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Gabriella Sneeringer
IIT Chicago-Kent College of Law

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CONTACT THAT CAN KILL: ORDERS OF PROTECTION, CALLER ID SPOOFING AND DOMESTIC VIOLENCE

GABRIELLA SNEERINGER*

One in four women will experience domestic violence at some point in their lifetime.¹ Domestic violence, also labeled “intimate partner violence,”² is a prolific problem across the globe, transcending race, gender, and socio-economic status. The United States Department of Justice defines domestic violence as “a pattern of abusive behavior . . . that is used by one partner to gain or maintain power and control over another intimate partner.”³ The underlying issue is the abuser’s need to exercise power and control.⁴ There is a common misconception that domestic violence is limited to physical abuse. While violence can be a component of an abusive relationship, it is the broader power and control dynamic which prevails:

The battering relationship is not about conflict between two people; rather, it is about one person exercising power and control over the other. Battering is a pattern of verbal and physical abuse, but the batterer’s behavior can take many forms. Common manifestations of that behavior include imposing economic or financial restrictions, enforcing physical and emotional isolation, repeatedly invading the victim’s privacy, supervising the victim’s behavior, terminating support from family or friends, threatening violence toward the victim,

* J.D., May 2015, Chicago-Kent College of Law, Illinois Institute of Technology. The author would like to thank Michael Morris and her family and friends for their continual love, support, and encouragement. A special thanks goes to the Cook County State’s Attorney’s Maiesha Baptiste, Sharday Shelby, and Brendon Stark for all their guidance and for assigning a research project about phone calls and orders of protection which became the inspiration for this Note. Lastly, the author dedicates this Note to all those who have been affected by domestic violence.

1. *Domestic Violence Fact Sheet: Illinois*, NAT’L COAL. AGAINST DOMESTIC VIOLENCE, www.ncadv.org/files/Illinois%20revised%202009.pdf (last visited May 14, 2015) (citing PATRICIA TJADEN & NANCY THOENNES, NAT’L INST. JUST., EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY (2000), available at <http://www.ojp.usdoj.gov/nij/pubs-sum/181867.htm>).

2. Domestic violence occurring within the “context of an intimate relationship” is also referred to as intimate partner violence. TJADEN & THOENNES, *supra* note 1. This article uses the term domestic violence, but the focus is on domestic violence within intimate relationships.

3. *Domestic Violence*, U.S. DEP’T JUST., <http://www.ovv.usdoj.gov/domviolence.htm> (last updated July 23, 2014).

4. Andrew King-Ries, *Teens, Technology, and Cyberstalking: The Domestic Violence Wave of the Future?*, 20 TEX. J. WOMEN & L. 131, 135 (2011).

threatening suicide, getting the victim addicted to drugs or alcohol, and physically or sexually assaulting the victim.⁵

In domestic violence relationships, one partner will use a range of “physical, sexual, emotional, economic, [and] psychological actions” as a way to “intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure or wound” the other.⁶ The abuser’s goal is to claim superiority and dominion over the victim.⁷ Non-physical abusive behaviors typically manifest before any physical violence and may be the only forms of abuse inflicted in these types of relationships; yet physical violence continues to be the dominant image associated with domestic violence.⁸ An understanding of the actual characteristics of domestic violence is essential in order to provide effective legal redress and to attempt to end the cycle of violence.

One of the legal actions that victims of domestic violence may pursue is obtaining an order of protection.⁹ An order of protection is a court order that can require an abuser to physically stay away from a victim, as well as prohibit contact of any kind.¹⁰ Pursuant to the Illinois Domestic Violence Act (IDVA) enacted in 1986, domestic abuse victims in Illinois can petition for both criminal and civil orders of protection, which allow victims to receive a variety of remedies.¹¹ The protective orders granted under the IDVA address both the physical violence and non-physical abuse encountered in domestic violence relationships.

By prohibiting all kinds of abusive behaviors, orders of protection can enable victims to regain control and power over their lives; however, this empowerment is often short-lived. Abusers frequently violate orders of protection, perpetuating the power and control they have over their victim.¹² According to one study, 60% of the women interviewed reported that their abusers violated the orders of protec-

5. Andrew King-Ries, Crawford v. Washington: *The End of Victimless Prosecution?*, 28 SEATTLE U.L. REV. 301, 304 (2005) [hereinafter King-Ries, *End of Victimless Prosecution*].

6. *Domestic Violence*, *supra* note 3.

7. King-Ries, *End of Victimless Prosecution*, *supra* note 5.

8. Jeffrey R. Baker, *Enjoining Coercion: Squaring Civil Protection Orders with the Reality of Domestic Abuse*, 11 J. L. & FAM. STUD. 35, 35–36 (2008).

9. ELIZABETH M. SCHNEIDER ET AL., DOMESTIC VIOLENCE AND THE LAW: THEORY AND PRACTICE 221 (3d ed. 2013).

10. *Id.*

11. Sheila Simon, *Survey of Illinois Law: Family Law-the Illinois Domestic Violence Act*, 27 S. ILL. U. L.J. 719, 719–21 (2003).

12. See King-Ries, *supra* note 4, at 135 (explaining that abusers are characterized by their actions to “ignore, undermine, violate, or undervalue the autonomy of the victim” and that they do not “appreciate or respect the victim’s physical or emotional boundaries.”).

tion within the first year.¹³ Today, abusers have increasingly begun to use technology to easily circumvent orders of protection, especially telephone technology.¹⁴

Abusers have used telephone technology to contact, harass, monitor, and stalk victims.¹⁵ “Caller ID spoofing”¹⁶ is a particularly problematic telephone technology used by abusers. Caller ID spoofing technology allows a person to change the number and/or name that is displayed on the receiving phone’s caller ID, thereby concealing the identification of the caller.¹⁷ It is extremely difficult to trace phone calls placed by caller ID spoofing.¹⁸ When an abuser uses caller ID spoofing to contact a victim in violation of an order of protection, the victim and prosecutor are left without the necessary evidence to prove the violation occurred. Violations committed with this technology often go unenforced and unprosecuted. Thus, while victims may be able to escape the physical abuse, they are not always able to escape the psychological and emotional abuse perpetuated through caller ID spoofing.

Part of the problem is that the criminal justice system fails to recognize the ways in which abusers use phones to violate orders of protection, and that these are legitimate violations under the law to be prosecuted. This Note defends the thesis that the Illinois criminal justice system is not adequately addressing and prosecuting violations of orders of protection involving telephone technologies in light of the purposes of the Illinois Domestic Violence Act. This is a result of the criminal justice system’s lack of knowledge about caller ID spoofing and failure to recognize abusers’ use of caller ID spoofing. In turn, this results in a failure to adequately investigate and respond to violations committed with caller ID spoofing. This Note also defends the thesis that in order to better protect victims of domestic violence across the nation, all caller ID spoofing technology should be banned.

Part I of this note discusses the history and background of domestic violence, orders of protection and the Illinois Domestic Violence Act.

13. Carolyn N. Ko, Note, *Civil Restraining Orders for Domestic Violence: The Unresolved Question of “Efficacy,”* 11 S. CAL. INTERDISC. L.J. 361, 373 (2002).

14. Joanne Belknap et al., *The Roles of Phones and Computers in Threatening and Abusing Women Victims of Male Intimate Partner Abuse*, 19 DUKE J. GENDER L. & POL’Y 373, 374 (2012).

15. *Id.* at 402.

16. *Caller ID and Spoofing: FCC Consumer Facts*, FED. COMM’NS COMM., <http://www.fcc.gov/cgb/consumerfacts/callerid.html> (last updated Dec. 30, 2014).

