

Review of a Sample of Domestic Violence Protection Orders In King County Superior Court from April 2013

An Issue Paper

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Each year, millions of women who are battered by their partners look to the civil protection order system as a way to stop the abuse. In the act of seeking protection, a victim is putting her trust and safety in the hands of numerous professionals: from the advocates and attorneys who explain the system and assist the victim in obtaining an order, to the judge who crafts an order appropriate to the victim's unique needs; to the law enforcement officers who serve and enforce the order; and to the prosecutor who prosecutes violations. Anywhere along that complex chain, a victim can find that the promise of the civil protection order system is either kept, or broken¹.

1. Background: During the past several years, family law attorneys and domestic violence advocates in King County have expressed concerns that survivors of domestic violence seeking protection orders do not receive the full relief available to them under the Domestic Violence Prevention Act. To explore these concerns, the King County Coalition Against Domestic Violence (KCCADV), in collaboration with the King County Domestic Violence Protection Order Advocacy Program (POAP), reviewed outcomes from a sample of civil domestic violence protection order petitions adjudicated in King County Superior Court in April 2013. The City of Seattle Human Services Department (HSD) provided funding for the project.

HSD funds the KCCADV to lead a variety of training and planning projects to strengthen local and regional systems' response to survivors of domestic violence, based on priority areas identified by KCCADV membership. Domestic violence advocates and family law attorneys consistently identify the family law system as challenging for survivors: it has a significant impact on their long-term safety, economic, and emotional stability. The impetus for this project came from the

¹ *Civil Protection Orders: A Guide for Improving Practice*, National Council of Juvenile and Family Court Judges Family Violence Department, 2010, p. 1

KCCADV's Family Law Work Group (FLWG). The work group² was convened by the KCCADV in 2006 in response to a series of focus groups conducted with battered women. The focus group participants consistently identified family law issues as a major barrier to safely and successfully escaping an abusive partner.

King County Superior Court Commissioners hear several thousand petitions for Civil Domestic Violence Protection Orders (DVPOs) each year. In 2013, the court heard a total of 5,357 cases: 2,661 in Seattle, and 2,696 in Kent. Because Washington State statute defines domestic violence as specific acts that occur between family or household members, these numbers represent not only intimate partners but also siblings, in-laws, platonic roommates and relatives. Table 1 below shows the outcomes of all of the court's DVPO hearings in 2013³. Of all of the hearings for the year, 41% resulted in the court continuing the case for a variety of reasons (reissuances). Orders were granted in 25% of the hearings.

The Washington State Legislature highlights the need for protection orders: The legislature finds that domestic violence is a problem of immense proportions affecting individuals as well as communities. Domestic violence has long been recognized as being at the core of other major social problems... While the existing protection order process can be a valuable tool to increase safety for victims and to hold batterers accountable, specific problems in its use have become evident... Refinements are needed so that victims have the easy, quick, and effective access to the court system envisioned at the time the protection order process was first created.
-RCW 26.50.030

1.A. Prevalence: Intimate partner violence is a major public health problem in the US. One in four women has been the victim of severe physical violence by an intimate partner, while one in seven men experienced such violence. Eighty-one percent of women who experienced rape, stalking or physical violence by an intimate partner reported significant short- or long-term impacts related to the violence experienced, such as fearfulness, PTSD symptoms, and injury, while 35% of men report such impacts.⁴

In 2013, 46,657⁵ domestic violence offenses were reported to law enforcement agencies in Washington State. Seventy-one percent of the victims were female. Between 1997-2013, domestic violence perpetrators committed 579 acts of

² Attendees at the monthly meetings of the FLWG include individuals representing legal services, community DV advocacy services, the POAP, the court, and others involved in or concerned about the intersection of family law and domestic violence.

³ This is not an unduplicated count of unique individuals.

⁴ Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J., & Stevens, M.R. (2011). The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.

⁵ Crime in Washington, 2013, Washington Association of Sheriffs and Police Chiefs

homicide in Washington State, with a total of 647 victims.⁶ These deaths include domestic violence victims killed by partners and ex-partners, their friends, family members, and children as well as suicides by abusers. In 55% of homicides the perpetrator used a firearm. In recognition of the danger posed by domestic violence perpetrators, the Washington State Legislature enacted legislation in 2014 that makes it unlawful for a person who is respondent in a protection order to purchase or possess a firearm,⁷ and enables the court to require respondents to surrender their firearms.

