Court*, 533 N.W.2d 199 (Iowa 1995).

35. See, e.g., *id.*

36. N.C. GEN. STAT. § 50B-4.1 (2015).

37. Stephanie Simon, *Judges Push for Abused to Follow the Law*, L.A. TIMES (Jan. 22, 2002), <http://articles.latimes.com/2002/jan/22/news/mn-24141>.

38. Francis X. Clines, *Judge's Domestic Violence Ruling Creates an Outcry in Kentucky*, N.Y. TIMES, Jan. 8, 2002, at A14 (suggesting that equal enforcement of DVPOs can reduce litigation by creating fear of chastisement in victims for violating DVPOs).

39. SUSAN L. KEILITZ ET AL., NAT'L CTR. FOR STATE COURTS, CIVIL PROTECTION ORDERS: THE BENEFITS AND LIMITATIONS FOR VICTIMS OF DOMESTIC VIOLENCE 9 (1997).

40. *Id.*

41. *Id.*; Clines, *supra* note 38, at A14.

preventing repeat offenders from clogging dockets with subsequent domestic violence issues. Further, calls for mandatory prosecution of abusers would likewise increase court proceedings if potential abusers are not already on notice via a DVPO that their behavior is unacceptable.⁴²

Although court efficiency may appear to be a valid reason for judges to step in and punish a victim of domestic violence, it is more likely that judges feel they are protecting women from further domestic violence. In one notable case out of Kentucky in 2002, Judge Megan Lake Thornton issued fines to women who contacted defendants on DVPOs issued by the Fayette County District Court.⁴³ Judge Ron Johnson, also from Kentucky, who has jailed women for failing to comply with DVPOs that they requested, stated that “[courts] need to make these [women] insist on their own independence.”⁴⁴ In many of these cases, including those decided by Judge Thornton, both the plaintiff and defendant were charged with contempt or otherwise sanctioned by the court.⁴⁵ However, in Kentucky, there is nothing in the text of a DVPO that explicitly prohibits a victim from initiating contact with her abuser.⁴⁶ In fact, the text of a Domestic Violence Petition in Kentucky states that “if an order is issued which says no contact and [the victim] decide[s] to have contact with the respondent while this order is in effect, [the victim] may be placing [her]self at risk.”⁴⁷ Although this was likely intended to refer to additional violence from the abuser, the meaning of the word “risk” is vague enough to open interpretation as to whether or not court sanctions are reasonably included in that definition.

In North Carolina, some judges began fining women a sixty-five dollar fee for applying for a DVPO and later deciding to drop the matter.⁴⁸ Victims who are discovered to have initiated contact with their abusers may also be charged with aiding and abetting the violation of the DVPO, a criminal charge that carries

42. MODEL CODE ON DOMESTIC & FAMILY VIOLENCE § 205(B) (NAT’L COUNCIL OF JUVENILE & FAMILY COURT JUDGES 1994).

43. Clines, *supra* note 38, at A14; Simon, *supra* note 37.

44. Simon, *supra* note 37.

45. Clines, *supra* note 38, at A14.

46. Simon, *supra* note 37.

47. COURT OF JUSTICE, COMMONWEALTH OF KY., AOC-275.1, PETITION/MOTION FOR ORDER OF PROTECTION 3.

48. Simon, *supra* note 37.

larger consequences than civil contempt or a fine.⁴⁹ Yet North Carolina's DVPO goes a step further than Kentucky's and explicitly states that "[t]he plaintiff cannot give [the defendant] permission to violate this order."⁵⁰

Some states have current, valid case law that explicitly allow holding a victim in contempt for contacting the defendant of a DVPO. Iowa, for instance, has good law that allows the prosecution of victims of domestic violence.⁵¹ In *Henley v. Iowa District Court*, a victim of domestic violence was charged with aiding and abetting "the violation of the very order issued to protect her."⁵² The victim then challenged her conviction under three theories: (1) that the court did not have jurisdiction under the DVPO to adjudicate her behavior; (2) that as a victim of domestic violence, the law under which she was charged was designed to protect her, not punish her; and (3) that there was inadequate evidence to sustain the court's ruling.⁵³ For the purposes of this Comment, only the first two theories will be investigated.