17. *Id.*

18. Alicia Hatfield, Note, *Phoney Business: Successful Caller ID Spoofing Regulation Requires More Than the Truth in Caller ID Act of 2009*, 19 J.L. & POL’Y 827, 832 (2011).

This section explains the importance of protective orders in the battle against domestic violence and the issues surrounding violations of these orders. Part II concentrates on the recent phenomena of caller ID spoofing and its connection to violations of orders of protection. Part III argues that using the Illinois Domestic Violence Act as intended by the legislature allows the judicial system to prosecute violations of orders of protection committed with caller ID spoofing. This section proposes procedures to address the evidentiary problems connected with phone spoofing during investigation and prosecution of violations of orders of protection. Part III also examines the federal and state legislative solutions that have been enacted to address caller ID spoofing, and their shortcomings in addressing the problem. This Note concludes with a call for the complete ban of caller ID spoofing technology and services.

I. DOMESTIC VIOLENCE AND ORDERS OF PROTECTION

American history is shadowed by an extensive account of societal and legal tolerance of domestic violence. Common law recognized a husband's right to punish or chastise his wife "so long as he did not inflict permanent injury upon her."¹⁹ The widely recognized "rule of thumb" allowed a man to beat his wife with an object as long as it was not thicker than a thumb.²⁰ This was defended on the grounds that husbands could legally be held liable for their wives' conduct.²¹ Thus, if a husband was legally responsible for his wife's actions, the law reasoned that he should be able to use whatever means necessary to control her.²² Moreover, it was believed that the state should not interfere with this right.²³

The practice of condoning spousal abuse continued into the nineteenth century. For example, *Bradley v. State*, decided in 1824, supported the right of chastisement.²⁴ In *Bradley*, the Supreme Court of Mississippi considered whether assault and battery against one's wife

19. Reva B. Siegel, "The Rule of Love": Wife Beating as Prerogative and Privacy, 105 YALE L.J. 2117, 2118, 2122-23 (1996).

20. James Martin Truss, Comment, *The Subjection of Women . . . Still: Unfulfilled Promises of Protection for Women Victims of Domestic Violence*, 26 ST. MARY'S L.J. 1149, 1157 (1995).

21. *Id.* at 1157-58.

22. Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1661.

23. *Id.*

24. SCHNEIDER ET AL., *supra* note 9, at 15-16.

was a crime.²⁵ The court began by stating that “unlimited license” of a husband’s right to beat his wife was not acceptable.²⁶ However, the court argued that the right of “domestic discipline” could be maintained by narrowing the right with the concept of moderation.²⁷ Therefore, the court held that husbands should be permitted to “exercise the right of moderate chastisement, in cases of great emergency, and use salutary restraints in every case of misbehavior.”²⁸ Even though the court in *Bradley* placed limitations on the right of chastisement, it never defined what counted as moderate chastisement or cases of great emergency.

By the latter half of the nineteenth century, courts slowly stopped enforcing the right of chastisement.²⁹ In 1871, Alabama and Massachusetts denounced the principle that beating one’s wife was legally justified.³⁰ Likewise, *Bradley* was effectively overruled in 1894 by *Harris v. State* in which the court stated that the right of a husband to chastise his wife had “long been utterly repudiated” in criminal courts.³¹ However, despite the rejection of chastisement by the legal system, little was done to actually protect battered wives. The courts simply traded in the policy of condoning spousal abuse for a policy favoring domestic privacy.³² For instance, in 1874, the North Carolina Supreme Court stated in dicta that domestic situations were better handled in private unless permanent injury was inflicted.³³ Preserving the privacy of a marital relationship became a justification for effectively granting abusers legal immunity.³⁴ It was not until 1920 that “wife-beating” became illegal in all states.³⁵ Even though this type of violence had become illegal, court protection of married couples’ privacy continued to prevent any intervention.³⁶

25. *Id.* at 15.

26. *Id.*

27. *Id.*

28. *Id.* at 16.

29. Siegel, *supra* note 19, at 2129.

30. Nichole Miras Mordini, *Mandatory State Interventions for Domestic Abuse Cases: An Examination of the Effects on Victim Safety and Autonomy*, 52 *DRAKE L. REV.* 295, 306 (2004).

31. *Harris v. State*, 14 So. 266, 266 (1894); SCHNEIDER ET AL., *supra* note 9, at 16.

32. Jerome Nadelhaft, “*The Public Gaze and the Prying Eye: The South and the Privacy Doctrine in Nineteenth-Century Wife Abuse Cases*,” 14 *CARDOZO J.L. & GENDER* 549, 555 (2008).

33. *State v. Oliver*, 70 N.C. 60, 61–62 (1874); see Pamela Blass Bracher, Comment, *Mandatory Arrest for Domestic Violence: The City of Cincinnati’s Simple Solution to a Complex Problem*, 65 *U. CIN. L. REV.* 155, 160 (1996).

34. Siegel, *supra* note 19, at 2169–70.

35. Mordini, *supra* note 30, at 307.

36. Truss, *supra* note 20, at 1157–60.

Marital privacy influenced the criminal justice system's approach to domestic violence well into the twentieth century as domestic relations courts were created to handle domestic abuse through dispute resolution and mediation rather than criminal prosecution.³⁷ This new court system served to decriminalize domestic violence and discouraged women from filing charges against their abusive husbands.³⁸ The supposed goal was to encourage couples to reconcile and repair their relationships.³⁹

Eventually, thanks in part to the feminist movement, the criminal justice system began to help victims of domestic violence by issuing orders of protection. In the beginning, however, access to orders of protection was limited because they were typically only granted in conjunction with criminal cases, which did not include domestic violence.⁴⁰ If there was no pending criminal case, as was often the case, victims could attempt to petition for civil orders of protection through divorce courts, but they were rarely granted.⁴¹ The difficulty in obtaining orders of protection caused feminists and women's rights advocates to demand legislative change that would broaden access to protective orders.⁴² Thus, beginning in the mid-1970s, states began adopting laws that gave all judges within their respective jurisdictions the authority to grant orders of protection.⁴³ And by 1994, every state had passed some form of legislation that made civil orders of protection a viable option for domestic violence victims.⁴⁴

Opening access to orders of protection was an important first step in protecting victims of domestic violence. For example, orders of protection help shield victims against immediate physical violence. But more significantly, orders of protection are tools facilitating an end to the power and control cycle of abuse. The power and control cycle is the "pattern of physical violence" combined with "psychological, eco-

37. Siegel, *supra* note 19, at 2169–70.

38. *Id.* at 2170.

39. *Id.*

40. Judith A. Smith, *Battered Non-Wives and Unequal Protection-Order Coverage: A Call for Reform*, 23 YALE L. & POL'Y REV. 93, 98 (2005).

41. *Id.*

42. Sack, *supra* note 22, at 1667.

43. Michelle R. Waul, *Civil Protection Orders: An Opportunity for Intervention with Domestic Violence Victims*, 6 GEO. PUB. POL'Y REV. 51, 53 (2000).