1. B. Impact of Protection Orders: Protection Orders can be effective in reducing domestic violence. They can help to prevent ongoing assault or stalking, force the batterer to leave a shared residence, prohibit the batterer from harassing or contacting the survivor and other family and household members or using others to contact them, establish temporary visitation schedules, or order the batterer to relevant treatment or assessments. National studies have indicated that anywhere from 30% to 77% of victims reported that the process and act of receiving a full order ended the violence.⁸ A large study of several hundred rural and urban women⁹ found that, "...for most women, protective orders reduce violence and save the state millions of dollars of avoided costs." However, the same study also revealed that,

...There are significant and unrecognized barriers for women in accessing protective orders. For example, bureaucratic red tape barriers can prevent, or certainly impede, victims from being able to obtain protection for which they are eligible under the statute. Further, there was limited key informant awareness of many of the factors women must overcome in asking for help from the court to address this very personal issue. There especially seemed to be a lack of recognition of how embarrassing, fear provoking, disheartening, and frustrating the process can be for victims.

In their 2002 study of 2692 females in Seattle, Washington who had an incident of police-reported intimate partner violence, researchers found that women who were granted full protection orders experienced an 80% reduction in police-reported physical assaults during the following 12 months.¹⁰ Although there is clear value of full protection orders for many survivors, findings from the above-referenced study

⁶ 2013 Domestic Violence Fatalities in Washington State, Washington State Coalition Against Domestic Violence, March, 2014

⁷ RCW 9.41.040 (2) and 9.41.800(4)

⁸ TK Logan and Robert Walker, Civil Protective Order Violations and Perceptions of Effectiveness (2009) *Journal of Interpersonal Violence*, 24, 675-677

⁹ TK Logan, Robert Walker, William Hoyt, Teri Faragher, The Kentucky Civil Protective Order Study: A Rural and Urban Multiple Perspective Study of Protective Order Violation Consequences, Responses, and Cost (2009) University of Kentucky, Department of Behavioral Sciences

¹⁰ Holt, V.L, Kernic, M.A., Lumley, T., Wolf, M.E. & Rivara, F. P. (2002), Civil Protection orders and risk of subsequent police-reported violence, *The Journal of the American Medical Association*, 288 589-594

suggest that temporary (14-day) orders alone may not have a positive impact on the petitioner's safety and well being. Women in this study who had temporary protection orders experienced significantly higher levels of police reported psychological abuse from their batterer compared with women who did not have protection orders. Further research is needed to clarify the impact of temporary orders.

1. C. The Context of Coercive Control: The majority of people who come before the court for domestic violence protection orders seek protection from an abusive and dangerous intimate partner or former partner. Abusive relationships are defined by a significant power differential between the parties that is intentionally established and vigorously maintained by the abusive person not only through physical and sexual violence, but also through persistent intimidation, coercion and control. The goal of batterers is to control their partners by limiting their freedom and independence in every aspect of their lives. This constellation of behaviors has been the subject of more than three decades of research, and is framed in recent literature as “coercive control.”¹¹ Researcher Evan Stark notes, “*Hostage-taking, kidnapping, torture and other ‘capture’ crimes share many of the same tactics.*”¹² Batterers control their intimate partners through surveillance, degradation, shaming, deprivation of vital resources, isolation from friends and family members, controlling access to information, making threats to murder them and their friends and family members, threatening to harm or abduct the parties’ children, and many other coercive and controlling behaviors.

Some of these behaviors may not appear to be dangerous when viewed outside the context of coercive control. For example, in our review of cases, many petitioners who had already separated from the respondents alleged that the respondents showed up unexpectedly at their workplaces, came to their houses late at night demanding to see the children, repeatedly called their friends and family to find them, etc. These behaviors may seem annoying and intrusive, but relatively harmless for people who are separating after an intimate relationship. However, when a batterer shows up at their estranged partner’s work place uninvited and unannounced, he or she is intentionally intimidating or stalking their partner, in the context of the history of past abuse.

When survivors attempt to end the relationship, batterers often escalate their violence and threats of violence. Survivors face a very real increased risk of injury, murder, or attempted murder by their batterers after they leave the relationship, according to many research studies.¹³ In addition, after the parties separate,

¹¹ Evan Stark, Re-presenting Battered Women: Coercive Control and the Defense of Liberty, Prepared for Violence Against Women : Complex Realities and New Issues in a Changing World, Les Presses de l’Université du Québec (2012)

¹² *ibid*, p. 8

¹³ e.g. Farr, K.A, 2002, Battered women who were “being killed and survived:” Straight talk from survivors. *Violence and Victims*, 17, 267-281

batterers often escalate their manipulation of the parties' children to maintain dominance and control. Several studies highlight ways that batterers use their children and visits with children to continue the abuse: by conveying threats to the survivor through children, making the children monitor the survivor, using visitation exchange to assault or threaten the survivor, preventing the survivor from accessing the children, making threats to obtain custody or kidnap the children, filing frivolous court complaints, and filing for full child custody.¹⁴

Judicial officers who hear petitions for protection orders are faced with the unique dynamics of domestic violence, which may influence the nature and consistency of the information petitioners provide to the court. Many survivors who petition for a domestic violence protection order are in the midst of what is often a terrifying process -- trying to separate from an intimate partner who has dominated, terrorized, and abused them for many years, and threatened to kill them if they try to leave. During protection order hearings, the survivor and batterer must stand in close proximity to each other in a crowded courtroom. The judicial officer might ask the survivor to describe or elaborate on specific details of frightening and humiliating experiences. The hearing itself can increase survivors' anxiety and make it more difficult for them to clearly and coherently articulate the urgent need for protection.