In her first argument, the victim contended that under section 665.7 of the Iowa Code, she was entitled to personal service with a rule to show cause as well as the opportunity to defend herself before she was arrested and immediately jailed for the violation of the DVPO.⁵⁴ However, the court reasoned that the general provisions of section 665.7 were trumped by the more specific law regarding contempt and domestic violence under section 236.14.⁵⁵ This section provided that someone who was taken into custody under Iowa's Domestic Abuse Act may be released only after an initial appearance before a magistrate, and it authorized peace officers to immediately arrest individuals who

49. N.C. GEN. STAT. § 50B-4.1(a) (2015); STRUCTURED SENTENCING: TRAINING & REFERENCE MANUAL 44 fig. C (N.C. SENTENCING & POLICY ADVISORY COMM'N 2009), http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/ssstrainingmanual_09.pdf.

50. N.C. GEN. COURT OF JUSTICE, AOC-CV-306, DOMESTIC VIOLENCE ORDER OF PROTECTION 1 (2015); *see also* MODEL CODE ON DOMESTIC AND FAMILY VIOLENCE § 308 (NAT'L COUNCIL OF JUVENILE & FAMILY COURT JUDGES 1994) ("If a respondent is excluded from the residence of petitioner or ordered to stay away from the petitioner, an invitation by the petitioner to do so does not waive or nullify an order for protection.").

51. *See* *Henley v. Iowa Dist. Court*, 533 N.W.2d 199 (Iowa 1995).

52. *Id.* at 200.

53. *Id.* at 201–02.

54. *Id.* at 201; *see also* IOWA CODE ANN. § 665.7 (West 2014).

55. *Henley*, 533 N.W.2d at 201.

were believed to have violated the terms of a DVPO.⁵⁶ Because an individual can legally remain in custody for up to twenty-four hours before appearing before a magistrate, the victim's argument that she was improperly detained was denied.⁵⁷ Although this line of reasoning makes sense regarding the immediate arrest and detention of an abuser to hold him in contempt for violating a court order—namely that releasing an abuser from custody for the purpose of proper service could potentially further endanger the victim—this logic does not follow for arresting and detaining the victim.

Despite the court's acknowledgment that the victim's status entitled her to protection under the law was "somewhat more compelling" than her first argument, it still denied her appeal on these grounds.⁵⁸ The court's position here illustrates a basic misunderstanding of abusive relationships, which will be explored further in this Comment. The victim in *Henley* argued that because she was not a party to the DVPO (i.e., she was not the one against whom protection was sought), the domestic violence laws were created to protect her, not punish her.⁵⁹ The court summarily dismissed this claim.⁶⁰ In doing so, it argued that an individual need not be a party to a DVPO (or any order) to be held in contempt.⁶¹ Instead, a person need only have knowledge of the order and act "in concert" with the person who is a party.⁶² This allows victims of domestic violence to be charged with contempt along with their abusers if they act in concert together.⁶³

Black's Law Dictionary indicates that this requires an element of "plann[ing], arrang[ing], and agree[ing]" between parties to act together in a particular manner, "so that all involved are liable for the actions of one another."⁶⁴ By using this definition, Iowa limits its aiding and abetting charge to victims who willingly engage with their abusers; however, it still disregards

56. IOWA CODE ANN. § 236.14 (West 2005), *repealed by* IOWA CODE ANN. § 664A (West 2014).

57. *Henley*, 533 N.W.2d at 202.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Concerted Action*, BLACK'S LAW DICTIONARY (10th ed. 2014).

the possibility that victims may have legitimate reasons for interacting with their abusers, even after they felt the need to protect themselves with a DVPO. Iowa, however, bypasses this argument by claiming public policy as its reason for holding victims of domestic violence in contempt—it states that the domestic violence statutes are meant for “safety and protection” and that it “makes no exception for victims who, regrettably, choose to ignore their own best interest.”⁶⁵ Instead of leaving its ruling at assuming that a legal body can be aware of an individual’s own best interest, the court went on to say that these particular individuals’ interests “must be subordinated” when compared to the interests of other victims.⁶⁶

III. PROTECTING VICTIMS: THE PURPOSE OF A DVPO

Other courts have been far more reluctant to reach the conclusion in *Henley*.⁶⁷ The Supreme Court of Ohio held in *State v. Lucas* that a victim was “immune” from a complicity charge based on a DVPO against her abuser.⁶⁸ Although the court noted that victims of domestic violence can legitimately be charged with domestic violence against their abuser as long as certain processes are followed, charging a victim with aiding and abetting the violation of an order issued to protect her is the equivalent of issuing mutual DVPOs without following the official process necessary to accomplish this.⁶⁹

The *Lucas* court also noted policy reasons for rejecting such charges against victims, in addition to the mere procedural issues outlined above. The legislative intent of domestic violence statutes is to protect victims of domestic violence.⁷⁰ If the state authorized such charges against victims, it would create a chilling effect on reporting violations of DVPOs—a result which directly contradicts the purpose of domestic violence statutes.⁷¹ If victims

65. *Henley*, 533 N.W.2d at 202.