44. Smith, *supra* note 40, at 100.

nomie, sexual, and other abusive acts” associated with domestic violence relationships.⁴⁵

In 1984, the staff at the Domestic Abuse Intervention Project developed the “Power and Control Wheel” as a way to illustrate this power and control dynamic intertwined in a domestic violence relationship.⁴⁶ The “Power and Control Wheel” describes some of the behaviors abusers use for the purpose of “obtaining and maintaining power and control,” including, but not limited to: “intimidation; emotional abuse; isolation; minimization, denial, and blaming; using the children against the victim; use of male privilege; economic abuse; and coercion and threats.”⁴⁷ For example, economic abuse involves making a victim financially dependent on the abuser by withholding access to money and prohibiting the victim from obtaining employment.⁴⁸ The abuser might inflict emotional abuse by “[u]ndermining a [victim’s] sense of self-worth” through repeated insults and demeaning criticism.⁴⁹ Psychological abuse includes threats of “physical harm to self, partner or children,” as well as “mind games or forcing isolation from friends [and] family.”⁵⁰ These behaviors create a power imbalance enabling an abuser to exert control over all areas of the victim’s life, “including sexuality; material necessities; relations with family, children, and friends; and work.”⁵¹

The complex dynamic of a domestic violence relationship is one of the reasons victims are unable to leave the abusive situation.⁵² Thus, one of the most important functions of orders of protection is breaking this chain of power and control by allowing the victim to escape the debilitating abusive behaviors. Orders of protection create a protective barrier between victims and the abuse by placing limitations on abusive behaviors, such as prohibiting physical and non-physical contact with the victim.⁵³ Moreover, orders of protection reset the power im-

45. Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1121 (2009).

46. *Wheel Gallery*, DOMESTIC ABUSE INTERVENTION PROGRAM, <http://www.theduluthmodel.org/training/wheels.html> (last visited May 14, 2015).

47. Alafair S. Burke, *Domestic Violence as a Crime of Pattern and Intent: An Alternative Reconceptualization*, 75 GEO. WASH. L. REV. 552, 571 (2007).

48. Johnson, *supra* note 45, at 1120.

49. *Id.* at 1121.

50. *Id.*

51. *Id.* at 1121–22.

52. Hannah Brenner, *Transcending the Criminal Law’s “One Size Fits All” Response to Domestic Violence*, 19 WM. & MARY J. WOMEN & L. 301, 313 (2013).

53. Simon, *supra* note 11, at 719–20.

balance in domestic violence relationships by transferring power and control back into the hands of the victim.⁵⁴ Simply petitioning for an order of protection empowers victims because it allows them to gain a sense of control over the situation and their lives.⁵⁵ Victims are able to exercise their own power and control by choosing from a variety of remedies that orders of protection allow and to place restraints on their abusers.⁵⁶

A. *The Illinois Domestic Violence Act and Orders of Protection*

In 1978, the Illinois Coalition Against Domestic Violence formed with the purpose of attacking the domestic violence problem in Illinois.⁵⁷ It helped push the legislature towards enacting the Illinois Domestic Violence Act (IDVA) as a means of providing protection and remedies to domestic violence victims.⁵⁸ The IDVA is located both in Chapter 750 of the Illinois Compiled Statutes and in criminal statutes, and it allows for the issuance of both criminal and civil orders of protections.⁵⁹

The orders of protection granted by the IDVA offer a wide array of remedies such as protection against abuse, harassment and interference with personal liberty.⁶⁰ One available remedy requires abusers “to stay away from the victim, the victim’s household, and the victim’s place of school or employment.”⁶¹ Additionally, the orders can restrict abusers from contacting victims in any manner, as the “stay away” provision prohibits both physical and non-physical contact.⁶² The prohibition of non-physical contact encompasses both direct and indirect communications, “including but not limited to telephone calls, mail, email, faxes and written notes.”⁶³

54. Paula Pierce & Brian Quillen, *No Contest: Why Protective Orders Provide Superior Protection to Bond Conditions*, 40 AM. J. CRIM. L. 227, 236 (2013).

55. *Id.* at 238.

56. Brenner, *supra* note 52, at 317–18.

57. The Illinois Domestic Violence Act was first enacted in 1982, but is known as the Illinois Domestic Violence Act of 1986. ICADV “Her” Story, ILL. COAL. AGAINST DOMESTIC VIOLENCE, http://www.ilcadv.org/about_icadv/herstory.html (last visited May 14, 2015).

58. *Id.*

59. Illinois Domestic Violence Act of 1986, 750 ILL. COMP. STAT. 60/101-401; 725 ILL. COMP. STAT. 5/111-8 (West 2013), 725 ILL. COMP. STAT. 5/112A-1 to 112A-31 (West 2014); Simon, *supra* note 11, at 720.

60. 750 ILL. COMP. STAT. 60/214 (b)(1) (West 2013).

61. Simon, *supra* note 11, at 721; *see* 750 ILL. COMP. STAT. 60/214(b)(1)(B)(3).

62. 750 ILL. COMP. STAT. 60/103(14.5).

63. *Id.*

The remedies proscribed by the IDVA can be useful in protecting against both the physical and non-physical abuse present in domestic violence relationships. Prohibiting harassment and non-physical contact alleviates emotional abuse inflicted by abusers.⁶⁴ Likewise, prohibiting interference with personal liberty addresses the dynamics of power and control.⁶⁵ Interference with personal liberty is a “means of committing or threatening physical abuse, harassment, intimidation or willful deprivation so as to compel another to engage in conduct from which she or he has the right to abstain or to refrain from conduct in which she or he has a right to engage.”⁶⁶ Thus, the IDVA specifically prohibits the wide range of physical and non-physical abusive behaviors most often used to control victims.

While these protective orders help address the dynamics of domestic violence relationships, abusers often undermine the benefits of orders by continuing with the prohibited behaviors. Studies show that at least 50% of orders of protection are violated within the first two years.⁶⁷ The IDVA makes a violation of any civil or criminal order of protection a criminal offense in the State of Illinois.⁶⁸ Unfortunately, proper enforcement and prosecution of violations is a continuing problem.

B. Violations of Orders of Protection

A violation of an order of protection is a crime, but redress through the justice system is not always a guarantee. The IDVA provides extensive details and policies for enforcement of orders of protection.⁶⁹ For example, police officers can arrest an abuser for a violation without a warrant.⁷⁰ However, violations are still under-enforced. For example, in Chicago, Illinois, only 41% of violations reported in 2003 resulted in an arrest; of those arrests, only 62% result-

64. See Joy M. Bingham, Note, *Protecting Victims By Working Around the System and Within the System: Statutory Protection for Emotional Abuse in the Domestic Violence Context*, 81 N.D. L. REV. 837, 839 n.11 (2005) (referencing the IDVA as a statute which uses harassment as an attempt to protect against emotional abuse).

65. Jeffrey R. Baker, *Enjoining Coercion: Squaring Civil Protection Orders with the Reality of Domestic Abuse*, 11 J.L. & FAM. STUD. 35, 61 (2008).

66. 750 ILL. COMP. STAT. 60/103(9).

67. See Lynn D. Wardle, *Marriage and Domestic Violence in the United States: New Perspectives about Legal Strategies to Combat Domestic Violence*, 15 ST. THOMAS L. REV. 791, 799 (2003).

68. 725 ILL. COMP. STAT. 5/112A-23 (West 2013).

69. 750 ILL. COMP. STAT. 60/301-304; 725 ILL. COMP. STAT. 5/112A-26 to 112A-30.

70. 750 ILL. COMP. STAT. 60/301, 725 ILL. COMP. STAT. 5/112A-26.

ed in the filing of criminal charges; and of the 62% of the charges filed, 70% of the cases were dismissed.⁷¹

Proper enforcement and prosecution of violations is crucial to the efficacy of protective orders. When abusers violate orders of protection, the control and order victims have regained is threatened. Violations of orders of protection are in themselves a product of the abusers own attempt to regain control over the victim. The most dangerous time for a victim of domestic violence is when the victim leaves the abuser, which is usually after the victim obtains an order of protection.⁷² Leaving the relationship increases the likelihood of physical violence and homicide.⁷³

The violence that occurs after a victim leaves the abusive relationship is known as “retribution assault,” in which [an abuser] attacks” the victim as punishment for leaving.⁷⁴ This has also been defined as “separation assault” because it is a type of attack occurring once the victim decides to separate or actually separates from the abuser.⁷⁵ These types of assaults relate back to the abuser’s desired control over the victim.⁷⁶ When victims leave and obtain protective orders, increased violence and homicide occur as a result of the loss of control felt by the abusers.⁷⁷ In the attempt to regain control, abusers violate orders of protection; the acts that violate the orders are manifestations of obsessive behaviors toward the victims such as stalking and are indicative of an increased likelihood of violence.⁷⁸ For example, one

71. JODY RAPHAEL, *HARD FACTS: AN ANALYSIS OF INTIMATE PARTNER VIOLENCE AND SEXUAL ASSAULT DATA FROM THE COOK COUNTY LEGAL SYSTEM* (2005), available at https://law.depaul.edu/about/centers-and-institutes/schiller-ducanto-fleck-family-law-center/Documents/hard_facts.pdf.