Many respondents use a variety of tactics prior to, and during, the court hearing to intimidate petitioners. For example, during the hearing, the respondent may give the petitioner a subtle look or gesture that symbolizes a threat. This signal may be imperceptible to anyone else except the petitioner, who is suddenly unable to speak coherently, or to confirm the information in the petition. Or, the respondent may present the court with a stack of unrelated documentation about, for example, the petitioner's finances, in an attempt to undermine the petitioner's credibility, and thereby demonstrate to the petitioner their intent to block all attempts at seeking safety. In addition, because of the history of abuse by the respondent, petitioners are often experiencing the effects of trauma, which can impair a person's memory, cognition, and regulation of emotion. Finally, many of the abusive behaviors described in the petition may not be consistent with or framed in a manner that meets the statutory definition of domestic violence. All of these factors create a very challenging situation for the judicial officer to accurately assess the credibility of the parties and to obtain the information they need to make a finding.

2. Approach: The KCCADV identified two volunteer law students from Seattle University who compiled information on 143 domestic violence protection order cases heard in April 2013 from case information provided by the POAP. The students compiled data from a sample of cases of intimate partner violence from each of the two King County Superior Court locations. We focused on a single

¹⁴ A brief review of the current literature on this topic is provided in R.E. Fleury-Steiner, S.L. Miller, S. Maloney, and E.B. Postel, "No Contact, Except..." Visitation Decisions in Protection Orders for Intimate Partner Abuse," *Feminist Criminology*, 1-20, 2014

month in 2013 to increase the likelihood of case disposition by the end of the year and to diminish the impact of variations in time and judicial practice. We compiled data on disposition of the cases, dates of filings, representation of the parties, use of interpreters, whether there were children in common, number of and reasons for reissuances, and other factors.

The quantitative data alone did not offer any insight into the initial concerns that provided the impetus for this paper, so consultants with expertise in domestic violence conducted an in-depth review of a subset of 100 case files from the original data set. We focused on those cases that were dismissed, denied, or granted after at least one reissuance. We chose to review cases that were dismissed and denied in hopes of illuminating possible gaps in information provided by the petitioner, or possible process-related issues. We chose to review those cases that were granted but only after at least one reissuance in hopes of identifying barriers that prevented the order from being granted at the first full hearing. Our in-depth review of the court files included reading the full petition and any addendums, any responses, all reissuance orders, and all disposition forms.

After reviewing the data, identifying themes, and summarizing the issues, the consultants worked with the FLWG to develop a list of recommendations. As highlighted by the quote at the beginning of this issue paper, community- and court-based advocates, attorneys, judicial officers, and prosecutors may all be involved in a survivor's experience of the protection order process. We focused our review on judicial rulings on DVPO hearings because this particular issue has been a persistent concern among the FLWG participants. However, in our review we also identified areas where advocates, attorneys, law enforcement, and others can help to strengthen the response to survivors who are petitioning for protection orders in the King County region. Our intent was to identify practical actions that advocates, attorneys, judicial officers, and court personnel could collaborate on to improve outcomes for survivors. Some of these improvements could potentially increase court efficiency as well.

2.A. Limitations: This paper reflects what we learned from a small data sample and a qualitative review of case files. Our analysis highlights some key issues and questions. It does not provide a statistical basis for analyzing the outcomes of the overall civil protection order process in King County Superior Court. As we focused on a sample of cases heard during the month of April 2013, we cannot determine to what extent the issues identified for this month are representative of issues for the full year. We reviewed only written records for the cases and did not review the hearing tapes. Facts and issues that arise during a hearing can impact a judicial officer's decision. Additionally, it should be noted that since 2013, many judicial officers received training about the coercive control tactics of batterers, which may be reflected in current practices. However, advocates and attorneys who are frequently in court for protection order hearings confirm that the issues and questions we identified are consistent with many of their recent experiences.

3. Summary Data Compiled: Table 1 shows the outcomes of all domestic violence protection order hearings (not individual cases) for 2013. Of the 143 cases we reviewed from April 2013, 86% of the petitioners were female, and 92% of the respondents were male. In nine of the cases, parties were of the same gender. Seventeen percent of petitioners were represented, 24% of respondents were represented, and in 13% of the cases, both parties were represented. Fifteen percent of petitioners and 8% of respondents used language interpreters.

