

EXECUTIVE SUMMARY

PETITIONING FOR A DOMESTIC VIOLENCE ORDER OF PROTECTION

Summary

- 63% of petitioners report some form of physical abuse, either alone or in conjunction with other forms of abuse.
- While petitioners are not prompted to do so, many document their assessment of future risk.
- In general, the court grants most requests for relief that are reasonable and justified. The court is especially likely to grant requests related to children.
- A little less than half (47%) of sample petitions result in an extended order that reaches expiration. Among those that fail, most (79%) are dropped by the petitioner or dismissed due to petitioner failure to appear.
- Reviewing multiple filing cases reveals that the nature of ongoing abuse is shaped by the relationship between the parties and reasons for continued contact.
- Documented DVOP violations are uncommon in this sample. This may be due in part to a lack of instruction on procedures for reporting violations to the court.

New Mexico Statistical Analysis Center

Kristine Denman, Danielle Albright, Lisa Broidy, and Erin Kleymann
June 2009

The popular media and the scholarly literature have both evaluated the utility of civil protection orders as a tool for curbing domestic violence and limiting its physical and emotional consequences. Much of the prior research has focused on the effectiveness of orders (see Carlson, Harris, and Holden, 1999; Holt et al., 2002, 2003; McFarlane et al., 2000). Some research has examined the factors that influence whether orders are granted or denied, noting that lack of petitioner follow through is the most common reason that initial requests for orders do not result in a permanent order (see Malecha et al., 2003; Roberts, Wolfer, and Mele, 2008; Zoellner et al., 2000). This research has generally overlooked the dynamic nature of the petition process, examining one particular element of the process (e.g., violations or dropped petitions) rather than the process as a whole. Specifically, prior research has failed to examine how petitioners navigate the petition process, whether elements of the process itself affect how petitioners frame the abuse they experience, and how the protection order process plays out once a request for an order is initiated. Additionally, focusing on a specific part of the process means researchers have overlooked a particularly unique set of cases, those involving multiple petitions for protection over time.

Purpose

This project utilizes case-level data to explore the petition process and examine how and why domestic violence victims use the civil court system to file for an order of protection. We assess in some detail case-level features that are implicated in the decision to seek a Domestic Violence Order of Protection (DVOP) and in the success of that court intervention. We concentrate on three primary objectives in the current research: 1) to identify the nature of abuse incidents that lead victims to pursue protection orders, 2) to examine the processing of protection orders, including requests made to and granted by the court, whether temporary orders are extended or not, and the nature of and response to reported violations, and 3) to examine cases involving multiple filings to explore abuse, relationship patterns and court outcomes over time. This research is a first step towards evaluating whether and how well the system is set up to meet the needs of petitioners, by focusing on the process, in relation to its outcome rather than focusing exclusively on the outcome.

Data Collection

The data for this research are derived from protection order requests processed at the Domestic Violence Division of the Bernalillo County Court House in Albuquerque, New Mexico. We randomly selected 190 cases from all cases involving one single adult respondent and one single adult petitioner filed in 2002. While each case file involves a single petitioner and respondent, it may include multiple petitions for protection. Except when specifically examining

cases with multiple filings, we focus on the petition filed in 2002.

Data includes both quantitative and qualitative elements. The data are culled directly from the case file, which includes the *Petition for an Order of Protection* and all other forms resulting from petition processing. While the quantitative data provide some descriptive information, the findings are primarily derived from the qualitative case narrative data. Case narratives are comprised of the petitioner's written description of the abuse and the events documented in each case file. In addition to collecting case file data, we observed both the petition and the DVOP hearing process. The purpose of these observations was simply to inform our analysis and recommendations.

This document provides a brief reporting of key findings for this project. Both a more detailed description of the research method and a complete presentation of findings are available in the full report.