66. *Id.*

67. *See, e.g.*, *People v. Jungers*, 127 Cal. App. 4th 698, 705 (Cal. Ct. App. 2005); *People v. Gams*, 52 Cal. App. 4th 147, 153–54 (Cal. Ct. App. 1997); *Dixon v. State*, 869 N.E.2d 516, 520 (Ind. Ct. App. 2007); *State v. Lucas*, 795 N.E.2d 642, 647 (Ohio 2003); *City of N. Olmsted v. Bullington*, 744 N.E.2d 1225, 1229 (Ohio Ct. App. 2000).

68. *Lucas*, 795 N.E.2d at 642.

69. *Id.* at 647.

70. *Id.* at 648.

71. *Id.* at 647.

fear their own prosecution by reporting violations, then they open themselves up to continued violence that renders a DVPO useless.

Courts in other jurisdictions have also noted the inappropriate nature of charging victims with complicity in the violation of DVPOs with slightly different reasoning than the mechanical, procedural spin of *Lucas*. In *Dixon v. State*, the court reasoned that the consent of a victim of domestic violence does not (1) prevent violence between the victim and the abuser or (2) preclude the violation of a DVPO.⁷² The analysis should not be whether or not the victim “knowingly ignored” a DVPO, but if the offender knowingly violated it.⁷³ This reasoning offers protection to victims who may feel that they must interact with their abusers for a variety of reasons.

In *City of North Olmsted v. Bullington*, an Ohio Court of Appeals case from 2000, the victim was found in the passenger seat of the defendant’s car after the defendant was pulled over for a traffic violation.⁷⁴ Both parties were arrested, and the victim was charged with “recklessly aid[ing], abett[ing], and/or solicit[ing] her husband to violate the no-contact terms of a [DVPO].”⁷⁵ The victim then filed a motion to dismiss the charge, arguing that it was impossible for her to be charged with complicity in the violation of an order issued to protect her.⁷⁶ The DVPO in this case included a notice to the defendant that stated in part that “this order cannot be waived or nullified by an invitation to you.”⁷⁷

The court reasoned that victims of domestic violence are members of a “protected class” and thus cannot be charged with aiding and abetting the violation of a DVPO against their abuser.⁷⁸ It went on to concede that the concern for additional domestic violence, particularly when victims willingly engage with their abusers, was a natural one that the city in this case clearly wanted to address.⁷⁹ However, the court stated that punishing victims “is not the way to solve [the city’s] perceived or imagined problems”

72. *Dixon*, 869 N.E.2d at 520.

73. *Id.*

74. *City of N. Olmsted v. Bullington*, 744 N.E.2d 1225, 1227 (Ohio Ct. App. 2000).

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.* at 1229.

79. *Id.*

regarding domestic violence.⁸⁰ Because the judicial system—courts and law enforcement included—cannot always determine *why* a victim is in the presence of her abuser, it is inappropriate for them to focus on the victim’s behavior rather than the abuser’s.⁸¹

As the court delineated in *City of North Olmsted*, there could be many legitimate reasons why a victim may need to voluntarily contact her abuser.⁸² It is not for the court to pass judgment—both literally and figuratively—about the behavior of a victim, as that is not at issue in a DVPO, regardless of how frustrating it may be.⁸³

IV. WHY A VICTIM STAYS OR RETRURNS: THE IMPROPRIETY OF CRIMINAL CHARGES

One frequent analysis of domestic violence includes the so-called “cycle of violence.”⁸⁴ In this model, three phases are typically discussed: (1) tension building, (2) abusive incident, and (3) honeymoon period.⁸⁵ The first phase of this cycle, tension building, involves increased threats and control by the abuser but no actual incident of violence.⁸⁶ During this stage, a victim may withdraw or minimize the problems she is experiencing by her abuser.⁸⁷ Although no clear violence has occurred at this point, communication between the abuser and the victim is poor, and the tension ultimately becomes “intolerable” between the two parties.⁸⁸ The second phase, abusive incident, is somewhat self-explanatory. During this phase, an incidence of violence occurs.⁸⁹ The abuser is unpredictable and volatile, and the victim feels

80. *Id.*

81. *Id.* (“Any number of reasons may exist for a victim’s being in the offender’s presence. Many of these reasons may not be volitional, even though they appear on the surface to be so.”).