**Table 1: Outcomes of All DVPO Hearings
In King County Superior Court, 2013¹⁵**

Disposition	Seattle	Kent	Total	% Total
Dismissed	639	731	1370	27%
Denied	155	191	346	7%
Granted	605	692	1297	25%
Reissued	1119	1016	2135	41%
Total	2518	2630	5148	100%

Source: King County Protection Order Advocacy Program

In April 2013, the court considered approximately 330¹⁶ domestic violence protection order matters for cases of intimate partner violence at the Seattle and Kent locations of King County Superior Court. The outcomes of all *hearings* (not individual cases) for DVPOs in April 2013 reflect a similar pattern to the annual numbers above. Thirty-one percent were dismissed, 6% were denied, 26% were granted, and 37% resulted in reissuance.

4. Issues from Case Review: The following questions and issues emerged from our review of the cases.

4.A. is the level of danger consistently identified through the protection order process? Extensive research identifies risk factors that predict dangerousness in cases of intimate partner violence¹⁷. The majority of petitions we reviewed described one or more of these risk factors. Nearly all of the petitions described previous incidents of physical violence and/or threats by the respondent. In addition, many petitioners graphically described stalking, strangulation attempts, coerced or forced sex, threats of suicide, substance abuse, violence during

¹⁵ Note that cases of intimate partner violence are not tracked separately from other DV protection order cases.

¹⁶ Some of the cases included as IPV could be roommates or family members, and not intimate partners. In addition, it is possible that not all cases are unique, as the same case may have been scheduled in front of the court twice during the month.

¹⁷ **The Danger Assessment: Validation of a Lethality Risk Assessment Instrument for Intimate Partner Femicide**, Jacquelyn C. Campbell, Daniel W. Webster and Nancy Glass, *J Interpersonal Violence* 2009 24: 653

pregnancy, violation of previous protection orders, or threats to kill the petitioner, her children and her family members. Some petitioners also reported that the respondent had access to a firearm and had made threats of murder. All of these behaviors are well-documented risk factors for future violence and/or homicide by the batterer.

In some cases, it appeared that the court did not recognize (or questioned the credibility of the petitioner's description of) acts that met the legal definition of domestic violence, especially multiple incidences of stalking, sexual abuse, and infliction of fear of imminent physical harm. Some examples of these are described in the sections below. A 2012 study investigating the use of a danger assessment tool in the protection order process in a New York State family court found that, "...judges were clearly making decisions regarding PO provisions without vital information," related to the risks to the survivor and children. The researchers noted, "...this is the perfect storm for future violence and risk of homicide."¹⁸ We are concerned that during the protection order process in King County Superior Court, the level of danger posed by many respondents is not identified or, for a variety of reasons, the process does not afford the court an opportunity to respond to these specific risks. It would be useful to conduct additional research to learn more about this concern.

The Washington Courts Domestic Violence Manual for Judges (2006) emphasized that, "Understanding domestic violence... requires an understanding of both the behavioral definition and the legal definitions of domestic violence." The behavioral definition is *a pattern of assaultive and coercive behaviors including physical, sexual and psychological attacks as well as economic coercion that adults or adolescents use against their intimate partners.*¹⁹ The dangerousness of batterers is often indicated by psychological attacks, economic coercion, isolation of the survivor, surveillance, and other behaviors that are not specifically included in the legal definition of domestic violence. However, in the context of coercive control, survivors may experience these behaviors as inflicting imminent fear of physical harm. Perhaps there are ways that the court could use this additional information to make decisions about specific protections or relief, or advocates could use it to enhance safety measures the petitioner might take.

4.B. How do judicial officers assess credibility of the parties' statements in the protection order process, and how do commissioners decide who is credible?

Judicial officers who hear the protection order calendars must determine the credibility of the parties' statements. Given the complexity of the allegations, and

¹⁸ *ibid*, p. 155

¹⁹ Ganley, A. (2006). Chapter 2. Domestic Violence: The what, why, and who, as relevant to criminal and civil court domestic violence cases. In *Domestic Violence Manual for Judges*, Washington State Administrative Office of the Courts.

the dynamics of domestic violence, this can be a challenging task. It is important to note that a common tactic of batterers is to minimize and deny the violence, divert attention away from their own acts of violence and to focus the attention on alleged flaws in the survivor/petitioner's character. Some of the petitions we reviewed were denied for lack of petitioner credibility or alleged discrepancy between the statements in the petition and subsequent statements to the court or to Family Court Services. As noted above, we did not review the hearing tapes, and therefore do not know what issues of credibility or discrepancies the commissioner heard.

- **Subject #46: Dismissed**

The Court ordered the petitioner to provide status of the police investigation for an incident where the respondent climbed into the petitioner's bedroom via the balcony and hit the petitioner's boyfriend with the butt of a gun. Regardless of the status of the investigation, it would appear that the facts of this case should have been sufficient to establish fear of imminent bodily harm by a preponderance of evidence, which also included numerous allegations of stalking behaviors.