72. Amanda Hitt & Lynn McLain, *Stop the Killing: Potential Courtroom Use of a Questionnaire that Predicts the Likelihood that a Victim of Intimate Partner Violence will be Murdered by Her Partner*, 24 *WIS. J.L. GENDER & SOC'Y* 277, 280 (2009) (explaining that victims legally separate from abusers by obtaining orders of protection).

73. *Protective Order Violations-Stalking in Disguise?*, SOURCE (Fall 2004), <http://www.victimsofcrime.org/docs/src/protective-order-violations.pdf?sfvrsn=2>.

74. Diane L. Rosenfeld, *Correlative Rights and the Boundaries of Freedom: Protecting the Civil Rights of Endangered Women*, 43 *HARV. C.R.-C.L. L. REV.* 257, 258 (2008).

75. Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 *MICH. L. REV.* 1, 65–66 (1991).

76. *Id.* at 65.

77. *Id.*

78. Margaret E. Johnson, *Balancing Liberty, Dignity, and Safety: The Impact of Domestic Violence Lethality Screening*, 32 *CARDOZO L. REV.* 519, 580 n.106 (2010).

study found that “more than half of the men who killed their spouses did so when the partners were separated.”⁷⁹

Violations that are not prosecuted pose a risk to victims because it means the violations are not being recorded for lethality (or risk) assessment. Lethality assessments were designed by researchers as screening tools to predict the likelihood of violence.⁸⁰ They calculate the potential of lethality in domestic violence situations based on different factors including stalking and separation from the abuser.⁸¹ Violations of orders of protection are a factor in the lethality assessment.⁸² In fact, violations of orders of protection present such a risk (in part because violations occur in conjunction with other risk factors such as stalking, threats, and harassment) that GPS monitoring programs have been implemented to monitor offenders based on the results of their lethality assessment.⁸³ The GPS devices track offenders’ locations using satellite technology to ensure that they do not come near victims.⁸⁴

On the suggestion of a domestic violence victim, the Illinois Legislature passed a law, effective in 2009, authorizing courts to order GPS monitoring for domestic violence offenders.⁸⁵ The victim, Cindy Bischof, had obtained an order of protection against her ex-boyfriend, Michael Giroux, after he began threatening and harassing her.⁸⁶ Giroux repeatedly violated the order of protection, and Bischof pressed charges each time.⁸⁷ Every time she came to court, Bischof brought a list of ways the criminal justice system could further protect her, including a request to have Giroux ordered to carry a GPS monitoring system.⁸⁸

79. Mahoney, *supra* note 75, at 64–65 (citing George Barnard et al., *Till Death Do Us Part: A Study of Spouse Murder*, 10 BULL. AM. ACAD. PSYCHIATRY & L. 271, 279 (1982)).

80. Hitt & McLain, *supra* note 72, at 283.

81. *Id.* at 283–84.

82. *Assessment Guides*, SOC. SERVS. AGENCY, http://www.sccgov.org/ssa/opp2/03_guide/3-15.1.html (last visited May 14, 2015).

83. Bryan Thompson, *Changes in the Cindy Bischof Law*, 24 DCBA BRIEF 40 (2011); see Shelley M. Santry, *Can You Find Me Now? Amanda’s Bill: A Case Study in the Use of GPS in Tracking Pretrial Domestic Violence Offenders*, 29 QUINNIPAC L. REV. 1101, 1116–18 (2011).

84. Mary Ann Scholl, *GPS Monitoring May Cause Orwell to Turn in His Grave, but Will It Escape Constitutional Challenges? A Look at GPS Monitoring of Domestic Violence Offenders in Illinois*, 43 J. MARSHALL L. REV. 845, 845 (2010).

85. *Id.* at 845–46.

86. Liam Ford & Megan Twohey, *The Law Didn’t Save Her*, CHI. TRIB., Mar. 16, 2008, http://articles.chicagotribune.com/2008-03-16/news/0803150558_1_intimate-partner-home-confinement-boyfriend.

87. *Id.*

88. Scholl, *supra* note 84.

The last violation Giroux committed was on March 7, 2008, when he showed up at Bischof's office.⁸⁹ Giroux fatally shot Bischof outside of her office before turning the gun on himself.⁹⁰ Bischof's death prompted the Illinois Legislature to adopt the "Cindy Bischof Law" authorizing GPS monitoring devices for abusers who violate orders of protection.⁹¹ The law authorizes courts to conduct lethality/risk assessments to determine which offenders should be placed on GPS monitoring.⁹² The assessment includes looking at whether the offender has committed any previous violations.⁹³ Therefore, proper enforcement of protective orders and prosecution of violations are essential for the violations to be considered in the lethality assessments.

The lack of proper enforcement and prosecutions is most prevalent when abusers use technology.⁹⁴ Technological advancements occur so quickly that the criminal justice system often is unable to keep up.⁹⁵ When violations committed with use of technology go unaddressed and are not prosecuted, the violations do not get included in the lethality assessment. Contemporarily, abusers have increasingly begun using technological advancements, such as caller ID spoofing, as a way to circumvent orders of protection and to stalk and harass their victims.⁹⁶ This is troubling, especially in the domestic violence context, as "more than fifty-nine percent of female stalking victims (and thirty percent of male stalking victims) are stalked by a [current or former] intimate partner, and of those women, more than eighty-one percent were physically assaulted by the person stalking them."⁹⁷ Moreover, stalking is a precursor to more dangerous behavior.⁹⁸ Studies of domestic violence homicides indicate that stalking and harassment precede 76% of homicides and 85% of attempted homicides.⁹⁹ As Part II of this Note will show, caller ID spoofing technology greatly enhances abusers ability to stalk and harass victims.

89. *Id.*

90. *Id.*

91. *Id.* at 853-54.

92. Thompson, *supra* note 83, at 41.

93. *Id.*

94. King-Ries, *supra* note 4, at 133.

95. *Id.*

96. "Cyberstalking is 'the use of the Internet, email, and other electronic communication devices to stalk another person.'" Laura Silverstein, *The Double Edged Sword: An Examination of the Global Positioning System, Enhanced 911, and the Internet and Their Relationships to the Lives of Domestic Violence Victims and Their Abusers*, 13 *BUFF. WOMEN'S L.J.* 97, 120 (2005).

