

South Carolina Law Review

Volume 68
Issue 4 *SURVEY OF SOUTH CAROLINA LAW
AND FOURTH CIRCUIT SURVEY*

Article 6

Spring 2017

State of Fear: Domestic Violence in South Carolina

Matthew Robins

Follow this and additional works at: <https://scholarcommons.sc.edu/sclr>



Part of the [Insurance Law Commons](#)

Recommended Citation

Robins, Matthew (2017) "State of Fear: Domestic Violence in South Carolina," *South Carolina Law Review*.
Vol. 68 : Iss. 4 , Article 6.

Available at: <https://scholarcommons.sc.edu/sclr/vol68/iss4/6>

This Article is brought to you by the Law Reviews and Journals at Scholar Commons. It has been accepted for inclusion in South Carolina Law Review by an authorized editor of Scholar Commons. For more information, please contact digres@mailbox.sc.edu.

STATE OF FEAR: DOMESTIC VIOLENCE IN SOUTH CAROLINA

Matthew Robins*

I. INTRODUCTION.....	630
II. THE EVOLUTION OF DOMESTIC VIOLENCE IN AMERICA.....	632
A. <i>America's Historical Tolerance of Abuse</i>	632
B. <i>America's Fight Against Domestic Violence</i>	636
III. DOMESTIC VIOLENCE IN SOUTH CAROLINA.....	642
IV. THE DOMESTIC VIOLENCE REFORM ACT.....	648
V. POLICY SUGGESTIONS FOR ENDING THE VIOLENCE.....	651
A. <i>Amending the Statutory Language to Take Firearms from Abusers Under Protection Orders</i>	652
1. <i>Balancing Women's Safety with the Second Amendment</i>	652
2. <i>Automatic Suspension of Gun Rights Upon Receiving an Order of Protection Subject to a Fast Track Appeal</i>	653
3. <i>Establishing a Rebuttable Presumption that Gun Rights Should Be Suspended Upon Issuance of an Order of Protection</i>	654
B. <i>Statewide Implementation and Enforcement of Lethality Assessments</i>	656
1. <i>Using Lethality Assessments to Protect Victims</i>	657
2. <i>Using Lethality Assessments to Help Reinstate a Defendant's Gun Rights</i>	658
C. <i>State Programs to End the Culture of Violence</i>	660
1. <i>Providing More Domestic Violence Shelters</i>	660
2. <i>Providing Counseling for Children Who Witness Domestic Abuse</i>	661
3. <i>Promoting Increased Female Participation in State Institutions</i>	662

* 2018 J.D. Candidate at the University of South Carolina School of Law. The author would like to thank all of the members of the *South Carolina Law Review* for all of the work they put in to reading and editing this Note. The author would also like to thank Dean Susan Kuo for providing invaluable guidance and feedback throughout the early stages of this Note. The author would like to give special thanks to Sara Barber and the other members of the South Carolina Coalition Against Domestic Violence and Sexual Assault for providing their unique insight and perspective into the issues associated with domestic violence, and for their unwavering support of the victims and survivors in South Carolina.

VI. CONCLUSION.....	663
---------------------	-----

I. INTRODUCTION

For many, marriage creates a strong, healthy relationship, where partners come to count on each other for love and support. But imagine a different scenario, one where a woman lives in perpetual fear of her partner. What started as violent threats and daily put-downs slowly grew into emotional torture, and eventually physical abuse. She wants to leave, but her partner's threats have kept her from doing so. One day, she finally musters the courage to report her abuse. After receiving an order of protection, she finally begins to feel safe again. That's when it happens. Her partner finds her, taking her life with a gun, a knife, or maybe even his bare hands.

While this nightmare is hard to imagine, it is all too real for many women¹ victimized by domestic violence.² Domestic violence is defined by the Department of Justice as “a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner.”³ Such abusive behavior commonly manifests in physical abuse, such as hitting or slapping, but often takes other forms, such as emotional abuse and psychological torture.⁴ Due to the emotionally charged nature of domestic violence, abusive relationships often produce lethal results. This is particularly true for women in South Carolina, which currently has the fifth highest female homicide rate in the country.⁵

Moving to fifth place may seem like progress, considering South Carolina was previously ranked as the most dangerous state in the country for women.⁶ Unfortunately, because the state has ranked in the top ten for

1. Domestic violence is not a gender specific problem. *See* BUREAU OF JUST. STATS., U.S. DEP'T OF JUST., FAMILY VIOLENCE STATISTICS: INCLUDING STATISTICS ON STRANGERS AND ACQUAINTANCES 11 (2005), <https://www.bjs.gov/content/pub/pdf/fvs02.pdf> (finding that, in domestic violence cases between spouses, 15.7% of victims are male). However, because this Note focuses on South Carolina's female homicide rate, I will refer to domestic violence victims as females throughout.

2. In 2014, the FBI reported that 1613 women were murdered by men in single victim/single offender incidents. *See* VIOLENCE POL'Y CTR., WHEN MEN MURDER WOMEN: AN ANALYSIS OF 2014 HOMICIDE DATA 3 (2016), <http://www.vpc.org/studies/wmmw2016.pdf> [hereinafter VPC (2016)].

3. DEP'T OF JUST., DOMESTIC VIOLENCE (2016), <https://www.justice.gov/ovw/domestic-violence>.

4. *See id.*

5. VPC (2016), *supra* note 2, at 4.

6. VIOLENCE POL'Y CTR., WHEN MEN MURDER WOMEN: AN ANALYSIS OF 2013 HOMICIDE DATA 11 (2015), <http://www.vpc.org/studies/wmmw2015.pdf>.

the last eighteen years,⁷ the recent movement looks less like progress and more like business as usual. Despite South Carolina's consistent ranking among the deadliest states in the country for women, domestic violence reform has traditionally been met with disinterest in the legislature.⁸ However, in 2014, the *Post and Courier* exposed South Carolina's legislative inaction in rectifying the trend.⁹

In 2015, South Carolina responded by passing the Domestic Violence Reform Act.¹⁰ The changes implemented by this legislation, which include significantly reworking South Carolina's domestic violence statutes,¹¹ will alter the way the state responds to domestic abuse.¹² The Domestic Violence Reform Act is a step in the right direction, but it is too early to tell if it has had a positive effect on the female homicide rate.¹³ There are early indications that it has not, however, as law enforcement officials have indicated an increase in domestic violence is contributing to a recent spike in homicides.¹⁴

The South Carolina legislature has taken significant steps to combat the state's female homicide rate, but there is more to be done if South Carolina is going end its top-ten streak and eventually become a safe state for women. There are three policy changes in particular that the state should implement

7. See Jennifer Berry Hawes & Doug Pardue, *S.C. Falls to Fifth in Domestic Abuse Deaths*, POST & COURIER (Sept. 19, 2016), <http://www.charlestonscene.com/20160920/160929971/south-carolina-falls-to-fifth-worst-in-nation-for-domestic-killings> [hereinafter Hawes & Pardue].

8. See Glen Smith, *S.C. Tops in Men Killing Women Rate More Than Twice the National Average*, POST & COURIER (Sept. 24, 2013), http://www.postandcourier.com/archives/s-c-tops-in-men-killing-women-rate-more-than/article_83d5987d-c0ee-5655-b7f4-3d4a108191a5.html.

9. See Doug Pardue et al., *Till Death Do Us Part*, POST & COURIER (2014), <http://postandcourier.com/app/till-death/index.html> [hereinafter Pardue et al., *Till Death Do Us Part*] (discussing an eight-month investigation into South Carolina's historically high female homicide rate which exposed a culture of legislative inaction in rectifying the trend as well as the state's overall struggle to end the violence).

10. S. 3, 121st Gen. Assemb., 121st Sess. (S.C. 2015).

11. See S.C. CODE ANN. § 16-25-20 (Supp. 2016) (separating domestic violence into degrees and corresponding penalties); S.C. CODE ANN. § 16-25-30 (Supp. 2016) (codifying firearm penalties for certain domestic violence offenses); S.C. CODE ANN. § 16-25-65 (Supp. 2016) (modifying the crime of domestic violence of a high and aggravated nature).

12. See S.C. CODE ANN. § 16-25-320 (Supp. 2016) (creating the Domestic Violence Advisory Committee). See also S.C. CODE ANN. § 16-25-510 (Supp. 2016) (establishing Community Domestic Violence Coordinating Councils).

13. The data in VPC (2016) is from 2014, therefore, the decrease in the female homicide rate is not a product of the Act. VPC (2016), *supra* note 2, at 2.

14. Glen Luke Flanagan, *Drugs, Gangs, Domestic Violence Driving Spike in Homicides, Midlands Officials Say*, STATE (June 4, 2016), <http://www.thestate.com/news/local/crime/article81820857.html>.

to reduce the violence. First, the state should enact tougher gun restrictions for abusers under protective orders. Second, South Carolina should mandate the statewide use of lethality assessments. Finally, the state should develop programs to help victims leave abusive relationships, continue funding child victims' counseling services, and promote the increased participation of women in state legal institutions.

Part II of this Note will analyze the evolution of domestic violence in the United States by discussing historical and social factors contributing to domestic violence, recent efforts to combat domestic violence, and the country's current female homicide rate. Similarly, Part III will analyze the evolution of domestic violence in South Carolina by discussing the state's consistently high female homicide rate, factors contributing to violence, and factors preventing the state from enacting meaningful reform. Part IV of this Note will explore the Domestic Violence Reform Act, identifying its positive changes and shortcomings. Finally, Part V will suggest possible amendments to the Domestic Violence Reform Act, as well as other policy changes designed to make South Carolina a safer state for women.

II. THE EVOLUTION OF DOMESTIC VIOLENCE IN AMERICA

A. *America's Historical Tolerance of Abuse*

Historically, men have received better treatment under the law than their female counterparts, particularly their married counterparts.¹⁵ Until relatively recently, the legal system in the United States fostered a patriarchy,¹⁶ especially in the household.¹⁷ This structural patriarchy has its roots in Anglo-American common law, which gave husbands considerable control over their wives.¹⁸ One such common law creation, was the concept of "marital unity," of which William Blackstone said, "[b]y marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing,

15. See Shelley M. Santry, *Penny Wise but Pound Foolish in the Heartland: A Case Study of Decriminalizing Domestic Violence in Topeka, Kansas*, 14 J.L. & FAM. STUD. 223, 229 (2012) (stating that society within the U.S. is based on "a patriarchal system, wherein the father or husband maintained the central, governing authority over the family").

16. How recently? Consider the fact that American women have been voting for less than 100 years. See U.S. CONST. amend. XIX (establishing women's right to vote).

17. See Santry, *supra* note 15, at 229.

18. See Reva B. Siegel, *The Rule of Love: Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2122 (1996) [hereinafter Siegel, *The Rule of Love*].

protection, and cover, she performs everything . . .”¹⁹ Through “marital unity,” a husband was responsible for his wife’s conduct and, as “master of the household,” he was permitted to subject her to corporal punishment or “chastisement” if she defied him.²⁰

The “right” of the husband to control his wife through physical violence was recognized throughout the country until 1871, when Alabama became the first state to rescind it.²¹ As states began to rescind the right to chastisement, they also began expanding divorce statutes to include evidence of cruelty as grounds for divorce.²² However, these statutes were largely symbolic, as abuse that was not ignored under the doctrine of family privacy²³ was often tolerated under a body of divorce law “premised on the assumption that a wife was obliged to endure various kinds of violence as a normal—and sometimes deserved—part of married life.”²⁴

Domestic violence continued to be viewed as a private, family matter well into the twentieth century.²⁵ During the 1960s, states began treating violence in the household as an appropriate arena for state intervention, as opposed to a private family matter.²⁶ However, even when states passed limited reform, they struggled to enforce it.²⁷ Rather than pursue charges, women were routinely encouraged to return to their husbands and work through the issues underlying their abuse.²⁸ Police officers were trained to

19. *Id.* at 2122 n.16 (citing 1 WILLIAM BLACKSTONE, COMMENTARIES *442).