The majority of responses we reviewed included multiple statements from the respondent that appeared to focus more on discrediting the petitioner than on responding directly to the allegations of domestic violence. The following common themes emerged from the responses. The respondent alleged that the petitioner:

- Has mental health and/substance abuse issues
- Is the person who is violent
- Is making false allegations to get custody
- Is an abusive, neglectful parent
- Is alienating the child or children
- Is filing the petition with some other motivation such as child custody or immigration, or to get child support

One respondent even recommended that the court sanction the petitioner for perjury. Several researchers²⁰ have described the tendency of batterers to shift responsibility away from their own behavior and blame their victims or others for their abusive behaviors. Additionally, batterers commonly minimize, deny, or lie about their actions. It is worth noting that "best practice" in domestic violence perpetrator intervention is for the practitioner to ask direct questions about the perpetrators' behavior, and to redirect irrelevant and/or victim-blaming responses back to the perpetrators' responsibility for their choices and actions.²¹

4.C. Is the court imposing a higher burden of proof on the petitioner than required by statute? Many sworn statements made by survivors in the sample contained allegations that appeared to provide a preponderance of evidence

²⁰ e.g. Lundy Bancroft

²¹ as summarized in Washington Administrative Code, 388-60 (005)

sufficient to meet the legal definition of domestic violence per RCW 26.50 but were denied or continued multiple times, and then dismissed. Sixteen of the 22 denied petitions we reviewed in depth were dismissed for a “lack of preponderance of evidence.” Some petitioners who unequivocally alleged injury, assault, fear of imminent physical harm, and/or sexual assault and stalking were denied protection. Some petitions were denied because they did not meet the legal definition of domestic violence. In other petitions, the petitioner’s experience of violence or fear was not clearly articulated. However, for those cases where the written allegations appeared to be sufficient, we couldn’t determine the reason for the denial. It is possible that review of the hearing tapes would provide additional relevant information.

- **Subject #55: Denied**

The petitioner alleged that the respondent slept with a rifle, tracked the petitioner’s activities, drove recklessly with the petitioner and her young son in the car, punched walls, and threw things. The petitioner also reported that the respondent’s dog attacked her son twice, causing his face to bleed and resulting in an infection. She stated she could not take her son to the emergency room because she did not have a driver’s license and was an undocumented immigrant. She reported that the respondent refused to take the boy to the hospital for her. The court denied the petition with reference to a pending family law case in another county.

- **Subject #283: Denied**

The petitioner alleged that the respondent had two guns and several knives that he frequently displayed and played with. The respondent had a history of substance abuse including methamphetamine use, and he had military training. The petitioner reported, *“He told me before he would kill anyone who tried to take his daughter. Due to years of mental abuse and threats I am constantly in fear he will try to harm me and take my daughter.”* The petitioner fled her home state with their daughter to get away from the respondent and reported, *“I now live in constant fear that he might show up and attempt to harm us and take my daughter.”* The petition was denied for a lack of preponderance of the evidence, based on the information in the Family Court Services report.

It is critical for judicial officers hearing domestic violence cases to be familiar with the research on coercive control, which demonstrates that batterers intentionally manipulate information and use coercion and threats to control the survivor. Without this understanding, individuals and institutions intended to protect survivors may end up unintentionally colluding with batterers in discrediting survivors and denying them protection. This lack of protection can have significant negative consequences to survivors, their children and family members, and the larger community.

4.D. To what extent are the dangers to and fears of children taken into account? The negative impacts of domestic violence on children are widely documented. National research indicates that 30% to 60% of perpetrators of domestic violence also physically and/or sexually maltreat their children.²² When the parties separate, batterers often escalate their use of children as a way to maintain coercive control over their former spouse or partner through visitation, as well as through frequent court actions, including requests to modify parenting plans.

We reviewed several cases where both the petitioner and the parties' child or children expressed significant concerns for the child's safety. Concerns included allegations of physical and sexual assault of the children, threats to harm the children, suicide notes to the children, withholding medication from a medically fragile child, and in one case, allegations of killing a family pet. In some of these cases, the petitioner had reported the concerns to other agencies, including CPS and healthcare facilities, and submitted CPS reports, medical reports, and/or relevant photos of injuries with their petitions. Several of these petitions were denied. Reasons for denial included: failure to meet the burden of proof establishing domestic violence, inconsistent reports by the petitioner, and written statements by the judicial officer indicating that the issues (in some cases where the parties had children in common) are better resolved in Family Court. The court removed the children as protected parties on one case and established a 50/50 residential schedule despite the fact that the respondent had a documented history of domestic violence convictions.

- **Subject #285: Denied**

The petitioner reported that CPS told her to file for the protection order after her 5-year old son was taken out of school for investigation of allegations of sexual abuse by the respondent. In accordance with the recommendation of Family Court Services, the court dismissed the protection order, but ordered supervised visitation. We found it concerning that the court would determine that the child required supervised visitation, but dismissed the protection order.