97. *Id.*

98. Belknap et al., *supra* note 14, at 379; see Hitt & McLain, *supra* note 72, at 280.

99. Hitt & McLain, *supra* note 72, at 280.

II. CALLER-ID SPOOFING

Caller ID spoofing is a telephone technology which disguises the identity and origin of a telephone call.¹⁰⁰ Generally, when a person places a phone call, the caller's phone number appears on the caller ID of the receiving phone. The caller's phone number is also transmitted to the telephone company of the receiving phone and is recorded in the company's records. Caller ID spoofing replaces a caller's telephone number with a fake one, so the fake number shows up on a caller ID display.¹⁰¹ Not only does the fake number appear on the receiving phone's caller ID, but the fake number appears in the telephone company's records as well.¹⁰² Thus, caller ID spoofing makes it virtually impossible to trace the origin of a phone call and the identity of the caller.¹⁰³ Text message spoofing is also available and functions the same way as caller ID spoofing.¹⁰⁴ Additionally, certain caller ID spoofing applications (apps) have voice-changing capabilities, which can make a male caller sound like a female, further disguising the identity of the caller.¹⁰⁵ The spoofing technology available from SpoofCard, for example, has both telephone number and voice-changing capabilities.¹⁰⁶

Spoofing was originally intended for persons who work outside their business offices.¹⁰⁷ It permitted them to make calls or send texts that displayed their work phone number instead of the phone number they were actually using, such as a home phone or personal cell-phone.¹⁰⁸ But now, spoofing technology is available to everyone. SpoofCard, which is the number one spoofing company, has over three

100. *Caller ID and Spoofing: FCC Consumer Facts*, *supra* note 16.

101. Hatfield, *supra* note 18, at 831-32.

102. *Id.*

103. *Id.* The only possible way to try and trace the phone call would be to subpoena the spoofing company; however, this requires knowledge of which company was used, and the spoofer would have had to provide *correct* identifying information with the company, which is not always necessary in order to use spoofing technology.

104. Melissa F. Brown, *Safety and Security in a Digital Age*, S.C. LAW., July 2010, at 38, 40 ("Technology also exists to falsify or spoof text messages. Such services are found at www.thesmszone.com or www.fakemytext.com."); SPOOF MY TEXT, <http://www.spoofofmytext.com> (last visited May 14, 2015).

105. Brown, *supra* note 104, at 39.

106. SPOOFCARD, <http://www.spoofofcard.com/features> (last visited May 14, 2015).

107. Brown, *supra* note 104.

108. *Id.*

million customers.¹⁰⁹ To obtain caller ID spoofing technology, someone can simply google “caller ID spoofing” for links to several different websites with downloads. Moreover, anyone with an android phone can download a caller ID spoofing app from the Google Play Store.¹¹⁰ Some spoofing companies, such as SpoofCard, charge for services requiring its consumers to register and purchase credits.¹¹¹ Many companies, including SpoofCard and SpoofTel, offer free trials without registration.¹¹² Alternatively, some apps available at the Google Play Store, such as Caller Id Faker, provide consumers with free minutes.¹¹³ Because spoofing has become more widespread and accessible, abusers have begun using spoofing technology for unlawful purposes.¹¹⁴

Caller ID spoofing is used as means for violating orders of protection. It is used to stalk, harass, and simply contact victims, all of which are prohibited by orders of protection under the IDVA.¹¹⁵ Abusers use caller ID spoofing to harass and stalk their victims in a multitude of ways, such as calling the victims repeatedly.¹¹⁶ The calls may be of a threatening nature or simply numerous calls and hang-ups at all hours of the day. In some cases, abusers spoof the victim’s number to call the victim multiple times, resulting in the victim’s own number displaying on the caller ID.¹¹⁷ This gives the impression that the abuser is calling from within the victim’s home, causing the victim to fear for his or her safety.¹¹⁸ Caller ID spoofing ultimately deceives victims into unknowingly answering calls from their abusers.¹¹⁹ Ordinarily, victims know which calls to answer and which to avoid; however, when an abuser uses spoofing technology, the victim does not know it is the abuser on the other line. Abusers may use numbers the victim recognizes, such as

109. Judy L. Thomas, ‘Spoofers’ Sidestepping Caller ID Raise Alarm, ORLANDO SENTINEL (Sept. 20, 2009), http://articles.orlandosentinel.com/2009-09-20/news/0909200100_1_caller-id-called-spoofing-phone-calls.

110. GOOGLE PLAY STORE, <https://play.google.com/store/apps/details?id=com.phone.gangster> (last visited May 14, 2015).

111. SPOOFCARD, *supra* note 106.

112. *Id.*; SPOOFTEL, <https://www.spoofTel.com/freecall/index.php> (last visited May 14, 2015).

113. *Caller Id Faker*, GOOGLE PLAY STORE, <https://play.google.com/store/apps/details?id=com.mathrawk.calleridfaker&hl=en> (last visited May 14, 2015).

114. Brown, *supra* note 104.

115. Illinois Domestic Violence Act of 1986, 750 ILL. COMP. STAT. 60/214 (West 2013).

116. Hatfield, *supra* note 18, at 839–40.

117. “In 2009, for example, a man called three women in the middle of the night claiming that he was inside their houses watching them. He called the women’s cell phones and spoofed their home numbers so that his victims believed he was calling from within the house.” *Id.*

118. *Id.*

119. *Id.* at 839.

telephone numbers of loved ones, tricking victims into answering the calls.

Most alarming is that Caller ID spoofing facilitates abusers' ability to stalk victims. With caller ID spoofing, abusers can obtain personal information that they otherwise would not have been able to access. One way is through the voice-changing capability of spoofing.¹²⁰ For example, the abuser can use the voice-changing capability to disguise their voice and call the victim. The abuser could pretend to be a clerk in the courthouse and ask for the victim's current address. When the telephone number that appears on the victim's caller ID reflects the courthouse's telephone number (because the abuser replaced his/her number with the courthouse number through traditional spoofing), the victim willingly discloses his/her address to the "clerk" who is actually the abuser.

Another way abusers can obtain personal information is by using spoofing technology to break into the victim's voicemail.¹²¹ Most cell phone voicemail systems are set up to automatically accept calls from the owner's cell phone number.¹²² The abuser can therefore use caller ID spoofing to replace their own number with the victim's number and then call the victim's cellphone; the voicemail system recognizes the number as the owner's and grants the abuser access to the victim's voicemails.¹²³ This helps abusers intercept calls about court dates or learn information about a victim's location.

Essentially, caller ID spoofing makes violating orders of protection pretty easy. It gives an abuser the ability to commit acts prohibited by the orders, while helping to protect him or her from liability.¹²⁴ Because spoofing technology transmits a fake number to the victim's telephone company, the victim does not have a record directly tying the abuser to the call. When victims try to file complaints for the violation, the lack of evidence makes it nearly impossible to press charges against the abuser and even more difficult to obtain a conviction.

The difficulties presented by telephone spoofing are particularly problematic in the domestic violence context. The lack of prosecutions of violations committed by the use of telephone technology results in

120. SPOOFCARD, *supra* note 106.

121. Brown, *supra* note 104.

122. *Id.* at 40.

123. *Id.*

124. Stephanie Austria, *Forgery in Cyberspace: The Spoof Could Be On You!*, 4 U. PITT. J. TECH. L. & POL'Y 2 (2004).

these violations going unnoticed in a lethality assessment. Prosecuting and making a record of these violations is necessary for the protection of victims because, as noted earlier, studies of domestic violence homicides indicate that 76% of homicides and 85% of attempted homicides are preceded by stalking and harassment.¹²⁵ Therefore, the criminal justice system needs to recognize the existence and use of spoofing technology.

III. ADDRESSING AND SOLVING THE CALLER ID SPOOFING PROBLEM

Addressing and solving the problem of violations committed by caller ID spoofing is a multi-step process. First, the criminal justice system must recognize that caller ID spoofing is covered under the IDVA. Once this is realized, law enforcement, prosecutors and the courts can begin using the tools at their disposal to address the evidentiary issues presented by caller ID spoofing.