20. *Id.* at 2123 (citing BLACKSTONE, *supra* note 19, at *442).

21. *See Fulgham v. State*, 46 Ala. 143, 147–48 (1871).

22. Siegel, *Rule of Love*, *supra* note 18, at 2133.

23. *See* Emily J. Sack, *From the Right of Chastisement to the Criminalization of Domestic Violence: A Study in Resistance to Effective Policy Reform*, 32 T. JEFFERSON L. REV. 31, 34 (2009) (quoting *State v. Oliver*, 70 N.C. 60, 61–62 (1874) (“If no permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forget and forgive.”)).

24. Siegel, *Rule of Love*, *supra* note 18, at 2133–34.

25. *See* Sack, *supra* note 23, at 32–33.

26. JEFFREY FAGAN, NAT’L INST. OF JUST., THE CRIMINALIZATION OF DOMESTIC VIOLENCE: PROMISES AND LIMITS 7 (1996).

27. *See* Siegel, *Rule of Love*, *supra* note 18, at 2171 (discussing how procedures used by police officers created informal immunity for those involved in domestic violence situations) (quoting DEL MARTIN, BATTERED WIVES 93–94 (1976) (quoting Oakland Police Department’s training bulletin)).

28. Judges and social workers frequently discouraged women from pursuing criminal charges and encouraged them to “accept responsibility” for their role in provoking their husband so that the relationship could be rebuilt. Siegel, *Rule of Love*, *supra* note 18, at 2170 (citing ELIZABETH PLECK, DOMESTIC TYRANNY: THE MAKING OF SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT 136–42 (1987)).

do anything in their power to avoid charging men who beat their partners.²⁹ Unless the abuse was dangerous in nature, law enforcement officials and the courts viewed domestic violence as an “intractable interpersonal conflict unsuited for police intervention and inappropriate for prosecution and substantive punishment.”³⁰

Throughout the history discussed above, two social factors remained constant.³¹ First, the notion that a man has the right, even the responsibility, to assert control over his wife was ingrained in the American legal system.³² This concept was consistent with and reinforced by the patriarchal structure of American society.³³ Second, the idea that the right to control his wife entitled the husband to use force to assert or maintain such control was generally accepted.³⁴ This implied right remained relatively unchecked, even as married women gained more freedoms, due to widespread institutional tolerance.³⁵

29. Police officers were trained to treat domestic violence as a non-criminal matter and it was common practice to simply attempt to defuse the situation rather than placing a violent husband under arrest. FAGAN, *supra* note 26, at 8 (citing MORTON BARD, DEP’T OF JUST., TRAINING POLICE AS SPECIALISTS IN FAMILY CRISIS INTERVENTION (1970)).

30. *Id.* at 8 (citing Raymond I. Parnas, *The Police Response to the Domestic Disturbance*, 31 WIS. L. REV. 914, 914–60 (1967)).

31. See Siegel, *Rule of Love*, *supra* note 18, at 2133 (citing BLACKSTONE, *supra* note 19, at 442) (stating that a husband was responsible for his wife’s conduct and that he was permitted to subject her to corporal punishment). See also FAGAN, *supra* note 26, at 7 (highlighting the status of women as domestic violence laws in America evolved).

32. Under early Anglo-American law, a husband acquired the “rights to his wife’s person, the value of her paid and unpaid labor, and most of the property she brought into the marriage.” Siegel, *Rule of Love*, *supra* note 18, at 2122. Additionally, the wife had an obligation to obey and serve her husband and he was responsible, sometimes even liable, for her actions. *Id.* at 2122–23.

33. See *To Have and To Hold: The Marital Rape Exemption and the Fourteenth Amendment*, 99 HARV. L. REV. 1255, 1256–57 (1986) [hereinafter *To Have and to Hold*] (discussing the marital rape exemption and stating that it “reinforced social practice, sanctioning female sexual subordination as a weapon in the struggle for power among men”). With the passage of the Married Women’s Property Acts in the nineteenth century, married women slowly began receiving legal rights that were separate and distinct from their husbands. *Id.* at 1257. However, due to the absence of laws limiting a man’s power over his wife, men continued to dominate their partners in the home. *Id.* at 1258.

34. See Sack, *supra* note 23, at 33 (citing BLACKSTONE, *supra* note 19, at 442) (stating that, under early Anglo-American law, a husband was entitled to use physical discipline to “correct” his wife’s behavior since he was responsible for his wife’s conduct).

35. See Rebecca G. Goddard, *When it’s the First Time Every Time: Eliminating the “Clean Slate” of Pretrial Diversions in Domestic Violence Crimes*, 49 VAL. U. L. REV. 267, 273–74 (2014) (citing *State v. Rhodes*, 61 N.C. 453, 457–58 (1868)) (“To the extent that the legal system had any involvement with domestic matters, it was merely to establish guidelines by which such family discipline should occur.”).

After its creation,³⁶ the right of the husband to exert control over his wife continued as a result of America's historically patriarchal structure, which left women with limited avenues to challenge the right through public policy.³⁷ Many states prohibited women, who were expected to fulfill the duties of a wife and mother,³⁸ from holding elected office or serving on the bench.³⁹ Until passage of the Nineteenth Amendment,⁴⁰ women were not even permitted to vote for the men who occupied these positions. This effectively gave women very little influence in crafting policy affecting their marriage rights.⁴¹ As a result, men were able to prolong the subordination of women in their marriages.⁴²

36. See *supra* Part II.A.

37. As coverture unraveled due to the Married Women's Property Acts, it was replaced by the "separate spheres" ideology. *To Have and To Hold*, *supra* note 33, at 1257. Pursuant to this ideology, Men occupied the commercial, political, and professional realms while women were confined to the home. Sandra Day O'Connor, *The History of the Women's Suffrage Movement*, 49 VAND. L. REV. 657, 658 (1996). These gender-specific spheres were rooted in the belief that women were subordinate to men. *Id.*

38. See *To Have and To Hold*, *supra* note 33, at 1257–58 (quoting *Bradwell v. Illinois*, 83 U.S. 130, 141 (1872) (Bradley, J., concurring)) ("[Women] were free to fulfill 'the noble and benign offices of wife and mother.'").

39. See O'Connor, *supra* note 37, at 658. Additionally, many states prohibited women from serving on a jury, practicing law, and serving as a notary public. *Id.*

40. U.S. Const. amend. XIX.

41. Women did not receive representation in a state legislature until Colorado elected three women in 1895. *First Women to Serve in State and Territorial Legislatures*, NAT'L CONF. OF STATE LEGISLATURES (2016), <http://www.ncsl.org/legislators-staff/legislators/womens-legislative-network/first-women-in-state-legislatures.aspx>. Additionally, no woman held a seat on a state supreme court until Florence Allen joined the Ohio Supreme Court in 1923. *Florence Allen*, THE SUP. CT. OF OHIO & THE OHIO JUD. SYS., <https://www.supremecourt.ohio.gov/SCO/FORMERJUSTICES/>

42. See *To Have and To Hold*, *supra* note 33, at 1258 (quoting *Bradwell v. Illinois*, 83 U.S. 130, 141 (1872) (Bradley, J., concurring)) ("[T]he civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman."); Reva B. Siegel, *The Modernization of Marital Status Law: Adjudicating Wives' Rights to Earnings, 1860-1930*, 82 GEO. L.J. 2127, 2127 (1994) (quoting *Lewis v. Lewis*, 245 S.W. 509, 511 (Ky. 1922)) [hereinafter Siegel, *The Modernization of Marital Status Law*] ("At common law the husband and wife are under obligation to each other to perform certain duties. The husband to bring home the bacon, so to speak, and to furnish a home, while on the wife devolved the duty to keep said home in a habitable condition."); Reva B. Siegel, *She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family*, 115 HARV. L. REV. 947, 981 (2002) [hereinafter Siegel, *She the People*] (quoting 52 Cong. Rec. 1465 (1915) (statement of Rep. Heflin)) ("Faithful to the doctrine of the old Bible and true to the teachings of the new, our fathers founded this Government upon the family as the unit of political power, with the husband as the recognized and responsible head.").

The husband's right to control his wife through force arose with his right to assert such control.⁴³ However, despite unraveling the doctrine of coverture, legal institutions were hesitant to challenge a man's authority to physically discipline his wife.⁴⁴ Instead, under the doctrine of family privacy, courts sought to eliminate themselves from matters taking place between spouses.⁴⁵ Courts felt that intervention in spousal relations would disrupt domestic harmony and invade the privacy of the family.⁴⁶ In applying family privacy to spousal abuse, courts reasoned that the husband was disciplining his wife "in order to foster the altruistic ethos of the private realm."⁴⁷ Therefore, abuse was institutionally tolerated as an expression of emotions that needed to be modified and focused into marriage rather than criminal conduct.⁴⁸ Under the doctrine of family privacy, the notion that a man was entitled to control his wife through physical force has remained relatively unchecked until recently.⁴⁹

B. America's Fight Against Domestic Violence

In 1871, Alabama became the first state to formally repudiate the husband's right to chastisement,⁵⁰ but it would be another hundred years before the United States significantly addressed spousal abuse.⁵¹ However, during the 1970s, the United States began taking steps to combat domestic violence and, by 1980, forty-seven states had passed legislative reform.⁵² During the 1980s, many states enacted pro-arrest laws in domestic violence cases, which led to increased arrests and more aggressive prosecution of abusers.⁵³ By 1990, states began providing a wide range of criminal and civil

43. See *supra* note 34.

44. See Sack, *supra* note 23, at 34.

45. See Siegel, *Rule of Love*, *supra* note 18, at 2170–74. See also FAGAN, *supra* note 26, at 6–9 (detailing the hesitance of police and criminal justice systems to interfere in the household).

46. Sack, *supra* note 23, at 34.

47. Siegel, *Rule of Love*, *supra* note 18, at 2169–70.

48. See *id.* at 2170.

49. Widespread institutional tolerance of domestic violence was not effectively challenged until the late 1970s. See *id.* at 2171.

50. See *Fulgham v. State*, 46 Ala. 143, 144–48 (1871) (upholding a charge of assault by a husband upon his wife).

51. The Duluth Project, the country's first coordinated criminal justice response model for domestic violence, was created in 1984. Goddard, *supra* note 35, at 274 (citing U.S. DEP'T OF JUST., THE HISTORY OF THE VIOLENCE AGAINST WOMEN ACT, <https://perma.cc/4CZA-7GXF> (last visited Feb. 26, 2017)).