- **Subject #78: Denied**

The petitioner alleged that the parties' young child described physical abuse, threats with a gun, and extreme fear of the father/respondent. The petitioner said that she was terrified to send the children to see their father. Three CPS reports were made against the respondent. The petitioner alleged that the respondent left suicide notes to the children, has access to firearms and a concealed weapons permit, and violated a No Contact Order. The petition was denied because "the court finds petitioner's allegations lack credibility as specifically set forth in the oral findings."

²² Edleson, J.L. (1999). The Overlap Between Child Maltreatment and Woman Battering, *Violence Against Women*, 5 (2) 134-154

We are concerned about the reasons these petitions were denied and what protections could be put in place for children who are required to visit with respondents who have allegedly physically or sexually assaulted them or seriously neglected them. It appears that in some cases the respondent's access to the children is prioritized over the safety of the children and the petitioner. This is consistent with national research documenting that batterers are successful in getting visitation and sometimes custody of their children even when there are significant allegations of physical and sexual assault, in some cases even when there is corroborating evidence. It is also well documented that court decisions allowing ongoing contact between batterers and their children can contribute to ongoing violence by the batterer, as well as long-term negative emotional and developmental impacts on children.²³

4.E. Do multiple continuances delay the relief to which petitioners are entitled? Of the 143 cases we reviewed, 81 (57%) were continued, and new temporary orders were issued (reissuances). For these 81 cases, there were a total of 157 reissuances. Lack of service was the most frequent reason for reissuance (73 reissuances). Other reasons for reissuance included the respondent or petitioner's request, reissuance to await the outcome of a pending family law case, criminal case, Family Court Services assessment, or CPS investigation. There is a need for due process; however, without the full order, petitioners cannot access the full protection intended by statute. They must return to court repeatedly, potentially having to face their batterers at each new hearing, which may be a source of additional trauma to the survivor. There is concern that multiple reissuances are inconsistent with the intent of the legislature that, "...victims have... easy, quick, and effective access to the court system." RCW 26.50.035 Findings – 1993 c 350.

- **Subject #23: Granted after two reissuances**

The petition alleged that the respondent arrived unannounced at the petitioner's home saying he wanted to see the children. He put his foot in the door so she couldn't shut it. He came into the house and grabbed her phone from her. The petitioner reported, *"After this I went to go to the bedroom to lock the door but the door didn't lock. He ended up coming in and grabbed me by my hair and was moving my head back and forth with his hands. During this time I was yelling for him to let me go and my youngest son (4 years old) came and told his Dad to let me go. The more I tried to get loose from his grip, the harder he would push me around. I felt like my hair was coming off of my scalp. He went to push me down onto the floor and as he did this my head hit the bed post... He let me go for a few seconds but then returned... During this time he grabbed me with two hands and separated my hair while pulling some out. During this entire time, my kids were crying and were telling him to let me go."*

²³ As cited in R.E. Fleury-Steiner, S.L. Miller, S. Maloney, and E.B. Postel, "No Contact, Except..." Visitation Decisions in Protection Orders for Intimate Partner Abuse," *Feminist Criminology*, 1-20, 2014

After two reissuances (and eight weeks from the initial petition), the full order was granted. While this was one of the shorter time intervals between the initial petition and granting of the full order, for a petitioner who is in fear of significant harm to herself and her children, eight weeks might feel like a very long time.

From our review of cases, it is clear that some petitioners alleged serious acts of physical violence in their petition but did not appear for their full hearings. While there is no way to know from the court records why petitioners did not appear for their full hearings, there are many possible reasons, several of which cause concern about the potential danger to the petitioner from the respondent and raised questions about the accessibility of the process.

- Was the petitioner threatened or intimidated by the abuser or afraid to see the abuser at the hearing?
- Did the petitioner simply not want to experience the trauma of standing up in court beside the respondent again?
- Did the petitioner “drop out” of the process because the respondent was too difficult to serve?
- Did petitioners fully understand the process, know what the service process entails, and know that they have to return to court?
- Despite legal protection for employees petitioning for a protection order, was the petitioner’s employment or income status at risk because s/he had to attend multiple court hearings?
- Did the temporary order alone provide the relief that petitioners were seeking, rendering the full order unnecessary?

4.E. Problems in Service: In many reviewed cases, the petitioners had difficulty getting the respondent served personally. Some respondents are not served because law enforcement does not have a valid address for them. However, based on the experience of the POAP advocates, many respondents actively evade service.

Subject 216: Dismissed

This case had nine reissuances due to lack of service on the respondent. The petitioner alleged extreme physical abuse including one incident where the parties’ 3-week old infant got a black eye. The petitioner alleged that the respondent made threats to kill her and to “dispose of your children.” He hit her in the head with a gun and burned her with hot water. She initially filed for a petition in October 2012. The final reissuance was November 2013. During this period, the petitioner came into court every six weeks for reissuance of a temporary order. The case was dismissed because neither party appeared at the November, 2013 hearing.