A. Spoofing and the IDVA

The intent and purposes of the IDVA can be interpreted to encompass violations committed by caller ID spoofing. The statute's first line states that the "act shall be liberally construed and applied to promote its underlying purposes."¹²⁶ Purposes of the statute include recognizing the seriousness of domestic violence, the history of inefficient response to domestic violence by the legal system, and the fact that inefficient responses to domestic violence continue.¹²⁷ Two of the purposes specifically refer to orders of protection: "support[ing] the efforts of victims of domestic violence to avoid further abuse by... diligently enforcing court orders" and "expand[ing] the civil and criminal remedies."¹²⁸ Taking these purposes together only leads to the conclusion that caller ID spoofing can be recognized within the prohibitions and remedies proscribed in the IDVA.

While the statute does not specifically reference telephone technology such as spoofing, the plain language and purpose of that statute can, and should, be interpreted to cover spoofing. For example, telephoning the victim's workplace, home and residence repeatedly is

125. Hitt & McLain, *supra* note 72, at 280.

126. 750 ILL. COMP. STAT. 60/102.

127. *Id.* §§ 102(1), (3).

128. *Id.* §§ 102(4), (6).

conduct presumed to be harassment.¹²⁹ Because caller ID spoofing often involves calling a victims phone, “diligently enforcing” the protective orders would include constituting this as a violation.¹³⁰ Likewise, caller ID spoofing should be included under the forms of indirect, non-physical contact prohibition in orders of protection. Telephone calls are specifically mentioned, and much of caller ID spoofing involves telephone calls.¹³¹ In addition, caller ID spoofing through text messages should be covered because the list of indirect contact is not an all-inclusive list.¹³²

Furthermore, simple non-harassing or nonthreatening telephone contact via caller ID spoofing should also be covered. While the remedy section titled “stay away order and additional prohibitions” only makes reference to physical contact, in *People v. Olsson*, an Illinois Appellate Court held that “stay away” under section 214(b)(3) does encompass indirect contact.¹³³ In fact, the court stated that a single phone call was enough to constitute a violation.¹³⁴ In *Olsson*, the State alleged that the defendant telephoned the victim in violation of the stay away provision under section 214(b)(3) of the IDVA listed in section 12-30 of the Criminal Code.¹³⁵ The defendant argued that under the remedies granted by the IDVA, section 214(b)(1) addressed non-physical contact and only to the extent of prohibiting non-physical contact that was harassing in nature.¹³⁶ According to the defendant section 214(b)(3) of the IDVA only prohibited physical contact, and a single telephone call could not violate the order even if the order of protection also stated there was to be no telephone contact.¹³⁷ The trial court dismissed the charge, but the appellate court reversed.¹³⁸

The appellate court held that the interpretation of “stay away” in section 214(b)(3) also covered non-physical contact¹³⁹ and supported

129. *Id.* § 103(7)(ii).

130. *Id.* § 102(4).

131. *Id.* § 103(14.5).

132. “‘Stay away’ means for the respondent to refrain from both physical presence and non-physical contact with the petitioner whether direct, indirect (*including, but not limited to*, telephone calls, mail, email, faxes and written notes) (emphasis added). *Id.*”

133. *People v. Olsson*, 780 N.E.2d 816, 819 (Ill. App. Ct. 2002).

134. *Id.*

135. *Id.* at 817–18.

136. *Id.* at 819.

137. H. JOSEPH GITLIN, GITLIN ON DIVORCE: A GUIDE TO ILLINOIS MATRIMONIAL LAW § 21-12[a] (Matthew Bender & Co. 3d ed. 2014).

138. *Olsson*, 780 N.E.2d. at 817.

139. *Id.* at 819.

this interpretation by referencing the purposes section of the IDVA.¹⁴⁰ The appellate court pointed out that the purposes listed in the Act include:

[r]ecogniz[ing] domestic violence as a serious crime against the individual and society which produces family disharmony in thousands of Illinois families, promotes a pattern of escalating violence which frequently culminates in intra-family homicide, and creates an emotional atmosphere that is not conducive to healthy childhood development.¹⁴¹

According to the appellate court,

[t]he Illinois Domestic Violence Act would fail in its purpose of protecting family harmony and creating an emotional atmosphere 'conducive to healthy childhood development' if it could not protect an abused person, particularly a minor, from receiving even a single or occasional telephone call from his or her abuser.¹⁴²

Therefore, the court held that even one phone call is sufficient to violate the stay away provision of the IDVA.¹⁴³

In *People v. Leezer*, the court was presented with a similar challenge to a violation of an order of protection.¹⁴⁴ The court reaffirmed their interpretation in *Olsson* stating, "[W]e interpreted the Act as the legislature instructed us to do, and determined stay-away orders may prohibit a variety of contact, including non-physical contact, when it threatened the purpose of the Act."¹⁴⁵ Thus, because caller ID spoofing can be included under the definition of indirect contact, which is prohibited under the remedies of the IDVA and threatens the purpose of the Act, any contact via spoofing is an actionable violation of an order of protection.

The court's use of the legislative intent and purposes of the IDVA in the foregoing decisions is significant. The court referenced that the legislature intended for the Act to be interpreted broadly. Additionally, the court recognized that there are forms of domestic abuse and methods to violate orders of protection that may not be specified under the remedies provided in the IDVA, yet those acts can still be prohibited as long as they further the purposes of the law. Therefore, using the purpose of the IDVA and interpreting the Act broadly, as instructed by the legislature, caller ID spoofing should be recognized as a legitimate vio-

140. *Id.*; see Illinois Domestic Violence Act of 1986, 750 ILL. COMP. STAT. 60/102.

141. *Olsson*, 780 N.E.2d. at 818-19 (quoting 750 ILL. COMP. STAT. 60/102(1) (West 1998)).

142. *Id.* at 819.

143. *Id.*

144. *People v. Leezer*, 903 N.E.2d 726, 730-31 (Ill. App. Ct. 2008).

145. *Id.*

lation of a protective order whether spoofing is used to stalk, harass or simply contact victims. The remaining issue is the need for the criminal justice system to begin addressing the ways in which to enforce the orders against spoofing and prosecute the violations.

B. Addressing the Evidentiary Issues of Caller ID Spoofing

Presently, one of the only ways to attempt tracing a spoofed call is by subpoenaing the commercial caller ID spoofing company.¹⁴⁶ The problem is that there is no way to know which company is used, and there are at least thirteen different companies with websites offering spoofing services.¹⁴⁷ When a victim reports a situation that suggests an abuser may be using caller ID spoofing technology, prosecutors can begin by subpoenaing as many spoofing companies as possible. But the investigation cannot end there.

Abusers do not always access spoofing services online. Caller ID spoofing can also be committed with phone apps and widgets downloaded to a computer. Some of the apps are offered by companies available online, and the app downloads could be traced through those companies. For example, SpoofTel has a desktop application that allows users to access spoofing technology without going through the website.¹⁴⁸ However, some spoofing apps that can be downloaded from the Google Play Store are not connected to one of the online companies.¹⁴⁹ Moreover, some of the spoofing apps allow users to register and login through Facebook accounts.¹⁵⁰ This would make it necessary to search the abuser's phone and computer for evidence. The search would need to include browser history and download history to determine whether the abuser visited any of the spoofing websites or downloaded an app, as well as searching Facebook accounts. Law enforcement officers and prosecutors would need to work together in order to obtain warrants for these searches.

There is an argument that such measures would not only be costly and timely, but also would be a violation of the abuser's privacy. How-

146. Hatfield, *supra* note 18, at 862.

147. Internet search done by the author using the terms "spoofing" and "caller ID spoofing" produced thirteen different spoofing websites: bluffmycall.com, crazycall.net, calleridfaker.com, covertcalling.com, itellas.com, prankowl.com, phonegangster.com, spoofcard.com (can also be reached by going to 123spoof.com), spoofmycalls.com, spoofpro.com, spoofotel.com, telespoof.com, and teleturd.com.