82. *Id.*

83. *Id.* Compare *City of N. Olmsted*, 744 N.E.2d at 1229, with *Henley v. Iowa Dist. Court*, 533 N.W.2d 199, 202 (Iowa 1995) (reasoning that victims should be punished for failing to consider their own best interests).

84. KAN. OFFICE OF THE ATT’Y GEN., DOMESTIC VIOLENCE RESOURCES: THE CYCLE OF VIOLENCE, https://cf.umaryland.edu/titleix_training/story_content/external_files/CycleofViolence.pdf (last visited Sept. 16, 2016).

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

trapped.⁹⁰ Oftentimes, the abuser will blame the victim for his behavior during this phase.⁹¹

The third phase, the honeymoon period, is typically when victims remain with or return to their abusers.⁹² This phase is exemplified by an abuser that is apologetic and loving towards the victim, even immediately after violence has occurred.⁹³ The abuser may offer promises to change his behavior in order to convince a victim to remain in the relationship.⁹⁴ During this period, the victim may feel guilt and responsibility for the abuser's actions.⁹⁵ She may also consider reconciliation with the abuser and continue to minimize the abuse.⁹⁶

The tactics that abusers use against their victims are centered around power and control.⁹⁷ The Domestic Abuse Intervention Project developed the Duluth Model—otherwise known as the Power and Control Wheel—to demonstrate how abusers interact with their victims.⁹⁸ This wheel was formed to show tactics by abusers that were “most universally experienced” by victims of domestic violence.⁹⁹ Its focus is the psychological strategies used by abusers to maintain some level of control rather than the physical or sexual abuse that ultimately occurs.¹⁰⁰ These tactics include, but are not limited to, coercion and threats; intimidation; emotional abuse; isolation; minimizing, denying, and blaming; and economic abuse.¹⁰¹

Advocates suggest that it takes a victim of domestic violence seven attempts to leave an abusive relationship before she leaves permanently, and many of the reasons why a victim may stay with

90. *Id.*

91. *Id.*

92. Bess Rothenberg, *The Success of the Battered Woman Syndrome: An Analysis of How Cultural Arguments Succeed*, 17 SOC. F. 81, 85 (2002).

93. KAN. OFFICE OF THE ATT'Y GEN., *supra* note 84.

94. *Id.*

95. *Id.*

96. *Id.*

97. NAT'L CTR. ON DOMESTIC & SEXUAL VIOLENCE, POWER AND CONTROL WHEEL, <http://www.ncdsv.org/images/powercontrolwheelnoshading.pdf> (last visited Sept. 23, 2016).

98. *About Us*, DOMESTIC ABUSE INTERVENTION PROGRAMS, <http://www.theduluthmodel.org/about.html> (last visited Sept. 16, 2016).

99. *Id.*

100. NAT'L CTR. ON DOMESTIC & SEXUAL VIOLENCE, *supra* note 97.

101. *Id.*

or return to an abuser are due to the exercise of control.¹⁰² “Leaving a violent relationship is a process, not an event.”¹⁰³ If the court enters a DVPO during one of these failed attempts to leave, then violations can occur from contact between the victim and her abuser if the victim decides to go back.¹⁰⁴ However, as previously discussed, the victim may also be subject to criminal punishment if she has not reached that final, permanent separation.

Beyond the somewhat theoretical and psychological cycles of control that can cause a victim to return to her abuser and are often criticized,¹⁰⁵ a variety of more concrete justifications exist to explain the behavior that is being condemned in an aiding and abetting charge. Abusers may use children in common as a scare tactic, threatening to seek sole custody or even kidnap the children.¹⁰⁶ Victims may be completely isolated from friends and family, which removes viable support systems to help a victim permanently leave.¹⁰⁷ Additionally, abusers tend to engage in financial abuse that leaves victims without any independent access to income.¹⁰⁸ Victims may have been prevented from attending school or seeking employment, which translates into limited options for financial independence.¹⁰⁹ Although this impacts victims of all socioeconomic statuses, financial dependence can be particularly harmful to individuals living in poverty.¹¹⁰ A victim may need to choose between finding safety and returning to her only source of support—her abuser.¹¹¹ If a victim attempted to leave before and has a valid DVPO, returning to her abuser can cause additional legal concerns.