In some cases, it appeared that petitioners stopped coming to court because without service they had no ability to move forward on the full order. This attrition is concerning in light of the underlying allegations and may serve to reinforce evasion

by respondents; they get the message just to “wait it out” and the order will be dismissed. Petitioners have only two remedies for the inability to personally serve the respondent with the order: service by mail and service by publication. Both methods have limitations. Service by publication is too expensive for many survivors. There is also a reasonable fear that criminal enforcement of violations may be undermined if a respondent received notice in a form other than personal service.

4.F. Are survivors of intimate partner violence being encouraged to seek relief through other actions that are not specifically designed to address the unique risks and dangers they face? Among the cases we reviewed, there were some petitions that were denied, dismissed, or continued, and parties were encouraged or required to seek relief in family court.

- **Subject #69: Denied**

In her 2013 petition, the petitioner alleged that when she arrived to pick up their 6-year old daughter at the respondent’s home, she found the daughter without any adult supervision. When the respondent returned, she confronted him about this and he threatened and assaulted her. She alleged that in the past the respondent strangled her, kicked, punched and choked her so she couldn’t breathe. She said that her daughter is afraid of the respondent. The respondent alleged that the petitioner filed the petition to strengthen her custody case. The petition was denied because the petitioner failed to meet her burden of proof. The commissioner hand wrote a note on the petition saying, “Parties were advised that they should have no contact until a parenting plan is established.”

It is our impression that judicial officers and the private bar sometimes view the allegations of domestic violence as a negotiating tactic instead of a serious risk to survivors and children. In some of the cases we reviewed where there were agreed upon mutual restraining orders, both parties were represented. In those cases, it appears that attorneys may have advised their clients to agree to a dismissal of the DV protection order petition and agree instead to entry of temporary, usually mutual, restraining orders in a family law action. In cases of domestic violence, mutual restraining orders are problematic in that they empower the batterer, do not provide adequate protection to the survivor, and indicate to anyone who might subsequently view the orders that both parties are equally violent and require legal restraint.

5. Recommendations: The KCCADV, in collaboration with the Family Law Work Group, has developed the following recommendations with the goal of improving the experiences of and outcomes for survivors of domestic violence seeking protection orders in King County.

5.A. Improve the quality of information provided to petitioners about the protection order process

- Community- and court-based advocates should:
 - Increase their own understanding of eligibility requirements for protection orders in order to assist survivors to determine whether their experiences meet the standards for a DVPO. If so, advocates can help survivors decide if they are actually ready to file and explain the potential benefits and consequences of petitioning for a protection order.
 - Provide education for law enforcement, CPS, health care providers and others who work with survivors to increase their understanding about the eligibility requirements for and process of obtaining a protection order. If staff of a referring agency is not reasonably confident that a survivor is eligible for a protection order, they should refer survivors to a community-based advocacy program rather than referring directly to the protection order program.
- Judicial officers, advocates, and others assisting petitioners should emphasize that temporary orders are time-limited and will expire if petitioners don't attend their next hearing.
- Advocates should explain to survivors that not following through on the petition (e.g. not attending a hearing) can have negative impact on future court proceedings.

5.B. Improve the quality of information available to the court in the petition

- Community and court-based advocates should:
 - Continue to work with petitioners to draft concise and legible petitions. The petitions should document those aspects of the petitioner's experience that are consistent with the legal definition of domestic violence and clearly articulate their reasons for fear.
 - Support and encourage petitioners who are uncomfortable speaking during the hearing to refer back to the information in their petition by saying, "I stand by what is in my petition."
- A collaborative work group should explore:
 - Whether the use of an established risk assessment tool or checklist with petitioners could improve the quality of information available to the court, and if so, develop and provide relevant training.
 - Consistent training for advocates and judicial officers about key risk factors in domestic violence, and the importance of identifying and responding to them in the protection order process and in safety planning.
 - The possibility of utilizing a kiosk or small work station in the courthouse that would allow petitioners to electronically complete and print out their petitions.

- A change to the Washington State protection order pattern forms to include prompts for petitioners to discuss the full range of behaviors included in the legal definition of domestic violence.

5. C. Improve the process and outcome of hearings for petitioners

When hearing protection order petitions, judicial officers should:

- Focus on the petition as admissible evidence. Petitioners, especially those who are *pro se*, may be very intimidated in the presence of the abuser. For a variety of reasons, it may be difficult for the petitioner to respond to questions orally, especially to questions about dates, times, and the content of the petition.
- For survivors with limited English proficiency or other cultural or cognitive barriers, responding orally can be extremely difficult. Such factors should be considered when determining a petitioner's credibility and weight should be given to the written petition. When the parties are using interpreters, the court should consider taking additional steps to ascertain whether apparent inconsistencies might be due to miscommunication.
- Employ a consistent process for conducting protection order hearings that includes requiring respondents to respond directly to the allegations in the petition. This process will assist the judicial officer in creating a framework for the hearing that keeps the focus of the hearing on the allegations of domestic violence in the petition and increase opportunities to assess the credibility of the respondent.
- Make a clear and legible ruling when issuing final orders. The law is clear that protection orders cannot be denied even if relief is available through another action. If the petitioner meets his/her burden of proof, s/he should be given a one-year order. Consider longer orders if the parties have no children in common.
- The court should make a clear finding about the alleged domestic violence. When the court makes a finding of domestic violence, a full order should be granted. If there is no domestic violence, the case should be dismissed.