148. SPOOFTEL, *supra* note 112.

149. *Caller Id Faker*, *supra* note 113.

150. SPOOF MY TEXT, *supra* note 104.

ever, when the cost and benefits of these measures are weighed against each other, the benefits overwhelmingly supersede the costs. First, the cost of subpoenaing several companies is minimal compared to the high reward of producing evidence to prove an abuser violated the order of protection. Second, risk of abuse is minimized because warrants are required for the searches. A magistrate would need to make a determination of whether there is probable cause to believe the abuser has used spoofing technology. Likewise, the scope of searches would be limited to spoofing technology. For example, if the warrant included searching through a Facebook account, the search would be limited to searching through the Facebook account's applications section.

Any intrusion of privacy is nominal when compared to the interest in prosecuting violations of orders of protection. As mentioned before, when determining lethality in domestic violence relationships, one factor considered is whether the abuser has previously violated any orders of protection. There is a significant need to prosecute and convict abusers who violate orders of protection in order to prevent fatalities. Therefore, the benefit of protecting victims and reducing violence is far greater than the potentially cost to the abusers' privacy.

The use of subpoenas and warrants would help with the evidentiary problems that arise with caller ID spoofing, but they are in no way the ideal solution. They are not even a guarantee that the necessary evidence will be found. Many companies allow free spoofing trials without registration.¹⁵¹ While a subpoena could result in evidence showing that the victim was spoofed, it might not be able to produce an account that used the victim's number. Moreover, law enforcement agencies typically lack the "specific training, expertise, and resources" needed for investigations involving technology being used for illegal purposes such as stalking.¹⁵² Therefore, the very nature of caller ID spoofing and the difficulties with tracing the technology require a complete ban of spoofing technology and services in order to successfully deal with the problem.

151. SPOOFCARD, *supra* note 106; SPOOFTEL, *supra* note 112.

152. King-Ries, *supra* note 4, at 141.

C. Caller ID Spoofing Regulations

In 2010, Congress passed the Truth in Caller ID Act to regulate caller ID spoofing technology.¹⁵³ The Act makes it unlawful for any person “to cause any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value.”¹⁵⁴ Caller identification service is defined as “any service or device designed to provide the user of the service or device with the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or IP-enabled voice service.”¹⁵⁵ Exemptions to the prohibition include law enforcement agencies and court orders authorizing the use of spoofing technology.¹⁵⁶

The Act specifically outlaws only certain uses of caller ID spoofing due in part to the motivations behind passing the law. The main concern was addressing the use of caller ID spoofing by scammers who use spoofing to trick people into disclosing information such as social security and credit card numbers.¹⁵⁷ Another concern was the practice known as “swatting” in which spoofers called police departments resulting in SWAT teams being dispatched to nonexistent emergencies.¹⁵⁸ Moreover, only certain uses of caller ID spoofing were prohibited because committee report findings came to the conclusion that there were some beneficial uses to spoofing technology.¹⁵⁹ For example, the Senate Committee on Commerce, Science and Transportation indicated that victims at domestic violence shelters might need to make certain calls to their abusers, requiring the use of spoofing technology to protect the location and safety of victims.¹⁶⁰

Several states have attempted to enact their own laws regulating caller ID spoofing.¹⁶¹ In 2011, an anti-spoofing bill was proposed to the

153. Hatfield, *supra* note 18, at 844.

154. Truth in Caller ID Act of 2009, Pub. L. No. 111-331, 124 Stat. 3572 (effective Dec. 22, 2010).

155. *Id.* § 227(e)(8)(B).

156. *Id.*

157. JOHN D. ROCKEFELLER IV, TRUTH IN CALLER ID ACT OF 2009 REPORT OF THE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION, S. REP. NO. 111-96, at 1-2 (2009).

158. Hatfield, *supra* note 18, at 827-28.

159. S. REP. NO. 111-96, at 2.

160. *Id.*

161. Hatfield, *supra* note 18, at 842.

Illinois House of Representatives.¹⁶² The bill created the offense of Caller ID Spoofing.¹⁶³ According to the bill:

a person commits the offense when he or she, in connection with any telecommunications service or voice over Internet protocol (VoIP) service, knowingly causes any caller identification service to transmit misleading or inaccurate caller identification information with the intent to deceive, defraud, mislead, harass, cause emotional distress, or wrongfully obtain anything of value.¹⁶⁴

This bill prohibited spoofing to deceive, mislead, and cause emotional distress in addition to what is already prohibited by the Truth in Caller ID Act.¹⁶⁵ However, the proposed bill never made it into law.¹⁶⁶ States that did enact caller ID spoofing laws, such as Mississippi and Florida, included similar prohibitions on spoofing that deceive or mislead.¹⁶⁷ Prohibiting spoofing that misleads gives the statutes the effect of outlawing all caller ID spoofing since the very nature of spoofing is to mislead the called party.¹⁶⁸

However, the future of state anti-spoofing laws is uncertain, as some laws have been struck down in federal court. For example, in 2009, a Florida district court struck down the Florida's law prohibiting caller ID spoofing.¹⁶⁹ Teltech Systems, Inc., the parent company of SpoofCard,¹⁷⁰ filed a complaint alleging that the Florida law violated the Commerce Clause.¹⁷¹ Teltech argued that it had no way of knowing the called party resided in Florida if the number being called did not have a Florida area code; therefore, the company "could not conduct its business in any state without fear of violating the Florida Act."¹⁷² The district court agreed with Teltech's argument and held that the Florida Act violated the Commerce Clause because it had the effect of regulating commerce outside of Florida.¹⁷³ Likewise, in 2012, the Fifth Circuit

162. H.B. 3373, 97th Gen. Assemb., Reg. Sess. (Ill. 2011).

163. *Id.*

164. *Id.*

165. *Id.*

166. *Bill Status of HB 3373*, ILL. GEN. ASSEMBLY,

<http://ilga.gov/legislation/BillStatus.asp?DocNum=3373&GAID=11&DocTypeID=HB&LegId=60764&SessionID=84&GA=97> (last visited May 14, 2015).

167. Hatfield, *supra* note 18, at 842.

168. *Id.*

169. Brown, *supra* note 104, at 39.

170. Thomas, *supra* note 109.

171. Hatfield, *supra* note 18, at 842.

172. *Id.* at 843.

173. *Id.* at 842-43.

Court of Appeals struck down the Mississippi Caller ID Anti-Spoofing Act on the same grounds.¹⁷⁴

It appears that any regulation of caller ID spoofing can only proceed at the federal level. And in spite of the enactment of the Truth in Caller ID Act by Congress, caller ID spoofing technology continues to be used for illegitimate purposes. The fact that the technology remains readily available to the public makes it impossible for caller ID spoofing to be adequately regulated by the government. The only way to protect victims and to ensure spoofing technology does not fall into the hands of abusers is by completely banning the use of caller ID spoofing and shutting down all spoofing providers.

D. A Call for Legislation Banning Caller ID Spoofing Technology

While the claims of beneficial uses of caller ID spoofing may have some legitimacy, the Truth in Caller ID Act does not adequately respond to illegitimate uses of spoofing resulting from the continued availability of this technology.¹⁷⁵ The fact remains that abusers continue to access this technology to harass and stalk their victims. Likewise, the evidentiary issues surrounding spoofing technology continue. The only way to solve the evidentiary issues involved when enforcing orders of protection and prosecuting violations is to eliminate all access to spoofing technology and shut down the service providers. Shutting down caller ID spoofing service providers will help protect victims of domestic violence from further abuse and harm that caller ID spoofing enables.