52. FAGAN, *supra* note 26, at 8–9.

53. Sack, *supra* note 23, at 35.

remedies for abuse victims, instituting warrantless arrests for misdemeanor domestic violence and eliminating the requirement that a women apply for divorce to receive a protective order.⁵⁴

Perhaps one of the biggest steps forward came in 1994, when Congress passed the Violence Against Women Act.⁵⁵ The act, and its reauthorizations,⁵⁶ created the first federal cause of action for gender-motivated violence.⁵⁷ The Act also provides for better enforcement of domestic violence laws by allowing victims to cross state lines to obtain protection orders,⁵⁸ requiring that all protection orders be recognized in all jurisdictions within the United States,⁵⁹ and eliminating expenses for service of a protection order.⁶⁰ Additionally, the Act provides funding for victims' services, the National Domestic Violence Hotline, and training for law enforcement officials, prosecutors, victim advocates, and judges.⁶¹

But perhaps the Act's biggest impact is the effect it has had on the states. Since the Act was passed, all states have reformed their domestic violence laws with every state providing criminal penalties for violating a protective order, as well as allowing warrantless arrests in misdemeanor violence cases.⁶² The positive effects of the Act have been apparent, as more victims are reporting their abuse to law enforcement and these reports have led to more arrests.⁶³ This has led to a sixty-seven percent decrease in

54. FAGAN, *supra* note 26, at 10 (citing Joan Zorza, *Criminal Law of Misdemeanor Domestic Violence, 1970-1990*, 83 J. CRIM. L. & CRIMINOLOGY 46 (1992)). Many states also allowed such orders to contain temporary child custody and child support terms. Sack, *supra* note 23, at 35.

55. Goddard, *supra* note 35, at 275.

56. The Violence Against Women Act was reauthorized and expanded in 2000, 2006, and 2013. Goddard, *supra* note 35, at 275.

57. See 42 U.S.C. § 13981 (2012). However, the Supreme Court later invalidated this cause of action as unconstitutional. See *U.S. v. Morrison*, 529 U.S. 598, 627 (2000) ("But Congress' effort in § 13981 to provide a federal civil remedy can be sustained neither under the Commerce Clause nor under § 5 of the Fourteenth Amendment.").

58. 42 U.S.C. § 3796hh (2012). Additionally, the Act made it a federal crime to cross state lines with the intent to commit domestic violence or violate a protection order. 18 U.S.C. §§ 2261–2262 (2012).

59. See 18 U.S.C. § 2265 (2012).

60. See 42 U.S.C. § 3796hh(c)(1)(D).

61. See 42 U.S.C. § 3796gg (2012). See also FACTSHEET: THE VIOLENCE AGAINST WOMEN ACT, http://titleix.ucr.edu/harass/vawa_factsheet.pdf (last visited Mar. 3, 2017).

62. See FACTSHEET, *supra* note 61.

63. *Id.*

domestic violence from 1993 to 2010,⁶⁴ and a thirty-one percent decrease, from 1996 to 2014, in the national female homicide rate.⁶⁵

The changes in American marriage policy and domestic violence law are consistent with changes in two social trends. First, in the last 100 years American women have acquired greater political power, eroding the patriarchal structure of society.⁶⁶ This has given women more opportunities to oppose male dominance in the public and private spheres.⁶⁷ Second, American legal institutions have slowly become less tolerant of domestic violence.⁶⁸ Decreased tolerance of abuse has created a greater challenge of the husband's right to control his wife by force.⁶⁹

Women's advocacy and eventually women's suffrage represented the first challenges to male dominance over public life and the home.⁷⁰ Through petitioning the legislature and protesting their subordinate status, women successfully lobbied for the elimination of marital unity, granting married

64. *Id.*

65. VPC (2016), *supra* note 2, at 2. The national female homicide rate currently stands at 1.08 per 100,000 women. *Id.*

66. With the passage of the Nineteenth Amendment in 1920, women gained the right to vote. U.S. CONST. amend. XIX. Additionally, after *Craig v. Boren*, women were afforded more protection under the Equal Protection Clause, as classifications based on gender are now held to a heightened level of scrutiny. See 429 U.S. 190, 197 (1976) (“To withstand constitutional challenge, . . . classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives.”).

67. In addition to the vote, women gained representation in Congress in 1916, when Jeannette Rankin became the first woman to serve. See Drew Desilver, *Women have long history in Congress, but Until Recently There Haven't Been Many*, PEW RESEARCH CTR. (Jan. 14, 2015), <http://www.pewresearch.org/fact-tank/2015/01/14/women-have-long-history-in-congress-but-until-recently-there-havent-been-many/>. A little over 100 years later, women will make up nineteen percent of the 115th Congress after winning 104 seats in the 2016 election. See Christina Marcos, *115th Congress Will be Most Racially Diverse in History*, HILL (Nov. 17, 2016), <http://thehill.com/homenews/house/306480-115th-congress-will-be-most-racially-diverse-in-history>.

68. Passage of the Violence Against Women Act, as well as nationwide reforms in state domestic violence laws, represented a significant shift in American domestic violence policy. See Sack, *supra* note 23, at 35.

69. Rather than condone a husband's physical control of his wife, domestic violence has increasingly been viewed as a criminal matter and many state legal institutions are aggressively seeking to punish abusers. See Goddard, *supra* note 35, at 273–76.

70. The married women's property acts, which unraveled the doctrine of coverture, were enacted as a result of the pressure women's rights advocates put on state legislatures during the nineteenth century. Siegel, *Rule of Love*, *supra* note 18, at 2142. As the women's rights movement grew, advocates came to realize that the right to vote was necessary to enact laws advancing women's status. O'Connor, *supra* note 37, at 660. See also Siegel, *She the People*, *supra* note 42, at 987 (“The demand for the vote was, in short, a challenge to the order of coverture.”).

women greater rights and increased independence from their husbands.⁷¹ As women became more independent, they challenged their exclusion from the public realm, ultimately gaining the right to vote in 1920.⁷² Women's advocacy was significantly strengthened by the franchise⁷³ and women continued to push for more autonomy and political freedom.⁷⁴ Through advocacy, women were able to achieve greater autonomy in the public and private realms⁷⁵ and, by the 1980s, effectively lobby for greater domestic protections for women, including significant domestic violence reform.⁷⁶

The increased role of women in the public sphere has further eroded male dominance in society.⁷⁷ The last three decades have seen a significant increase in female participation in Congress.⁷⁸ With greater representation, American women have gained a stronger voice and are now better equipped to advance policy benefitting and protecting women.⁷⁹ Additionally, the percentage of women occupying state and federal benches has significantly increased.⁸⁰ These changes have made legal institutions more responsive to women, giving women significantly more influence in legislative and judicial reform.⁸¹ This was a necessary development for domestic violence

71. See Siegel, *Rule of Love*, *supra* note 18, at 2142.

72. U.S. CONST. amend. XIX; see JoEllen Lind, *Dominance and Democracy: The Legacy of Woman Suffrage for the Voting Right*, 5 UCLA WOMEN'S L.J. 103, 115 (1994).

73. While women's suffrage did not have an immediate impact on the ballot, the vote represented the recognition of women's personhood and their entry into political discourse. See Lind, *supra* note 72, at 115–16.

74. The goal of ending gender subordination stalled in the early twentieth century, but women's advocacy regained its momentum during the feminist movement of the 1960s. See *id.* at 192.

75. See O'Connor, *supra* note 37, at 670–75.

76. FAGAN, *supra* note 26, at 8–9.

77. For example, research has shown that more women serving in Congress likely improves the chances for women to influence policy outcomes. See JENNIFER E. MANNING ET AL., CONG. RES. SERV., WOMEN IN CONGRESS: HISTORICAL OVERVIEW, TABLES, AND DISCUSSION 14 (2015), <https://www.fas.org/sgp/crs/misc/R43244.pdf>. See also Jennifer L. Peresie, *Female Judges Matter: Gender and Collegial Decisionmaking in the Federal Appellate Courts*, 114 YALE L.J. 1759, 1761–87 (2005) (indicating that the presence of female judges had an effect on the outcomes of Title VII sexual harassment and sex discrimination cases).

78. The amount of women in Congress has risen from eighteen in the 96th Congress to 104 in the 114th Congress. MANNING ET AL., *supra* note 77, at 4–5.

79. Evidence has shown that female legislators are more active in passing legislation concerning “women’s issues” than their male counterparts. *Id.* at 11. See also Desilver, *supra* note 67 (demonstrating the recent rise in female participation in Congress).

80. Women occupy about thirty percent of the seats on federal and state benches. See COMM’N ON WOMEN IN THE LAW, ABA, A CURRENT GLANCE AT WOMEN IN THE LAW 5 (2016).

81. See sources cited *supra* note 77.

reform, as women were able to directly influence institutional challenges to the status quo under which, men had effectively remained in power in society and their marriages.⁸² Women's increased representation in the public realm has likely contributed significantly to federal and state governments' ability to push reform favorable to women, especially in the area of domestic violence.⁸³

With women's increased role in the public sphere, they have successfully fought for increased rights in the private realm.⁸⁴ Women are no longer confined by their duties at home, giving them more opportunities to provide for themselves.⁸⁵ This has had a significant impact on marriage rights as most modern family structures have evolved from a husband-dominated household to one in which the husband and wife operate as partners on equal footing.⁸⁶ The increased independence of women in their marriages has slowly eroded the notion that a husband is supposed to control his wife.⁸⁷

Over the last century, particularly the last forty years, state institutions have become less tolerant of physical violence between partners.⁸⁸ States have gradually moved away from the idea that domestic violence is a family matter best resolved within the home.⁸⁹ This has led to significant state reform of three legal institutions in particular. First, states have taken considerable measures to modify the way law enforcement responds to domestic violence.⁹⁰ Additionally, state legislatures and court systems have sought to provide more remedies for abuse victims while redefining domestic violence as a criminal matter.⁹¹

82. *See supra* Part II.A.

83. *See* sources cited *supra* note 77.

84. *See* Tricia Hussung, *The Evolution of American Family Structure*, CONCORDIA UNIV. ST. PAUL (June 23, 2015), <http://online.csp.edu/blog/family-science/the-evolution-of-american-family-structure>.

85. Women have increased access to higher education and now make up a significant part of the workforce. *See* U.S. BUREAU OF LAB. STAT., *WOMEN IN THE LABOR FORCE: A DATABOOK 1–2* (2014).

86. *See* Hussung, *supra* note 84.

87. *See id.*

88. *See* FAGAN, *supra* note 26, at 9–10.

89. *See id.* at 10–25.

90. *See* Sack, *supra* note 23, at 34–37.

91. *See id.*; *see also* FAGAN, *supra* note 26, at 8–28 (discussing the evolution of domestic violence policy in America and state implementation of experimental policies designed to eliminate domestic violence).

Over the last forty years, law enforcement agencies have significantly modified the way they respond to domestic violence.⁹² With federal funding, states now provide officers with domestic violence training.⁹³ One of the goals of such training is the elimination of the idea that officers should do everything in their power to avoid arresting or charging the husband.⁹⁴ Many states now enforce mandatory arrest policies in domestic violence cases, which have led to a dramatic increase in arrests and prosecutions.⁹⁵ Additionally, law enforcement policies have placed more emphasis on ensuring victim safety, and officers are now trained in a wide variety of victim protection methods.⁹⁶ Rather than let the abuser “cool off,” officers are now trained to separate the victim and abuser, as well as work with the victim to ensure her continued safety.⁹⁷ These changes, and other law enforcement reforms,⁹⁸ made it police policy to challenge a man’s use of force to control his wife.⁹⁹

In the last four decades, states have reworked their statutory schemes, significantly modifying domestic violence laws nationwide.¹⁰⁰ Due to legislative and judicial reform, domestic violence is increasingly being treated as a criminal matter, rather than a family one.¹⁰¹ This represents a significant departure from the doctrine of family privacy and, as a result, courts have altered their treatment of abusers.¹⁰² Rather than condone abuse

92. See FAGAN, *supra* note 26, at 11 (“Efforts to deter domestic violence have focused primarily on the police.”).

93. See Sack, *supra* note 23, at 36. See also 42 U.S.C. § 3796gg (2012) (providing increased domestic violence training to law enforcement is one of the goals of the Violence Against Women Act).