102. Sarah LeTrent, *When a Friend Won't Walk Away from Abuse*, CNN (Jan. 10, 2013, 1:53 PM), <http://www.cnn.com/2013/01/10/living/friend-domestic-abuse>.

103. H. LIEN BRAGG, U.S. DEP'T OF HEALTH & HUMAN SERVS., *CHILD PROTECTION IN FAMILIES EXPERIENCING DOMESTIC VIOLENCE* 25 (2003).

104. N.C. GEN. STAT. § 50B-4.1 (2015).

105. *See, e.g.*, BERNS, *supra* note 22, at 109–11.

106. BRAGG, *supra* note 103, at 18.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

V. CHALLENGES FOR VICTIMS: LONG-TERM IMPACTS OF DOMESTIC VIOLENCE

For individuals who are victims of domestic violence, opportunities for employment and other benefits are difficult to obtain, regardless of the consequences of a potential arrest and conviction for aiding and abetting.¹¹² Ensuring safety for a victim necessarily involves “significant life changes,” which can include relocation, divorce, and securing employment.¹¹³ Repeated court appearances for obtaining a DVPO can cause multiple absences from a job and ultimately cause that victim to be fired.¹¹⁴ Landlords may discriminate against a single woman or single mother who applies for federally subsidized housing.¹¹⁵ Policy adjustments and legislation often have the primary goal of ensuring safety and separating the victim from her abuser; however, these goals fail to “guarantee that there will be a roof over their heads, food on their table, or health care available when they need it.”¹¹⁶ All of these issues are complicated and exacerbated if, for the reasons discussed, a victim voluntarily contacts her abuser with a valid DVPO in place and is subsequently arrested.

If a victim of domestic violence with an enforceable DVPO is charged with aiding and abetting its violation, the impact of an arrest can have a variety of long-term repercussions. Should she be arraigned—even if the case is ultimately dismissed—the charge will still appear on her criminal record.¹¹⁷ Although the record will note that the charge was dismissed, it will still be visible to employers and places of higher education.¹¹⁸ As of 2013, sixteen states, including North Carolina, had not enacted legislation that

112. JILL DAVIES, NAT’L RES. CTR. ON DOMESTIC VIOLENCE, POLICY BLUEPRINT ON DOMESTIC VIOLENCE AND POVERTY 4–5 (2002), <http://www.bcsdv.org/wp-content/uploads/2015/09/BCS-Pub15.pdf>.

113. *Id.* at 5.

114. *Id.* *But see* N.C. GEN. STAT. § 50B-5.5 (2015) (“No employer shall discharge, demote, deny a promotion, or discipline an employee because the employee took reasonable time off from work to obtain or attempt to obtain relief under this chapter.”).

115. DAVIES, *supra* note 112, at 5.

116. *Id.* at 4.

117. Dominic Pang, *My Case Was Dismissed, so I Have No Criminal Record, Right? (WRONG)*, AVVO (June 10, 2010), <http://www.avvo.com/legal-guides/ugc/my-case-was-dismissed-so-i-have-no-criminal-record-right-wrong>.

118. *See id.*

restricts an employer's use of arrest history in hiring decisions.¹¹⁹ Despite the national trend towards legal or suggestive restrictions on using arrest history,¹²⁰ any dismissed or acquitted charges, including an aiding and abetting arrest, will still appear on someone's record.¹²¹

Convictions for aiding and abetting the violation of a victim's own DVPO, as was the case in *Henley*,¹²² are often fair game for employers with regard to hiring.¹²³ The American Bar Association has noted over 38,000 statutes nationwide that allow "collateral consequences" for arrests and convictions.¹²⁴ Over eighty percent of these statutes restrict and deny employment opportunities to individuals who have been convicted of a crime.¹²⁵ The United States Equal Employment Opportunity Commission ("EEOC") notes that convictions are "usually . . . sufficient to demonstrate that a person engaged in particular criminal conduct."¹²⁶ Nearly ninety-two percent of employers subject job candidates to criminal background checks, and although the EEOC "recommends" that employers do not inquire about an applicant's criminal record on a job application, there is no mandate that requires this.¹²⁷ For victims who have been isolated and financially abused, the inability to obtain gainful employment on the basis of a criminal record may force them back to their prior source of wealth—their abusers.