It has been proposed that to better regulate caller ID spoofing, and keep the technology available for “legitimate” purposes, the federal government should “promulgate regulations to help law enforcement trace illegitimate users and create a Do-Not-Spoof list.”¹⁷⁶ The proposal to help law enforcement trace illegitimate users calls for regulations “specify[ing] what information must be kept by spoofing companies, the period of time such records must be kept, and the penalties that should be imposed for failure to keep such records.”¹⁷⁷ However, this regulation would not address one of the main issues with tracing caller ID spoofing—figuring out which spoofing provider and/or application

174. Cameron Langford, *Spoofing Upheld, If done for the Right Reasons*, COURTHOUSE NEWS SERVICE (Dec. 12, 2012), <http://www.courthousenews.com/2012/12/12/53073.htm>.

175. Hatfield, *supra* note 18, at 847.

176. *Id.* at 865.

177. *Id.* at 864.

was used by the spoofer. There are numerous spoofing companies and applications available. Before law enforcement can efficiently subpoena records, they have to figure out which company to subpoena.

A “Do-Not-Spoof List” was also proposed, and while such a list could be useful, the implementation does not seem feasible or likely. The proposal suggests mandating that all caller ID companies maintain a shared “Do-Not-Spoof list,” as well as share the costs of maintaining such a list.¹⁷⁸ It would require that individuals contact the spoofing companies directly to be placed on the lists.¹⁷⁹ Additionally, the proposal suggests that sanctions should be imposed if a company fails to honor a request to be placed on the list.¹⁸⁰ However, it is difficult to envision separate companies working together for the creation of a “Do-Not-Spoof List” and to place reliance on each other to avoid any sanctions or liability.

Moreover, a “Do-Not-Spoof List” might not withstand a constitutional challenge. In 2003, Congress enacted the “Do-Not-Call” Implementation Act, which prohibited telemarketers from calling phone numbers listed on a nationwide do-not-call registry.¹⁸¹ The law was upheld in federal court on the grounds it was a permissible regulation of commercial speech.¹⁸² In the case of caller ID spoofing, the caller ID spoofing companies are not the ones using the technology to place calls, but rather private individuals. In order to regulate speech, many considerations come into play, such as defining the category of speech to be regulated.¹⁸³ While an in-depth discussion on speech is outside of the scope of this article, it must be noted that determining the category of speech in this instance would likely be an impossible task. Telemarketers place calls for commercial purposes; thus, it is easy to define their speech as commercial speech.¹⁸⁴ However, individuals using caller ID spoofing cannot be placed into one category. This makes the creation and implementation of a “Do-Not-Spoof List” very implausible.

178. *Id.*

179. *Id.* at 864–65.

180. *Id.* at 865.

181. Joseph S. Falchek & Edward J. Schoen, *The Do-Not-Call Registry Trumps Commercial Speech*, 2005 MICH. ST. L. REV. 483, 490.

182. Alan C. Roline & Randall K. Skalberg, *Take Two Aspirin and Don't Call Me in the Morning: The Do Not Call List Migraine*, 19 MIDWEST L. REV. 46, 50 (2004).

183. See generally Edward J. Eberle, *The Architecture of First Amendment Free Speech*, 2011 MICH. ST. L. REV. 1191, 1234.

184. See Andrew L. Sullivan, *Leave Me Alone! The Delicate Balance of Privacy and Commercial Speech in the Evolving Do-Not-Call Registry*, 61 FED. COMM. L.J. 251, 256 (2008).

Even if caller ID spoofing becomes easier to trace and the evidentiary issues are reduced, the fact remains that the technology places victims of domestic violence at risk. Victims already face danger the moment they separate from their abusers. Homicide rates are high for victims who have left the relationship,¹⁸⁵ and, as noted earlier, “more than half of the men who killed their spouses did so when the partners were separated.”¹⁸⁶ Caller ID spoofing technology enables abusers to continue to stalk and harass victims after the separation, behaviors that are precursors to more violent and lethal behavior.¹⁸⁷ Again, studies of domestic violence homicides indicate that stalking and harassment precede 76% of homicides and 85% of attempted homicides.¹⁸⁸

Domestic violence advocacy groups have also spoken out against caller ID spoofing. The Women’s Resource Center responded to a press release issued by the caller ID spoofing company SpoofEm, which implied that the Women’s Resource Center and other Georgia domestic violence shelters endorsed spoofing technology.¹⁸⁹ The center vehemently denied any endorsement of spoofing technology stating that caller ID spoofing technology can actually be “extremely dangerous” for victims of domestic violence because it allows abusers to harass and stalk victims as well as violate orders of protection.¹⁹⁰ Furthermore, the center acknowledged that more abusers take advantage of caller ID spoofing to harass and intimidate than victims use it to protect their privacy.¹⁹¹

In spite of the “legitimate” uses of caller ID spoofing technology, allowing individuals to access caller ID spoofing does far more harm than good. The protection afforded by orders of protection is useless if caller ID spoofing can easily undermine it. And the fight against domestic violence cannot prevail if society allows abusers to access technology that enables them to more easily abuse and harm their victims. Caller ID spoofing is a weapon that should not be accessible to the public, and the government should not allow it to be accessible. While it is true that technological advancements create benefits, in the case of

185. Michael P. Johnson & Joan B. Kelly, *Differentiation among Types of Intimate Partner Violence: Research Update and Implications for Interventions*, 46 FAM. CT. REV. 476, 483 (2008).

186. Mahoney, *supra* note 75, at 64–65 (citing George Barnard et al., *supra* note 79, at 279).

187. Belknap et al., *supra* note 14, at 379; see Hitt & McLain, *supra* note 72, at 280.

188. Hitt & McLain, *supra* note 72, at 280.

189. Women’s Resource Center, *Caller ID Spoofing*, BIG PICTURE (July 6, 2009, 3:34 PM), <http://wrcdv.blogspot.com/2009/07/caller-id-spoofing.html>.

190. *Id.*

191. *Id.*

caller ID spoofing, the benefits are outweighed by the accompanying dangers. If victims have access to the technology, their abusers do as well.¹⁹² “Abusers are getting more sophisticated . . . in our digital age, [they] have learned to use technology to further harm and control their victims,”¹⁹³ and caller ID spoofing is no exception. Abusers use caller ID spoofing technology to inflict injury on victims by “track[ing] their every movement, obliterate[ing] their privacy, and maintain[ing] an even tighter vise of control than ever.”¹⁹⁴ Therefore, a complete ban on all caller ID spoofing technology and service providers is the only real way to combat domestic violence.

IV. CONCLUSION

It would be a lie to suggest that domestic violence could ever be eradicated. But great strides can be made to further protect and secure the safety of domestic violence victims. Caller ID spoofing technology is a weapon abusers use to maintain control and continuously injure their victims. Orders of protection, a legal remedy to help domestic violence victims regain control and power over their lives, are virtually useless against caller ID spoofing. Until legislation is enacted to ban spoofing all together and make all spoofing technology unavailable, the only course of action is for the criminal justice system to recognize its existence, understand how abusers use it to harm victims, and actively investigate and prosecute violations committed with spoofing technology.

Every year in the United States, approximately 1.3 million women and 835,000 men are assaulted by an intimate partner.¹⁹⁵ One in four women experience domestic violence at some point in their lifetime.¹⁹⁶ Caller ID spoofing only makes it easier for domestic violence and abuse to continue.

192. Silverstein, *supra* note 96, at 99.

193. *Id.* at 102 (quoting Cindy Southworth, *Technology's Dark Side*, WASH. POST, June 8, 2003, at B08).

194. *Id.* at 99.

195. T>JADEN & THOENNES, *supra* note 1.

196. *Domestic Violence Fact Sheet: Illinois*, *supra* note 1.