94. See Goddard, *supra* note 35, at 274–78.

95. See Sack, *supra* note 23, at 35.

96. *Police Improve Response to Domestic Violence, but Abuse Often Remains the ‘Hidden Crime’*, SUBJECT TO DEBATE, Jan.–Feb. 2015, at 2, http://www.policeforum.org/assets/docs/Subject_to_Debate/Debate2015/debate_2015_janfeb.pdf.

97. See *id.* at 2–11.

98. See, e.g., Goddard, *supra* note 35, at 277–78.

99. The law enforcement challenge to his right is two pronged. Research has shown that arresting the abuser has a deterrent effect on subsequent abuse. See Johanna Niemi-Kiesiläinen, *The Deterrent Effect of Arrest in Domestic Violence: Differentiating Between Victim and Perpetrator Response*, 12 HASTINGS WOMEN’S L.J. 283, 410 (2001) (concluding that arrest deters violence and encourages victims to call the police). Additionally, by separating women from their abusers and providing for continued protection, abusers have fewer opportunities to assert physical control over their wives.

100. Over 700 new domestic violence-related enactments were passed between 1997 and 2003 alone. NEAL MILLER, INST. FOR LAW AND JUSTICE, DOMESTIC VIOLENCE: A REVIEW OF STATE LEGISLATION DEFINING POLICE AND PROSECUTION DUTIES AND POWERS 1 (2004).

101. See *id.* at 5–40 (discussing state legislative and judicial efforts to enact and enforce criminal domestic violence reform).

102. See *id.* at 14.

as the husband's prerogative, courts now seek to punish abusers for physically asserting control of their wives.¹⁰³ Additionally, statutory reforms have created more civil remedies for battered women while increasing victims' access to such remedies.¹⁰⁴ These reforms have increased victims' access to orders of protection¹⁰⁵ and some states have created civil causes of action for domestic violence.¹⁰⁶ By offering these remedies to the victim, states allow women to directly challenge their husband's use of physical force to assert control.¹⁰⁷

III. DOMESTIC VIOLENCE IN SOUTH CAROLINA

While domestic violence and female homicide are decreasing in the United States as a whole, the same cannot be said of South Carolina which, for the past eighteen years, has had one of the ten highest female homicide rates in the country, holding the top spot four times, most recently in 2015.¹⁰⁸ This year, South Carolina is the fifth deadliest state in the country for women.¹⁰⁹ Of the women killed in South Carolina, almost all of them knew their attacker¹¹⁰ and sixty-three percent of them were shot and killed.¹¹¹ Neither of these statistics represents a new trend. From 2006 to 2015, 230 people in South Carolina have died as a result of domestic violence shootings.¹¹² Taking this information into consideration, it is clear

103. *See id.* at 3–4.

104. *See* Camille Carey, *Domestic Violence Torts: Righting a Civil Wrong*, 62 U. KAN. L. REV. 695, 697–712 (2014).

105. *See* Sack, *supra* note 23, at 35 (citing Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3, 11 (1999)).

106. For example, California and Illinois offer statutory causes of action for victims of domestic violence. *See* Carey, *supra* note 104, at 709–12; 740 ILL. COMP. STAT. ANN. 82 / 10 (West 2013); CAL. CIV. CODE §§ 52.4, 1708.6 (West 2011).

107. *See* Carey, *supra* note 104, at 752 (discussing the deterrent value of tort law in domestic violence cases).

108. *See* Hawes & Pardue, *supra* note 7.

109. *See id.*

110. VPC (2016), *supra* note 2, at 15 (“For homicides in which the victim to offender relationship could be identified, 93 percent of female victims (37 out of 40) were murdered by someone they knew.”).

111. *Id.* at 15 (“For homicides in which the weapon used could be identified, 63 percent of female victims (24 out of 38) were shot and killed with guns.”).

112. Jeffrey Collins, *New Domestic Violence Gun Law in SC Hard to Track in Court*, ABC NEWS 4 (Feb. 6, 2016), <http://abcnews4.com/news/lowcountry-and-state-politics/new-domestic-violence-gun-law-in-sc-hard-to-track-in-court>. There are only five states reporting more domestic violence shootings than South Carolina, four of which have twice the population. *Id.*

that the majority of women murdered in the state were shot as a result of domestic violence.¹¹³ For the women of South Carolina, it is hard to imagine how the state can consistently produce such violent results.

Like the rest of America, the historical structure of South Carolina society contributes to domestic violence in the state.¹¹⁴ However, while many states were working to rectify these social trends,¹¹⁵ South Carolina maintained the status quo.¹¹⁶ The failure to address these social factors, two in particular, is consistent with the continued prevalence of domestic violence and female homicide in the state. First, South Carolina society is historically patriarchal, and women have struggled to challenge male dominance in the private and public realms.¹¹⁷ Second, South Carolina institutions remained relatively tolerant of domestic violence until 2015.¹¹⁸

The legal institutions in South Carolina remain historically patriarchal. Men have consistently dominated the General Assembly¹¹⁹ and in 2016, female participation in the legislature is among the lowest in the country.¹²⁰ Additionally, there is only one standing committee, out of twenty-eight, with a female committee chair.¹²¹ Similarly, the proportion of women serving on the state bench is among the worst in the nation, at twenty-one percent.¹²²

113. VPC (2016), *supra* note 2, at 15.

114. *See supra* Part II.A.

115. *See supra* Part II.B.

116. *See* Pardue et al., *Till Death Due Us Part*, *supra* note 9, at Part One.

117. *See* Pardue et al., *Till Death Due Us Part*, *supra* note 9, at Part Three.

118. *See id.*

119. *Women's Representation in South Carolina*, REPRESENTATION 2020, http://d3n8a8pro7vhm.cloudfront.net/fairvote/legacy_url/1793/south_carolina.pdf?1478627859 (last visited Jan. 5, 2017).

120. At 14.7%, only Alabama (14.3%), Oklahoma (14.1%), Wyoming (13.3%), and Mississippi (13.2%) have a lower proportion of women in their legislatures. *Women in State Legislatures for 2016*, NAT'L CONF. OF STATE LEGISLATURES, <http://www.ncsl.org/legislators-staff/legislators/womens-legislative-network/women-in-state-legislatures-for-2016.aspx> (last visited Feb. 18, 2017) [hereinafter *Women in State Legislatures for 2016*].

121. Representative Merita A. "Rita" Allison chairs the House Education and Public Works Committee. *See House Standing Committees (2016)*, S.C. LEGISLATURE, <http://www.scstatehouse.gov/committee.php?chamber=H> (last visited Feb. 19, 2017). There are no female committee chairs in the senate. *See Senate Standing Committees (2016)*, S.C. LEGISLATURE, <http://www.scstatehouse.gov/committee.php?chamber=S>. (last visited Feb. 19, 2017).

122. South Carolina is ranked forty-seventh in the country for the proportion of women serving on the state bench. THE GAVEL GAP, <http://gavelgap.org/> (last visited Jan. 2, 2016) (follow "South Carolina" dropdown).

This leaves women, who make up about fifty-two percent of the state,¹²³ significantly underrepresented in state institutions.¹²⁴ As a result, antiquated ideas have remained in these institutions¹²⁵ and the legal structure in South Carolina has historically been designed to favor men.¹²⁶ This legal structure also enforces patriarchy in the household where the idea that the wife should be subordinate to the husband is well established.¹²⁷

Until recently, the South Carolina legislature remained relatively tolerant of domestic abuse,¹²⁸ and the state's domestic violence statutes did little to punish or deter abusers.¹²⁹ Despite South Carolina's consistent place among the deadliest states for women, this statutory scheme was not

123. See *Quick Facts S.C.*, U.S. CENSUS BUREAU, <http://www.census.gov/quickfacts/table/PST045215/45> (last visited Jan. 2, 2016).

124. With little female representation, South Carolina has struggled to pass meaningful domestic violence reform. Prior to the Domestic Violence Reform Act, legislators with Second Amendment interests or criminal defense agendas routinely overshadowed women advancing domestic violence policy in the legislature. See Pardue et al., *Till Death Due Us Part*, *supra* note 9, at Part Two. Conversely, of the twenty-five states at or below the national average for female homicide, all but three have legislatures in which female participation is at least 20%. See VPC (2016), *supra* note 2, at 9–10 (providing the female homicide rate by state.). See also *Women in State Legislatures for 2016*, *supra* note 120 (providing the gender demographics of state legislatures.).

125. For example, in 2015, a male representative “joked” with a female representative that women are inferior because they are a “lesser cut of meat.” Jamie Self, *Sparring Over Remark Hits SC Senate Floor*, STATE (Feb. 17, 2015), <http://www.thestate.com/news/politics-government/politics-columns-blogs/the-buzz/article13956770.html>.

126. Women in South Carolina did not have the right to serve on juries until 1967. § 14-7-20 (2017) (stating statute was passed in 1967 in history line). Additionally, South Carolina did not ratify the Nineteenth Amendment until 1969. *Women's Suffrage in South Carolina*, STATEHOUSE REPORT (Feb. 13, 2015), <http://www.statehousereport.com/2015/02/13/womens-suffrage-in-south-carolina/>. Today, South Carolina remains one of four states in the country without equal pay laws. Vara Bergengruen, *Why Does South Carolina Remain One of 4 States Without Equal-Pay Laws*, STATE (Jan. 29, 2016), <http://www.thestate.com/news/politics-government/article57348188.html>.

127. Women were not allowed to file for divorce until 1949. S.C. CODE ANN. § 20-3-10 (2014) (stating statute was passed in 1949 in history line). Marital rape was not criminalized until 1991. S.C. CODE ANN. § 16-3-615 (2015) (stating statute was not passed until 1991 in history line). Even when it was criminalized, the statute is difficult to apply as producing a conviction requires proof that the attacking spouse used aggravated force. *Id.*

128. As the *Post and Courier* observed, “the state’s power structure is a fraternity reluctant to challenge the belief that a man’s home is his castle and what goes on there, stays there.” Pardue et al., *Till Death Due Us Part*, *supra* note 9, at Part One. However, despite the recent changes, there are still issues within the legislature concerning domestic violence. See Cynthia Roldán, *Aiken Legislator Charged with Felony Domestic Violence of his Wife*, STATE (Dec. 27, 2016), <http://www.thestate.com/news/local/crime/article123089214.html> (stating that on Dec. 27, an Aiken legislator was charged with first-degree domestic violence for punching his wife and pointing a pistol at her).