119. *State and Federal Limits on the Use of Arrest Records in Employment Decisions*, MCGUIREWOODS (Feb. 15, 2013), <https://www.mcguirewoods.com/Client-Resources/Alerts/2013/2/State-and-Federal-Limits-on-the-Use-of-Arrest-Records.aspx>. The other fifteen states are Alabama, Arkansas, Idaho, Iowa, Kentucky, Louisiana, Missouri, North Dakota, South Carolina, South Dakota, Tennessee, Vermont, West Virginia, Wyoming, and the District of Columbia. *Id.* These states are still subject to federal protections regarding hiring criteria, including those from the EEOC. *Id.*

120. *Id.*

121. See Pang, *supra* note 117.

122. *Henley v. Iowa Dist. Court*, 533 N.W.2d 199, 201 (Iowa 1995).

123. See *Pre-Employment Inquiries and Arrest & Conviction*, U.S. EQUAL EMP. OPPORTUNITY COMMISSION, http://www.eeoc.gov/laws/practices/inquiries_arrest_conviction.cfm (last visited Aug. 23, 2016).

124. Amy L. Solomon, *In Search of a Job: Criminal Records as Barriers to Employment*, 270 NAT'L INST. JUST. 42, 44 (2012).

125. *Id.*

126. *Pre-Employment Inquiries and Arrest & Conviction*, *supra* note 123.

127. U.S. EQUAL EMP'T OPPORTUNITY COMM'N, 915.002, ENFORCEMENT GUIDANCE ON THE CONSIDERATION OF ARREST AND CONVICTION RECORDS IN EMPLOYMENT DECISIONS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, at 13–14 (2012).

Additionally, victims of domestic violence who subsequently have voluntary contact with their abusers and are arrested may be unable to find housing, thus perpetuating the cycle of abuse that got them arrested in the first place. Federal statutes limit the ability of individuals with criminal backgrounds to access federally subsidized housing from the United States Department of Housing and Urban Development.¹²⁸ Landlords may reject the applications of individuals who would otherwise qualify for federally assisted housing based on criminal history.¹²⁹ If an individual has engaged in “criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents,” then the landlord may refuse her admission.¹³⁰ Further, if any of this criminal behavior occurs during the individual’s tenancy, the landlord may terminate the tenancy.¹³¹ Finding alternative housing for a victim and, oftentimes, her children, is of particular concern, but domestic violence charges may negatively stigmatize families and prevent them from obtaining a place to live.

These issues regarding employment and housing are particularly profound when considering the relationship between domestic violence and poverty. Over half of women receiving welfare have experienced some type of physical abuse in their adult lives.¹³² Although domestic violence occurs regardless of socioeconomic status, poverty is inherently stressful, and some studies suggest that domestic violence is caused by stress.¹³³ This creates a vicious cycle that is exacerbated when coupled with a criminal record. Impoverished victims of domestic violence may be particularly disadvantaged in terms of gaining independence from their abusers to begin with, and this disadvantage is made more severe if a victim is charged with aiding and abetting the violation of her own protective order and has to grapple with the additional challenges that attach to a criminal record.

128. See 42 U.S.C. § 1437f(o)(6)(C)(iii) (2012); see also 24 C.F.R. § 5.855(a)(1)–(4) (2001).

129. 24 C.F.R. § 5.855(a)(1)–(4).

130. *Id.* § 5.855(a)(3).

131. 42 U.S.C. § 1437f(d)(1)(B)(iii).

132. DAVIES, *supra* note 112, at 4.

133. Rachel Jewkes, *Intimate Partner Violence: Causes and Prevention*, 359 LANCET 1423, 1424 (2002).

VI. CONCLUSIONS AND CURRENT STATE OF DOMESTIC VIOLENCE IN NORTH CAROLINA

In 2013, there were 108 domestic violence-related homicides in North Carolina.¹³⁴ Over fifty-seven percent of those victims were female and only three of the victims had a valid DVPO against their killer at the time of their death.¹³⁵ Recent moves by the North Carolina General Assembly indicate a legislative interest in protecting victims of domestic violence and preventing these deaths from occurring.¹³⁶ In July 2015, Governor Pat McCrory signed into law House Bill 59, which expedites emergency hearings and offers protection for victims more quickly than previous law provided.¹³⁷ The North Carolina Coalition Against Domestic Violence, which helped guide the legislature in creating House Bill 59,¹³⁸ continually advocates for legislative actions to help victims of domestic violence, including changes to the state budget.¹³⁹ The government of North Carolina is clearly on notice that victims of domestic violence need protection and it is working to make those protections a reality.