5. D. Develop Additional Tools to Strengthen The Process: A collaborative work group of representatives from the court, the POAP, the advocacy community, and family law attorneys should:

- Develop a document outlining protection order eligibility, to be distributed to agencies (such as law enforcement, CPS, healthcare providers, community-based advocates and others) that refer survivors to the protection order process.
- Develop "best practice" guidelines for judicial officers conducting protection order hearings that include asking the respondent specific questions about allegations in the petition. Provide information to assist judicial officers in identifying documented risk factors that appear in the petition.

- Create a document about the effects of trauma and its impact on survivors' written and oral statements.
- Develop guidelines for community-based advocates to strengthen their knowledge/ability to help petitioners to prepare for DVPO hearings.
- Develop relevant information and safety planning resources every survivor would receive upon filing a petition for a protection order.
- Use the new Washington State Domestic Violence Manual for Judges to work with the Gender and Justice Commission to develop a training video for judicial officers on best practices in hearing protection orders.
- Adapt the ABA Bench card on Judicial Considerations in Civil Protection Order Cases for use by judicial officers in Washington State.
- Conduct a focus group with family law attorneys to learn about their understanding of domestic violence, the impact on the survivor and children, and the benefits of different types of civil orders. Use the information from this focus group to identify areas for training development.
- Explore alternative methods for service of orders that may have been used in other jurisdictions (such as social media, email, text message, etc.) and pursue necessary legislation accordingly.
- Consider the possibility of using remote protection order “kiosks” and/or video appearances by petitioners (in specific, planned, vetted locations). In order to be effective, petitioners would need to be able to access assistance and support from advocates when participating in a remote or video court appearance.
- Identify key areas for future research about the regional protection order process.

5.E. Training

Organize and provide training related to protection orders.

Training topics for community-based advocates should include:

- The eligibility requirements for protection orders and how to assist survivors in determining whether their experiences meet the standards.
- The potential benefits and consequences of petitioning for a protection order.
- Assisting survivors in crafting petitions that accurately describe specific behaviors that meet the legal definition of DV and clearly articulate their reasons for fear.
- Preparing petitioners for the court hearing and the anticipated defenses of the respondent.
- Considerations in safety planning with survivors who are petitioning for a protection order or are engaged in the family law process.

Training topics for the private family law bar should include:

- Coercive control, the impact of domestic violence, and understanding of the potential negative consequences when survivors agree to conditions in their orders that compromise their long-term safety.
- The reasons why it is important to disclose domestic violence in family law matters, when it is consistent with the survivor’s wishes and safety.
- The inappropriateness and potential negative consequences of using domestic violence as a negotiating tactic in family law proceedings (develop training after conducting a focus group as described above).
- The differences in long-term impact between a DVPO and a family law restraining order.

Training topics for judicial officers should include:

- Coercive control, risk factors in domestic violence, the impact of domestic violence on survivors and their children, and tactics of batterers around visitation and parenting plans.
- The impact of trauma on survivors, on their memory, and their courtroom demeanor and responses.
- Research on the impacts of temporary and full protection orders on survivors.
- A framework for requiring respondents to address the specific allegations of DV in the petitions.
- Batterer behaviors that may cause the survivor “fear of imminent bodily harm” (what they are and why they meet this threshold) and the complexity of behaviors that constitute stalking with a review of how these behaviors may be presented in petitions (e.g. stalking presented as “he keeps showing up at my job.”)
- Best practices in “domestic violence evaluation.” What should judicial officers look for in an evaluation? Include: did the evaluator contact prior victims and conduct thorough court/criminal records search? Did the evaluator corroborate the respondent’s self-report?

6. Conclusion: National research indicates that full protection orders can reduce or end the violence for survivors of domestic violence. However, many survivors face numerous personal and institutional barriers to obtaining an order. From our review of a small sample of cases in King County Superior Court we identified issues that create barriers to survivors’ safety. To address these issues we developed recommendations for advocates, law enforcement, judicial officers and others, to improve the experiences and outcomes for survivors involved in the protection order process. By coordinating and collaborating, individuals and organizations working on domestic violence protection orders in King County can reduce opportunities for batterers to use violent and coercive tactics, and increase the safety of survivors and their children.

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