129. See *infra* notes 159–61.

reformed until 2015.¹³⁰ Under the state's old domestic violence laws, a first time offender was subject to a maximum of thirty days in jail for beating his wife or partner.¹³¹ Conversely, since 2000, a first time animal abuser has been subject to a maximum penalty of five years in prison.¹³² Furthermore, despite the fact that most women in South Carolina are killed with firearms,¹³³ the legislature refused to impose gun restrictions on convicted abusers until 2015.¹³⁴ The limited penalties for abuse did not serve as an effective deterrent, allowing abusers to return home and seek retribution against the victim.¹³⁵

Before the Domestic Violence Reform Act, South Carolina's criminal justice system struggled to punish perpetrators of domestic violence.¹³⁶ From 2004 to 2014, more than a third of those charged in South Carolina with domestic killings had at least one prior arrest for criminal domestic violence, and many had multiple.¹³⁷ Once arrested, abusers were often out of jail quickly, easily making bail.¹³⁸ Additionally, between 2005 and 2014, nearly half of the individuals convicted for domestic homicide pleaded guilty to lesser charges carrying lighter sentences,¹³⁹ while many were diverted to

130. S. 3, 121st Gen. Assemb., 121st Sess. (S.C. 2015).

131. See S.C. CODE ANN. § 16-25-20 (2015).

132. See S.C. CODE ANN. § 47-1-40 (2017).

133. According to the VPC, 63% of women in South Carolina are killed with firearms. VPC (2016), *supra* note 2, at 15.

134. The Domestic Violence Reform Act codified certain gun restrictions for domestic abusers in 2015. S.C. CODE ANN. § 16-25-30 (Supp. 2016). Before passage of the Act, a court was only required to deliver a written form to the abuser bearing the following language: "Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 to ship, transport, possess, or receive a firearm or ammunition." S.C. CODE ANN. § 16-25-30(B) (2015). It is interesting to see how the patriarchal nature of the legislature contributes to its historical tolerance of abuse. Consider the fact that the male representative who made the "joke" about women being inferior, *see supra* note 125, said he felt the female representative was angry with him because of his opposition to the proposed gun restrictions in early versions of the Domestic Violence Reform Act.

135. Pardue et al., *Till Death Due Us Part*, *supra* note 9, at Part Seven.

136. *Id.* at Part One.

137. Of these abusers, more than 70% had multiple prior domestic violence charges. *Id.* at Part 1. Despite recent reforms, this is still a problem in South Carolina. See Sarah Larimer, *He's Busting Into My Window Right Now, a Woman Told a Dispatcher. She Was Later Found Dead*, WASH. POST (Jan. 5, 2017), https://www.washingtonpost.com/news/true-crime/wp/2017/01/05/hes-busting-into-my-window-right-now-a-woman-told-a-dispatcher-she-was-later-found-dead/?utm_term=.f1054dcd8031 (discussing how Jorge Chavez recently killed himself, his wife, and two kids, after being arrested twice and previously threatening to kill her and himself).

138. Pardue et al., *Till Death Due Us Part*, *supra* note 9, at Part Seven.

139. *Id.* at Part 1.

anger-management programs.¹⁴⁰ The light penalties imposed on abusers by South Carolina's criminal justice system reinforced their use of violence as a source of power.¹⁴¹

South Carolina's institutional tolerance of domestic violence has perpetuated the idea that domestic violence is still a private, family matter to be settled at home.¹⁴² This idea is consistent with the traditional teachings of community institutions, such as the church.¹⁴³ Religion is a significant part of South Carolina society,¹⁴⁴ and many South Carolina women see divorce as a sin,¹⁴⁵ creating pressure for women to stay with their abusers in attempts to rectify the underlying issues.¹⁴⁶ Additionally, as the violence continues, many women begin to blame themselves for triggering abusive episodes.¹⁴⁷ This stigma has the effect of empowering the abuser while simultaneously

140. *Id.* The failure to impose significant consequences on abusers sends the message that abuse is not a serious crime, leaving the abuser feeling revictimized. Goddard, *supra* note 35, at 302. Conversely, imposing consequences sends the message that the crime against the victim is wrong. *Id.* at 302–03.

141. When an abuser uses violence against his partner, it increases his power in the relationship, increases the abuser's self-esteem, and ensures the victim's compliance. Orly Rachmilovitz, *Bringing Down the Bedroom Walls: Emphasizing Substance Over Form in Personalized Abuse*, 14 WM. & MARY J. WOMEN & L. 495, 503 (2008). This pattern of abuse becomes self-reinforcing, and is unlikely to end as long as the abuser does not face consequences. *Id.*

142. *See id.* at 554 (citing Jeannie Suk, *Criminal Law Comes Home*, 116 YALE L.J. 2, 11–12 (2006)). *See also supra* Section II.A. (discussing this same trend as seen in American history at large).

143. The traditional teachings of the church emphasized the man's responsibility to control and discipline his wife and children. Reverend Katherine Hancock Ragsdale, *The Role of Religious Institutions in Responding to the Domestic Violence Crisis*, 58 ALB. L. REV. 1149, 1154 (1995). *See also* 1 Corinthians 11:3 (“But I want you to realize that the head of every man is Christ, and the head of the woman is man, . . .”); Ephesians 5:23 (“For the husband is the head of the wife as Christ is the head of the church, . . .”). *But see* Ragsdale, *supra* note 143, at 1157–63 (discussing the efforts by members of the church community to oppose violence against women).

144. Pardue et al., *Till Death Due Us Part*, *supra* note 9, at Part Three.

145. *Id.* at Part Three (providing a quote from a South Carolina pastor saying, “The church believes marriage is a godly institution. Nothing should come between a man and wife.”).

146. *See* Ragsdale, *supra* note 143, at 1154 (citing DOROTHEE SOELLE, *SUFFERING* 17–18 (Everett R. Kalin trans., 1975)).

147. “*Why Don’t They Just Leave*”, NAT’L DOMESTIC VIOLENCE HOTLINE, <http://www.thehotline.org/is-this-abuse/why-do-people-stay-in-abusive-relationships/> (last visited Jan. 3, 2017) [hereinafter *Why Don’t They Just Leave*].

making the victim feel powerless, further reducing the victim's ability to deter the abuser.¹⁴⁸

As South Carolina institutions continue to tolerate abuse, members of the community are less likely to intervene,¹⁴⁹ leaving women with fewer options for escaping an abusive relationship.¹⁵⁰ This is exemplified by the state's lack of domestic violence shelters.¹⁵¹ Women who do not have a safe place to flee with their children are less likely to leave their abusers.¹⁵² Women who do not leave cannot limit or put an end to their abusers' opportunities to control them through violence.¹⁵³ With continued access to the victim, the abuser's use of violence becomes cyclical and harder to challenge.¹⁵⁴

148. Rachmilovitz, *supra* note 141, at 503 (citing Jana L. Jasinski, *Theoretical Explanations for Violence Against Women*, in SOURCEBOOK ON VIOLENCE AGAINST WOMEN, 11–12 (2001)).

149. A victim's continued exposure to abuse often leads to her isolation from her family, friends, and the community. Kathleen Waits, *The Criminal Justice System's Response to Battering: Understanding the Problem, Forging the Solutions*, 60 WASH. L. REV. 267, 287 (1985) (citing JENNIFER FLEMING, STOPPING WIFE ABUSE 289 (Anchor Press, 1st ed. 1979)). Furthermore, as abuse continues, some members of the community begin to shift the blame to the victim, asking questions such as "why doesn't she just leave?" Interview with Sara Barber, Exec. Dir., S.C. Coal. Against Domestic Violence & Sexual Assault, in Columbia, S.C. (Jan. 12, 2017).

150. Waits, *supra* note 149, at 297–98.

151. Despite having forty-six counties, South Carolina only has eighteen domestic violence shelters. S.C. DEP'T OF SOC. SERVS., THE DOMESTIC VIOLENCE STATE REPORT 20 (Oct. 2014–Sept. 2015), <https://dss.sc.gov/media/1303/14-15-domestic-violence-state-report.pdf> [hereinafter THE DOMESTIC VIOLENCE STATE REPORT]; WOMEN'S SHELTERS: A NATIONWIDE DIRECTORY OF SHELTERS FOR WOMEN, https://www.womenshelters.org/sta/south_carolina (last visited Jan. 3, 2017). The location of many of these shelters cannot be disclosed in an effort to protect the victims.

152. Waits, *supra* note 149, at 297–98. Even women who do leave are affected by the lack of shelter options, as battered women frequently return to their abusers due to the inability to support themselves or their children. *See* POWER AND CONTROL: DOMESTIC VIOLENCE IN AMERICA (Hillcrest Films 2010), <https://vimeo.com/19794785> (following the struggle of a woman, and her children, who ultimately returned to her abuser due to her inability to support herself and her children).

153. *See* Rachmilovitz, *supra* note 141, at 537 (citing Marion Wanless, Note, *Mandatory Arrest: A Step Toward Eradicating Domestic Violence, But Is It Enough?*, 1996 U. ILL. L. REV. 533, 546–47 (1996)) (“[W]ithout access to the victim, the abuser will not be able to carry out the abuse, and the abuse will less likely result in controlling the victim.”).

154. *Id.* at 503.

IV. THE DOMESTIC VIOLENCE REFORM ACT

After the *Post and Courier* exposed South Carolina's history of legislative inaction in the face of the staggeringly high female homicide rate,¹⁵⁵ the legislature responded by passing the Domestic Violence Reform Act.¹⁵⁶ The Act, passed in 2015, significantly altered the state's existing domestic violence laws.¹⁵⁷ As I will discuss below, this legislation represents a significant shift in South Carolina domestic violence policy.

One of the biggest steps forward taken by the Domestic Violence Reform Act came in the form of redefined domestic violence charges.¹⁵⁸ Under the old law, a first offender was guilty of a misdemeanor and subject to a maximum fine of \$2500, or not more than thirty days in prison, regardless of the severity of the offense.¹⁵⁹ Similarly, for a second offense, an abuser was convicted of a misdemeanor, subject to a \$2500 to \$5000 fine and thirty days to a year in prison.¹⁶⁰ It was not until the third offense that the abuser could be convicted of a felony, subject to one to five years in prison.¹⁶¹

Conversely, under the new law, domestic violence is separated into three degrees.¹⁶² Charges are now based on a combination of severity of the abuse, the number of offenses, and circumstances surrounding the crime.¹⁶³ This provides prosecutors with more flexibility,¹⁶⁴ as they can now consider different factors, such as a pregnant victim or the use of a gun in an abusive episode, when deciding whether to seek felony or misdemeanor charges.¹⁶⁵ The statute now allows prosecutors to seek sentences, ranging from

155. Pardue et al., *Till Death Do Us Part*, *supra* note 9, at Part Two.

156. See Sonja Sharp, *How a Paternity Fight Led to a Mass Shooting in a Trailer Park*, VICE NEWS (2016), <http://www.vice.com/read/domestic-violence-mass-shooting-ravenel-south-carolina-mungin-ancrum> (“[T]he Domestic Violence Reform Act was signed into law last June, almost a year after the damning *Post and Courier* exposé effectively shamed lawmakers into action.”).

157. Act No. 58, 2015 S.C. Acts 225.

158. S.C. CODE ANN. § 16-25-20 (Supp. 2016).

159. § 16-25-20(B)(1) (2015).

160. § 16-25-20(B)(2).

161. § 16-25-20(B)(3).

162. § 16-25-20.

163. *Id.*

164. Meg Kinnard, *South Carolina Ranks No. 1 For Deadly Violence Against Women*, STATE (Columbia, SC) (Sept. 15, 2015), <http://www.thestate.com/news/local/crime/article35338524.html>.