However, victims will not be truly protected until affirmative action is taken to eliminate an aiding and abetting charge with respect to the violation of a DVPO. Domestic violence victims should be considered just that—victims. Court intervention in the form of criminal sanctions in cases where a victim appears to “ignore [her] own best interest”¹⁴⁰ blatantly disregards the myriad reasons why a victim may need to connect with her

134. N.C. DEP'T OF JUSTICE, REPORT ON DOMESTIC VIOLENCE RELATED HOMICIDES OCCURRING IN 2013, at 4.

135. *Id.*

136. *Governor McCrory Signs Bill that Provides Immediate Protection for Domestic Violence Victims*, N.C. OFF. OF THE GOVERNOR (July 31, 2015), <http://governor.nc.gov/press-release/governor-mccrory-signs-bill-provides-immediate-protection-domestic-violence-victims>.

137. *Id.*; see also An Act to Clarify the Admissibility of the Reports of Forensic and Chemical Analysis and to Exempt Certain Ex Parte Hearings from Reporting Requirements, 2015 N.C. Sess. Laws 173 § 5 (2015) (stating that “reporting will not be provided in ex parte or emergency hearings before a judge pursuant to Chapter 50B or 50C”).

138. *Governor McCrory Signs Bill that Provides Immediate Protection for Domestic Violence Victims*, *supra* note 136.

139. See, e.g., *Legislative Agenda*, N.C. COALITION AGAINST DOMESTIC VIOLENCE, <http://nccadv.org/public-policy/legislative-agenda> (last visited Jan. 27, 2017).

140. *Henley v. Iowa Dist. Court*, 533 N.W.2d 199, 202 (Iowa 1995).

abuser.¹⁴¹ Because the North Carolina General Assembly is already aware of the need to protect victims of domestic violence, as evidenced in their passage of House Bill 59, legislation needs to be enacted that will help North Carolina follow in the footsteps of Ohio in protecting victims,¹⁴² rather than allowing this charge to exist as it does in Iowa.¹⁴³

The 1985 Commentary to the Model Penal Code states that although elements of complicity “may technically exist” and that victims’ actions “may be unwise or . . . immoral,” to hold victims criminally complicit in the crime against them “confounds the policy embodied in the prohibition; it is laid down, wholly or in part, for their protection.”¹⁴⁴ DVPOs are issued with the purpose of protecting victims of domestic violence. To hold a victim responsible for its violation contravenes the purpose of protecting her in the first place. Abusive relationships are complex and cyclical,¹⁴⁵ and victims may be forced to have contact with their abusers. Punishing victims because they have attempted to remove themselves from the cycle of abuse and were unable to do so successfully is inappropriate. Such punishment defeats the purpose of protecting domestic violence victims and can cause long-term issues that make independence from an abuser far more difficult. A victim of domestic violence already faces an uphill battle in gaining some measure of normalcy once she leaves an abusive relationship; however, if she is also isolated from other individuals, financially dependent upon her abuser, and has a criminal record from an aiding and abetting charge, she is at a major disadvantage for finding housing and employment, thus potentially causing her to return to her abuser once more.¹⁴⁶

To fully protect victims of domestic violence, courts need to be aware of the complexity of such relationships and understand that punishing a victim for returning to her abuser does more harm than good. Ignoring the legitimate reasons why a victim may voluntarily contact her abuser exacerbates the misunderstandings of abusive relationships. Punishing a victim for

141. See, e.g., BRAGG, *supra* note 103.

142. See generally *City of N. Olmsted v. Bullington*, 744 N.E.2d 1225 (Ohio Ct. App. 2000).

143. *Henley*, 533 N.W.2d at 202.

144. MODEL PENAL CODE § 2.06(9)(a) cmt. at 323–24 (AM. LAW INST. 1985).

145. KAN. OFFICE OF THE ATT’Y GEN., *supra* note 84.

146. BRAGG, *supra* note 103.

being a victim of domestic violence increases the challenges of leaving an abuser and contradicts current legislative intent and policy goals aimed at protecting victims.