165. § 16-25-20. Additionally, the statute considers factors such as whether the abuse was perceived by a minor, whether the abuse took place during a robbery, burglary, kidnapping, or theft, whether the victim's breathing or air flow was impeded, and whether the abuse was in an attempt to prevent the victim from calling for help. *Id.*

probation to ten years in prison, based on the severity of the abuse rather than the number of offenses.¹⁶⁶

In addition to modifying the existing domestic violence scheme, the Domestic Violence Reform Act modified the crime of domestic violence of a high and aggravated nature.¹⁶⁷ An abuser is guilty of domestic violence of a high and aggravated nature when the person:

- 1) commits the offense under circumstances manifesting extreme indifference to the value of human life and great bodily injury to the victim results;
- 2) commits the offense, with or without an accompanying battery and under circumstances manifesting extreme indifference to the value of human life, and would reasonably cause a person to fear imminent great bodily injury or death; or
- 3) violates a protection order and, in the process of violating the order, commits domestic violence in the first degree.¹⁶⁸

Under the old version of the statute, abusers faced a maximum of ten years in prison.¹⁶⁹ The amended statute allows prosecutors to seek a heavier punishment for especially heinous domestic violence crimes. Anybody, including first time abusers, violating this law is guilty of a felony and is subject to a period of imprisonment twice that of an abuser convicted of domestic violence in the first degree.¹⁷⁰

The Domestic Violence Reform Act also seeks to protect women by establishing gun restrictions for those convicted of certain types of domestic abuse.¹⁷¹ These restrictions are separated into two categories: automatic bans and discretionary bans.¹⁷² If a person is convicted of domestic violence in the first degree or domestic violence of a high and aggravated nature, that person is automatically banned from owning firearms for ten years or life, respectively.¹⁷³ Convictions for domestic violence in the second or third

166. *Id.*

167. S.C. CODE ANN. § 16-25-65 (Supp. 2016).

168. *Id.*

169. However, an abuser could have his sentence suspended and might only be forced to serve the mandatory minimum, one year, upon completion of a batterer's treatment program. S.C. CODE ANN. § 16-25-65 (2015).

170. § 16-25-20(B); § 16-25-65 (Supp. 2016).

171. S.C. CODE ANN. § 16-25-30 (Supp. 2016).

172. *Id.*

173. § 16-25-30(E)(1)–(2).

degree are subject to a discretionary ban by which abusers are banned from owning firearms for three years if the judge, at the time of sentencing, “ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition.”¹⁷⁴

Additionally, abusers can have their gun rights suspended for the duration of an order of protection if, at the time of the hearing, the family court judge made “specific findings of physical harm, bodily injury, assault, or that the person offered or attempted to cause physical harm or injury to a person’s own household member with apparent and present ability under the circumstances reasonably creating fear of imminent peril” and the judge ordered that that person be prohibited from possessing firearms.¹⁷⁵ Under the original draft of the bill, possession of a firearm would have been illegal for anyone convicted of domestic violence or subject to an order of protection without requiring any specific findings.¹⁷⁶ However, this protection was stripped from the Act, and the current statutory language has provided one of the biggest points of criticism. Many say the burden of proof established by the statute gives judges too much discretion in deciding whether to suspend the gun rights of abusers under protective orders. However, domestic abuse reform advocates maintain that such discretion has yet to be exercised.¹⁷⁷

This discretion is afforded by the phrase “specific findings” in the statute. A “finding,” as defined by South Carolina Legal Services, is what is written at the top of a protection order if a full hearing is held and the court believes that the abuse happened.¹⁷⁸ Therefore, the finding is based on the evidence presented in the hearing, such as testimony, pictures, medical records, and witnesses.¹⁷⁹ According to the statute, an abuser would keep his firearms unless the petitioner could present enough evidence to convince the judge that the specific abuse complained about actually happened, and that such abuse warrants suspending the abuser’s gun rights.¹⁸⁰ These women may have partners who pose a considerable threat to their safety, yet still retain access to firearms.

This failure to remove firearms from potentially dangerous abusers may be the biggest shortcoming of the Domestic Violence Reform Act. Studies

174. § 16-25-30(E)(3).

175. § 16-25-30(E)(4).

176. S.B. 3, 121st Gen. Assemb., 1st Reg. Sess. (S.C. 2014).

177. Sharp, *supra* note 156.

178. FILING FOR AN ORDER OF PROTECTION IN SOUTH CAROLINA, SOUTH CAROLINA LEGAL SERVICES 9, <http://www.sccourts.org/selfhelp/orderofprotectionmanual.pdf> [hereinafter FILING FOR AN ORDER OF PROTECTION]. A finding might read “The Respondent hit the Petitioner in the face and torso.”

179. *Id.* at 9–10.

180. S.C. CODE ANN. § 16-25-30 (Supp. 2016).

have shown that not only are women most likely to be killed by their abusers shortly after leaving,¹⁸¹ but they are five times more likely to be murdered if their partner has access to a gun.¹⁸² Therefore, by not removing guns from abusers under protection orders, the state is allowing abusers to keep the weapon most commonly used to kill their partners at the time they are most likely to use them. It is in this area that legislative reform is needed if South Carolina is to reduce its annual female-homicide rate.

V. POLICY SUGGESTIONS FOR ENDING THE VIOLENCE

This Part will provide policy suggestions to deter domestic violence and reduce the state's female homicide rate. Section A of this Part will discuss the need to implement gun restrictions for abusers under a protection order, before suggesting two potential statutory gun reforms: 1) automatic suspension of a defendant's gun rights with a protection order subject to an expedited appeal; and 2) a rebuttable presumption that a defendant's gun rights should be suspended with a protection order. Section B of this Part will discuss the Maryland Lethality Assessment, and suggest its implementation and potential use by first responders and the court system. Finally, Section C will advocate for state programs promoting the establishment of more domestic violence shelters, continued counseling for children who have witnessed abuse, and the increased participation of women in the state's legal institutions.

181. Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 no. 7 AM. JOURNAL OF PUB. HEALTH 1089, 1090 (2003) [hereinafter Campbell, *Risk Factors*] (finding that women are 3.6 times more likely to be killed shortly after leaving their partner than other women in physically abusive relationships, making it the most dangerous time period for victims). See also Jana Kasperkevic, *Private Violence: Up To 75% of Abused Women Who Are Murdered Are Killed After They Leave Their Partners*, GUARDIAN (Oct. 20, 2014), <https://www.theguardian.com/money/us-money-blog/2014/oct/20/domestic-private-violence-women-men-abuse-hbo-ray-rice> (“[A]nywhere between 50% and 75% of domestic homicides happen at the point of separation or after [the victim] has already left [her abuser].”).

182. Campbell, *Risk Factors*, *supra* note 181, at 1092.

A. *Amending the Statutory Language to Take Firearms from Abusers Under Protection Orders*

1. *Balancing Women's Safety with the Second Amendment*

Consider the story of Brandy Ward, who, in April 2016, was kidnapped at gunpoint by her husband.¹⁸³ On the morning he kidnapped his wife, Daniel Ward was due in court for violating an order of protection already in effect.¹⁸⁴ Daniel forced his way into Brandy's car at gunpoint while she was on the phone with the prosecutor discussing her husband's failure to appear.¹⁸⁵ Daniel then held his wife at gunpoint as he led officers on a chase across three counties, ultimately crashing and engaging them in a firefight.¹⁸⁶ Luckily, Brandy and the officers emerged from the incident unharmed.¹⁸⁷ However, Brandy's story is not unique to her, as many women are victimized by abusers under orders of protection, and not all of them are as lucky as Brandy.¹⁸⁸

Brandy's story exemplifies the need to remove firearms from abusers under valid orders of protection. Women, like Brandy, who leave their abusers, are at a higher risk of being killed shortly after leaving.¹⁸⁹ This makes the period shortly after leaving the most dangerous time for victims.¹⁹⁰ This threat is compounded when an abuser has access to firearms, as domestic violence victims are five times more likely to be killed if their abuser has access to a gun.¹⁹¹ This trend is evident in South Carolina, where sixty-three percent of female homicide victims were shot and killed.¹⁹²

183. Dave Munday, *Kidnapping Case Leads to Chase, Crash, Gunfight: Wife, Deputies Not Hurt; Berkeley Man Wounded After Hourlong I-95 Pursuit*, POST & COURIER (Apr. 20, 2016), <http://www.postandcourier.com/20160421/160429878/hourlong-chase-across-3-counties-ends-in-gunbattle>.

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. See Carla Field, *Man Admits Gunning Wife Down Outside Domestic Violence Shelter*, WYFF4.COM (Sept. 9, 2015), <http://www.wyff4.com/news/man-gets-30-years-for-gunning-wife-down-outside-domestic-violence-shelter/35162726> (reporting that Spartanburg man shoots wife outside of domestic violence shelter after violating an order of protection).

189. See Campbell, *Risk Factors*, *supra* note 181, at 1090 (separating from an abusive partner after living together made it 3.6 times more likely that the abuser would kill the victim).

190. Pardue et al., *Till Death Due Us Part*, *supra* note 9, at Part Four.

191. Jacquelyn C. Campbell et al., *Assessing Risk Factors for Intimate Partner Homicide*, 250 NAT'L INST. OF JUST. J. 14, 17 (2003), <https://www.ncjrs.gov/pdffiles1/jr000250.pdf>.

192. VPC (2016), *supra* note 2, at 15.

By not suspending gun rights for abusers under orders of protection, the state is leaving the weapon most commonly used to kill women in the hands of their abusers when the abusers are at their most volatile state. Removing firearms from abusers will go a long way in lowering the state's female homicide rate. Studies have shown that the risk of being killed by an intimate partner decreases six months after separation, dropping significantly after a year.¹⁹³ Coincidentally, an order of protection in South Carolina is typically valid for six months to a year.¹⁹⁴ Therefore, by suspending gun rights for an abuser under an order of protection, the state can remove his firearms when he is most likely to kill his partner, and return them when the order has expired and the victim is at significantly less risk of being killed. Thus, South Carolina should seek to amend Section 16-25-30 to increase restrictions for those under an order of protection.

2. *Automatic Suspension of Gun Rights Upon Receiving an Order of Protection Subject to a Fast Track Appeal*

This first potential amendment would suspend an abuser's gun rights upon receiving an order of protection. The amended statute would be similar to the language in California's protective order statutes.¹⁹⁵ Under this language, anyone under an order of protection would be prohibited from possessing a gun for the duration of the order.¹⁹⁶ This would allow the state to keep firearms from potentially dangerous abusers until they have had sufficient time to step back and re-evaluate the situation, at which point, they

193. See GEORGE CRONIN, STRUCTURAL DEVELOPMENTS OF HOMICIDE IN RURAL PENNSYLVANIA 96 (2008) (finding that 76.5% of the victims were killed within six months of separating from their partners); MARCI L. FUKURODA, CAL. WOMEN'S LAW CTR., MURDER AT HOME: AN EXAMINATION OF LEGAL AND COMMUNITY RESPONSES TO INTIMATE FEMICIDE IN CALIFORNIA 312 (2005), <http://cwlc.org/web/wp-content/uploads/2014/03/Murder-at-Home-Report.pdf> (finding that 14% of California domestic homicide victims were killed within a month of leaving or threatening to leave); J. Reid Meloy et al., *Domestic Protection Orders and the Prediction of Subsequent Criminality and Violence Toward Protectees*, 34 PYSCHOTHERAPY 450-53 (Winter 1997), http://drreidmeloy.com/wp-content/uploads/2015/12/1997_DomesticProtect.pdf (finding that 58% of post protective order arrests occurred within six months of receiving the order).

194. FILING FOR AN ORDER OF PROTECTION, *supra* note 178, at 3.

195. See CAL. PENAL CODE § 136.2 (Supp. 2017) (requiring that a person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm or ammunition while the protective order is in effect); CAL. FAM. CODE § 6389 (2013). See also CAL. PENAL CODE § 273.6 (2014) ("Every person who owns, possesses, purchases, or receives a firearm knowing he or she is prohibited from doing so by the provisions of a protective order . . . shall be punished. . .").

196. See CAL. PENAL CODE § 136.2; CAL. FAM. CODE § 6389. See also CAL. PENAL CODE § 273.6.

would likely present less of a threat to their victim. When the protection order expires, the abuser's gun rights would be reinstated. Under this statutory language, the state would remove guns from abusers posing a significant threat to their partners until they are significantly less likely to act on their violent impulses. Therefore, amending Section 16-25-30 to automatically suspend an abuser's gun rights upon the issuance of an order of protection should lead to a significant decline in South Carolina's female homicide rate.

However, this route presents concerns. One concern is that the statutory language would be overinclusive. By automatically suspending gun ownership with an order of protection, guns would be removed from those falsely accused and abusers who do not pose a lethal threat to their partners. Additionally, under this language, a judge would have no discretion in suspending a defendant's gun rights when issuing an order of protection. This contributes to the second concern, that guns will be removed without due process.

To address due process and Second Amendment concerns, the statutory amendment could establish an expedited appeals process, under which a defendant would be afforded an opportunity to demonstrate that he does not pose a danger to his partner. If the defendant could establish, by clear and convincing evidence, that he is not a threat to his partner, the judge could overturn the gun suspension, leaving the order of protection intact.¹⁹⁷ At an appeals hearing, a defendant could present evidence, such as the negative lethality assessments discussed below,¹⁹⁸ to demonstrate that his partner will not be in greater danger if his gun rights are restored.

3. *Establishing a Rebuttable Presumption that Gun Rights Should Be Suspended Upon Issuance of an Order of Protection*

The second possible amendment would change the statutory language of the Domestic Violence Reform Act so that the burden of proof is on a

197. Given the grave consequences of giving firearms back to a dangerous offender, the clear and convincing evidence standard, rather than preponderance of the evidence, is the appropriate standard to ensure, with certainty, that the abuser does not pose a threat to the victim. See 32A C.J.S. *Evidence* § 1624 (2016) (citing *Kent. K. v. Bobby M.*, 110 P.3d 1013, 1018 (2005)) (“The ‘clear-and-convincing evidence standard of proof’ reflects a heightened standard of proof that indicates that the thing to be proved is highly probable or reasonably certain.”). See also 32A C.J.S. *Evidence* § 1627 (2016) (citing *Grogan v. Garner*, 498 U.S. 279, 286 (1991)). The standard may be appropriate where the interests at stake are deemed to be more substantial than the mere loss of money, and it is used only where the interests at stake are deemed more significant than ordinary. *Id.*

198. See *infra* Section V.B.2.

defendant to show that he or she does not pose a danger to the victim, as opposed to placing the burden on the victim to show that the defendant is dangerous.¹⁹⁹ The amendment's language would create a rebuttal presumption that the state cannot ensure the safety of the victim without imposing a condition suspending the gun rights of an abuser subject to an order of protection.²⁰⁰ To overcome this presumption, the defendant would have to show, by "clear and convincing" evidence, that he does not pose a threat to his wife.²⁰¹ Under this standard, the State could likely remove firearms from dangerous abusers, while affording those who do not pose a danger to their partner a chance to retain their Second Amendment rights. By affording defendants the opportunity to show that they do not pose a threat, the state would be placing emphasis on the lethality of the abuser, not the weapon, when determining whether to impose this condition.

The defendant would have the opportunity to rebut the presumption at the protective order hearing. Under the current statutory framework, the victim must prove that she is entitled to a protective order with a specific finding of abuse for the defendant's gun rights to be suspended.²⁰² This requires the judge to simultaneously decide whether the victim is entitled to an order of protection and whether the defendant's gun rights should be

199. Shifting the burden to the abuser is appropriate for two reasons: 1) The abuser likely has more access to information that he is not dangerous than the victim would to information that he is; and 2) The victim's failure to meet the burden to remove firearms from a dangerous abuser creates a greater social harm than the abuser's failure to meet the burden to retain firearms. See 31A C.J.S. *Evidence* § 196 (2016) (quoting *Amaral v. Cintas Corp.* No. 2, 163 Cal. App. 4th 1157, 1188 (2008)) ("In determining whether the normal allocation of the burden of proof should be altered, the courts consider the knowledge of the parties concerning the particular fact, the availability of the evidence of the parties, the most desirable result in terms of public policy in the absence of proof on the particular fact, and the probability of the existence or nonexistence of the fact. . . . The party with greater expertise and access to relevant information should bear the evidentiary burdens of production of evidence and persuasion.").

200. A rebuttable presumption is appropriate because, due to the private nature of domestic violence, even if an abuser poses a lethal threat, it may be difficult for victims to provide sufficient evidence to satisfy specific findings required by S.C. Code Ann. § 16-25-30. However, if the victim is in enough danger to require court ordered protection, it follows that the abuser poses a significant threat to the victim. See 31A C.J.S. *Evidence* § 204 (2016) (citing *In re Miller's Estate*, 2 N.W.2d 888, 891 (Mich. 1942)) ("A presumption is an inference of the existence or nonexistence of some fact which courts or juries required or permitted to draw from the proof of other facts. . . . Presumptions owe their existence to necessity and are based on general experience, and the necessity which brings them into existence is the fact that in their absence, many meritorious causes would fail through an inability to produce affirmative evidence of essential facts, concerning the existence of which the general experience leaves but slight doubt.").

201. See *supra* note 197.

202. S.C. CODE ANN. § 16-25-30(A)(4) (Supp. 2016).

suspended. Under the proposed amendment, the decision whether to issue an order of protection would be separate from the decision concerning the defendant's gun rights. To receive an order of protection, a victim would simply have to demonstrate that they are entitled to one. Upon finding that the victim is entitled to such an order, the statutory presumption would take effect. If the defendant did not challenge this rebuttable presumption, his gun rights would be suspended for the duration of the order. However, if the defendant wishes to rebut the presumption, he will have an opportunity to present evidence, such as a negative lethality assessment,²⁰³ to that effect. If the judge determines the defendant does not pose a threat to his partner, his gun rights can be reinstated before the hearing is concluded.

By setting the burden of proof at "clear and convincing evidence," the amendment would require abusers to clearly demonstrate that they do not pose a serious risk of harm to their partners. To ensure due process, the state could establish an appeals process if a defendant does not agree with the results of his rebuttable presumption hearing. The appellate court in this scenario would only review the case for procedural errors or to determine whether the judge ruling against the defendant abused his or her discretion. By establishing this rebuttable presumption, the state can make significant strides in reducing the female homicide rate, while taking care not to strip defendants of their Second Amendment rights without due process.

B. Statewide Implementation and Enforcement of Lethality Assessments

Lethality assessments are risk assessment tools developed to provide first responders with a reliable method of measuring the level of danger faced by a domestic violence victim under the particular circumstances.²⁰⁴ The assessments are comprised of questions that first responders ask victims upon arriving at the scene of a domestic violence incident.²⁰⁵ The victim's answers indicate the level of danger she faces under the circumstances.²⁰⁶ First responders can then use the victim's danger level to make necessary provisions for the victim's safety.²⁰⁷

203. *See infra* Section V.B.2.

204. VA. DEP'T OF CRIM. JUST. SERV., REVIEW OF LETHALITY ASSESSMENT PROGRAMS (LAP) 2 (2013), [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD2802013/\\$file/RD280.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD2802013/$file/RD280.pdf) [hereinafter LETHALITY ASSESSMENT PROGRAMS] (evaluating the Maryland Lethality Assessment Program and suggesting its implementation).

205. *Id.*

206. *Id.*

207. *Id.*

1. *Using Lethality Assessments to Protect Victims*

South Carolina must act to implement lethality assessments and ensure their consistent enforcement across the state. Lethality assessments have had a significant impact on improving women's safety in other states.²⁰⁸ After introducing the lethality assessment, Maryland saw a thirty-four percent drop in domestic violence homicides between July 2007 and June 2012.²⁰⁹ South Carolina should seek to follow Maryland's example.

In implementing this practice, lethality assessments would be taken by the first officers to arrive at the scene of a domestic violence incident. After diffusing the situation, the officer would conduct a lethality assessment if the parties involved are in an intimate relationship and the officer believes an assault has occurred or senses that the potential for danger is high, or when the parties have had repeated incidents.²¹⁰ Additionally, the officer has discretion to conduct an assessment simply if he believes one should be conducted.²¹¹ Upon determining that one is needed, the officer would conduct the assessment to determine whether the abuser poses a significant threat such that officers need to refer the victim for protection.²¹²

Lethality assessments consist of a series of yes or no questions, divided into two categories.²¹³ The first category automatically triggers the victim's referral for protection.²¹⁴ This category consists of questions such as "has he/she ever used a weapon against you or threatened you with a weapon?"²¹⁵ If a victim responds in the affirmative to one of these questions, she will automatically be referred to protection regardless of her answers to the other questions.²¹⁶ In the second category, a victim must say yes to four questions to trigger a referral for protection.²¹⁷ This category consists of questions like "Does he/she have a gun or can he/she get one easily?," or "Has he/she ever tried to choke you?"²¹⁸ Additionally, an officer is afforded some discretion

208. *Id.* at 3.

209. *Id.*

210. *Id.* at 4 (citing GOVERNOR'S COMM'N ON DOMESTIC AND SEXUAL VIOLENCE, EIGHTH REPORT OF THE DOMESTIC VIOLENCE FATALITY REVIEW COMMITTEE 21 (2011)).

211. *Id.*

212. *Id.*

213. *Id.* at 21.

214. *Id.*

215. *Id.* Automatic trigger questions also include: "Has he/she threatened to kill you or your children?" and "Do you think he/she might try to kill you?"

216. *Id.*

217. *Id.*

218. *Id.* Other questions in this category include: "Is he/she violently or constantly jealous or does he/she control most of your daily activities?," "Have you left him/her after living together or being married?," "Is he/she unemployed?," "Has he/she tried to kill

and may refer a victim for protection if the victim indicates she is afraid because of a factor not addressed in the questions.²¹⁹

Maryland has used lethality assessments to get a head start on ensuring the victim's safety.²²⁰ Once it is determined that a victim needs protection, responding officers immediately initiate the process of arranging for the victim's security.²²¹ The first step in this process is advising the victim of the officer's assessment, indicating why the officer believes the victim should seek protection.²²² After the victim is advised of the situation, officers encourage them to call the domestic violence hotline and speak to a counselor.²²³ If the victim refuses, the officer would encourage the victim to reconsider, but would ultimately remind the victim of the assessment if the victim refuses.²²⁴ If the victim wants to leave, officers arrange for or provide transportation to a shelter or any other location where the victim will be safe.²²⁵ Officers are also required to assist the victim's counselor with safety planning, upon request, and notify the domestic violence unit or supervisor.²²⁶ After the victim enters services, an advocate conducts a more detailed danger assessment to develop a detailed safety plan based on the specific circumstances concerning the victim's situation.²²⁷

2. *Using Lethality Assessments to Help Reinstate a Defendant's Gun Rights*

In addition to using lethality assessments for victim protection, South Carolina could allow defendants to submit a negative lethality assessment²²⁸ when seeking to overturn their firearm suspension, either on expedited appeal²²⁹ or through the rebuttable presumption.²³⁰ If responding officers

himself?;" "Do you have a child that he/she knows is not his/hers?;" and "Does he/she follow or spy on you or leave threatening messages?" *Id.*

219. *Id.*

220. *Id.* at 3.

221. *Id.*

222. *Id.*

223. The phone call serves two purposes: 1) the immediate planning for the victim's safety; and 2) to have the victim enter services. *Id.*

224. *Id.* at 4.

225. *Id.* (citing *How LAP Works*, LETHALITY ASSESSMENT PROGRAM, <https://lethalityassessmentprogram.org/about-lap/how-lap-works/> (last visited Feb. 21, 2017)).

226. *Id.*

227. *Id.*

228. For purposes of this Note, a "negative lethality assessment" will be defined as a lethality assessment in which the victim is not referred for protection.

229. *See supra* Section V.A.2.

230. *See supra* Section V.A.3.

determine that a victim does not need to be referred to protection, judges could give this information greater weight when deciding if the clear and convincing evidence standard is satisfied. On the other hand, if officers do determine that a victim needs protection, judges could treat the information as neutral, because the rebuttable presumption already exists. It is important to note that a negative lethality assessment alone would not be enough to overcome the clear and convincing evidence standard. However, a defendant who submits a negative lethality assessment would be required to proffer less evidence than a defendant who does not. Incorporating lethality assessments in this manner will make it easier for defendants who do not pose a significant threat to their partners to retain their gun rights. This practice would also provide a starting point for such defendants to challenge the presumption.

In using the lethality assessment in this manner, there may be concerns that the beneficial effects of a negative lethality assessment may be lost if an alleged victim does not respond honestly to the questions. Additionally, defendants may also have similar concerns regarding the responding officer's discretion in referring a victim for protection based on a factor not provided by the assessment. To address these concerns, the state could provide an alternative option for defendants with positive lethality assessments. Upon receiving a positive lethality assessment, a defendant would be given the option to have a clinical professional evaluate whether the defendant poses a significant threat to his partner.²³¹ If the professional evaluation finds that the defendant is not a risk to kill their partner, the defendant may submit this information in place of the lethality assessment taken by first responders. To prevent this protection from being abused, the clinical evaluation would have to indicate that the defendant does not pose a danger to his spouse and provide a factually sufficient basis for that determination. In allowing the defendant to use a negative lethality assessment or clinical evaluation to their advantage, the state could balance the defendants' Second Amendment rights with the proposed statutory goal of ensuring victims' safety.

231. This option would also be available to defendants in cases where the abuse was not reported to law enforcement and, thus, no lethality assessment was performed. If the victim seeks an order of protection without previously reporting her abuse, the defendant would still have the option to submit to a clinical evaluation and submit that to the court.

C. *State Programs to End the Culture of Violence*

1. *Providing More Domestic Violence Shelters*

Despite having forty-six counties, South Carolina only has eighteen domestic violence shelters.²³² The lack of shelters places obstacles in front of women trying to escape abuse. Less shelters result in limited space for women and their children.²³³ In federal fiscal year 2014–2015, 367 people were denied access to shelters due to lack of space.²³⁴ Additionally, many women do not live within close proximity of a shelter, thereby preventing them access to such services.²³⁵ Without a safe place to flee, many women will remain in an abusive relationship.²³⁶

South Carolina should develop more shelter options for women. These options include traditional shelters, alternative emergency housing models, and transitional housing.²³⁷ Providing more options for shelter will serve two important functions. First, more women will have immediate access to a safe location to stay while they seek a long-term alternative.²³⁸ Second, abusers will have less access to their victims.²³⁹ This all but eliminates an abuser's opportunities to murder their partner, while simultaneously breaking the cyclical nature of domestic violence.²⁴⁰

232. THE DOMESTIC VIOLENCE STATE REPORT, *supra* note 151, at 20.

233. The eighteen shelters have a combined total of 422 beds. *Id.*

234. *Id.*

235. Many women struggle to leave due to a lack financial of resources. Interview with Sara Barber, *supra* note 149. Additionally, distance may prevent women without certain resources, like a car, from leaving their husband. *Id.*

236. *Why Don't They Just Leave*, *supra* note 147; see, e.g., Interview with Sara Barber, *supra* note 149, for an explanation that the idea that women in abusive relationships have the ability and the resources to leave at any time is a common misconception.

237. E-mail from Sara Barber, Exec. Dir., S.C. Coal. Against Domestic Violence & Sexual Assault, to Author, (Jan. 5, 2017, 12:20 EST) (on file with author).

238. Despite providing shelter to 2796 adults and children, the state had to deny 13.13% of people seeking shelter due to lack of space. See THE DOMESTIC VIOLENCE STATE REPORT, *supra* note 151, at 20. By providing more options for shelter, less women would be denied.

239. See *supra* note 153 and accompanying text.

240. Rachmilovitz, *supra* note 141, at 537 (citing Marion Wanless, *Mandatory Arrest: A Step Toward Eradicating Domestic Violence, But Is It Enough?*, 1996 U. OF ILL. L. REV. 533, at 547 (1996)).

2. *Providing Counseling for Children Who Witness Domestic Abuse*

South Carolina should continue providing support and funding to counseling programs for children who have witnessed domestic abuse.²⁴¹ Violence in the home has lasting psychological effects on the children who see it.²⁴² Children who witness abuse are taught that violence is an acceptable way to handle issues with a loved one.²⁴³ Furthermore, children who witness their mother being battered learn to accept it as an appropriate way for the father to exert control.²⁴⁴ Men who witnessed domestic violence as children are more likely to batter their wives.²⁴⁵ Similarly, women who witnessed their mother's abuse are more likely to be victimized as adults.²⁴⁶

South Carolina currently provides significant resources to children who have witnessed or fallen victim to violence in the home.²⁴⁷ The state should continue supporting these programs while encouraging more victims to enroll. Without intervention, abusive behavior can be passed from

241. Under South Carolina law, children witnessing abuse are eligible to receive medical services and counseling. *See* S.C. CODE ANN. § 16-3-1110(8) (2015) (“‘Victim’ means a person who suffers direct or threatened physical, emotional, or financial harm as the result of an act by someone else, which is a crime. . . . The term also includes a minor who is a witness to a domestic violence offense. . . .”); *see also* S.C. CODE ANN. § 16-3-1180(A)(1) (2015) (“An award may be made for: reasonable and customary charges as periodically determined by the board for medical services, including mental health counseling, required and rendered as a direct result of the injury on which the claim is based, as long as these services are rendered by a licensed professional.”).

242. Alan J. Tomkins et al., *The Plight of Children Who Witness Woman Battering: Psychological Knowledge and Policy Implications*, 18 L. & PSYCHOL. REV. 137, 153–54 (1994).

243. *Id.* at 138–39 (quoting *Patricia Ann S. v. James Daniel S.*, 190 W. Va. 6, 18, 435 S.E.2d 6, 18 (1993) (Workman, dissenting)).

244. *See id.* at 150 (quoting TERRY DAVIDSON, CONJUGAL CRIME: UNDERSTANDING AND CHANGING THE WIFE BEATING PATTERN 117 (1978) (“The nightmare apparently is to be regarded as natural-or nonexistent- since it is neither acknowledged or alleviated.”)).

245. Men who saw their mothers abused are 2.2 times more likely to abuse their wives as adults. Charles L. Whitfield et al., *Violent Childhood Experiences and the Risk of Intimate Partner Violence in Adults*, 18 No. 2 J. OF INTERPERSONAL VIOLENCE 166, 178 (2003).

246. Women who saw their mothers abused are twice as likely to be victimized as adults. *Id.*

247. Children who witness domestic violence are eligible for services from the State Office of Victim Assistance (“SOVA”). Telephone Interview with Larry Barker, Dir., State Office of Victim Assistance (Jan. 19, 2017) (on file with author). Children receiving services are eligible for up to forty sessions of counseling. *Id.* Additionally, children receiving services from SOVA are eligible to receive up to \$15,000 for medical care, including dental, as long as it is associated with domestic violence. *Id.* SOVA can also cover the cost of forensic interviews. *Id.*

generation to generation.²⁴⁸ Providing counseling to these children can help them avoid falling into the cycle of abuse themselves.²⁴⁹ Through counseling, children can be taught that the abusive behavior they witnessed is unacceptable, rather than a normal part of life.²⁵⁰ Counseling can help a child deal with low self-esteem, a frequent side effect for children who witness domestic violence,²⁵¹ and teach that child appropriate ways to handle stress or frustration in a relationship.²⁵² Ultimately, counseling gives children the support they need to overcome inheriting generational abuse and break out of the cycle of violence.²⁵³

3. *Promoting Increased Female Participation in State Institutions*

As noted above, women are significantly underrepresented in South Carolina's legal institutions.²⁵⁴ The South Carolina legislature should take three courses of action to increase women's voices in government. First, the legislature should seek to elect more women to serve in the judiciary.²⁵⁵ Second, the General Assembly should push for more female committee chairs.²⁵⁶ Finally, members of the legislature should seek to recruit more qualified women to serve in government.²⁵⁷

248. Tomkins et al., *supra* note 242, at 150.

249. *Id.* at 171.

250. *Interventions for Children Exposed to Domestic Violence: Core Principles*, NAT'L CHILD TRAUMATIC STRESS NETWORK, <http://www.nctsn.org/content/interventions-children-exposed-domestic-violence-core-principles> (last visited Feb. 22, 2017) [hereinafter *Interventions for Children*].

251. *Id.* Many children feel significant guilt for not interfering as well as feelings of confusion toward the perpetrator of the abuse. Telephone Interview with Larry Barker, *supra* note 247.

252. *Interventions for Children*, *supra* note 250.

253. Laurie Vargas, Jason Cataldo & Shannon Dickson, *Domestic Violence and Children*, in *VISTAS: COMPELLING PERSPECTIVES ON COUNSELING* 67, 68 (2005), https://www.counseling.org/docs/disaster-and-trauma_sexual-abuse/domestic-violence-and-children.pdf?sfvrsn=2.

254. *See supra* Part III.

255. Under the South Carolina Constitution, members of the Supreme Court, Court of Appeals, and Judicial Circuits are elected by the legislature. S.C. CONST. art. V, §§ 3, 8, & 13.

256. In South Carolina, House Committee Chairs are elected by the members of the respective committees; the Senate Committee Chairs are selected by seniority. Brenda Erickson, *Selection of Committee Chairs*, NAT'L CONF. OF STATE LEGS., <http://www.ncsl.org/research/about-state-legislatures/the-selection-of-committee-chairs.aspx> (last visited February 22, 2017).

257. Research indicates that party leaders are less likely to recruit female candidates, and women are less likely than men to run without being asked. Rebecca Beitsch, *Stalled Progress for Women in State Legislatures*, PEW CHARITABLE TRUSTS (Dec. 8, 2015),

Raising female participation in the state's legal institutions will give women greater ability to influence policy.²⁵⁸ Women will have more advocates with a direct understanding of the issues women face.²⁵⁹ As these institutions become less patriarchal, they will likely advance more policy benefitting women's rights.²⁶⁰ Furthermore, it will allow women to challenge, and one day eliminate, the antiquated ideas about women that still exist within those bodies.²⁶¹ With more opportunities to publicly speak out against these ideas and directly influence policy, women can challenge the notion that they are subordinate to men.²⁶²

VI. CONCLUSION

By enacting tougher gun restrictions for abusers under protective orders, evenly implementing and enforcing lethality assessments, and advocating for state programs providing more shelter options, counseling for children who have witnessed abuse, and the increased participation of women in state legal institutions, South Carolina can decrease the prevalence of domestic violence in the state and, in turn, the state's female homicide rate. By suspending the gun rights of abusers subject to an order of protection, the state could remove the most dangerous weapon involved in domestic violence scenarios from abusers when they are most likely to use it. Additionally, by implementing lethality assessments, the state could protect women while simultaneously providing defendants with the opportunity to demonstrate that they do not need to forfeit their gun rights. Finally, by advocating for programs providing more options for shelter, counseling for children, and increased female participation in state institutions, the state can protect more women and their children while challenging South Carolina's domestic violence culture.

<http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/12/08/stalled-progress-for-women-in-state-legislatures>.

258. See MANNING ET AL., *supra* note 77, at 11.

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.*

*