Sample Description

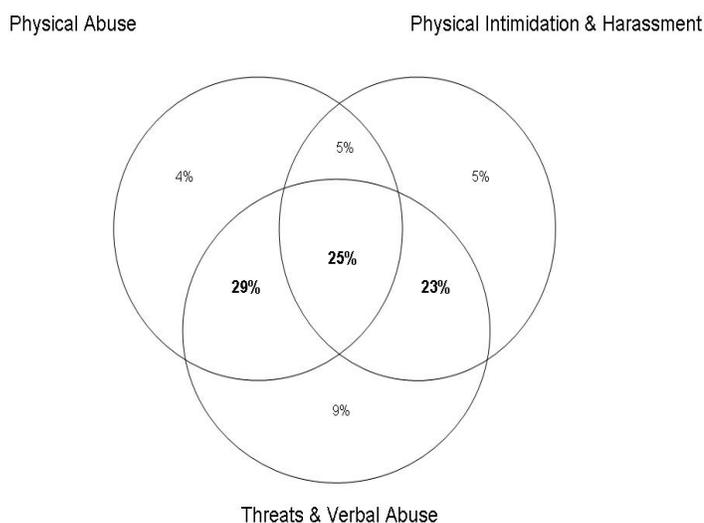
Most petitions involve intimate partners (90%); the remaining 10% involve non-intimate family members. The sample is primarily comprised of female petitioners (83%) and male respondents (84%). The average age of both petitioners and respondents is around 35 years. Over half of the cases reference one or more minor children (61%). Most respondents are reported by the petitioner to be Hispanic (58%) or White (26%). Exactly half of the respondents are described by petitioners as either employed or self-employed.

OBJECTIVE 1 NATURE OF ABUSE INCIDENTS LEADING VICTIMS TO PURSUE PROTECTION ORDERS

Reporting of Abuse

We categorized the abuse reported by petitioners into three primary types: physical abuse, threats/verbal abuse, and intimidation/harassment. Figure 1 shows the distribution of cases by reported abuse characteristics. Most petitioners (63%) report some form of physical abuse, either alone or in conjunction with other forms of abuse. We found that whether the abuse is reported as a single incident or ongoing varies with the type of abuse. Cases involving physical abuse are more likely to be reported as a single incident, even when there is an indication that there has been ongoing physical abuse. Conversely, when no physical abuse is reported, the abuse (threats/verbal abuse or physical intimidation/harassment) is typically described as ongoing. It appears that petitioners assume one instance of physical abuse is enough to support their request for court protection, while petitioners who experience non-physical abuse are more apt to describe this abuse in detail to make their case for the necessity of court intervention.

Figure 1. Abuse Characteristics Reported in Petitioner Narratives (N = 190)



Articulation of Perceived Risk of Future Abuse

In addition to the details of abuse petitioners are prompted to provide, many articulate their perceived risk of future abuse, even though they are not prompted to do so. Orders of protection are granted to protect petitioners from future abuse, not to punish respondents for alleged prior abuse. So, whether or not it is intentional, petitioners who make statements regarding their future risk of abuse do generally establish a stronger case in support of their request for an order of protection.

Over 90% of petitioners in this sample make some statement regarding their perceived risk of future abuse. These risk assessments appear in the abuse narratives in two ways. First, some petitioners include statements in the narratives regarding fear of future harm to self, others or property. Second, petitioners characterize the respondent as a dangerous person in general. This is done by indicating that the respondent owns weapons, uses alcohol/drugs which contribute to violence, and/or has tendencies towards violence due to a defined mental health issue or “bad temper.”

OBJECTIVE 2 PROCESSING OF PROTECTION ORDERS AND COURT RESPONSE TO REPORTED VIOLATIONS

Requests Made and Granted

Domestic Violence Orders of Protection are meant to prevent respondents from continuing to abuse the petitioner by ordering them to refrain from abuse and stay away. However, these orders can and often do provide more than these basic provisions. Petitioners can make additional requests related to such things as housing, finances, and child care. All written requests are made at the time of the petition filing. Requests can be granted at the time the temporary order (TO) is issued and/or at the time of the extended order (EO) hearing. We found that requests regarding children and personal safety are generally granted with the TO. However, other requests, specifically those related to financial support and custody/child exchange are granted with the EO. While not all requests are granted, our findings suggest that the court is generally responsive to petitioner requests, granting most requests for relief that are reasonable and justified. Additionally, though petitioners do not frequently request counseling for respondents, it is often required by the court as a condition of the DVOP.

Granting / Expiration of Extended Order

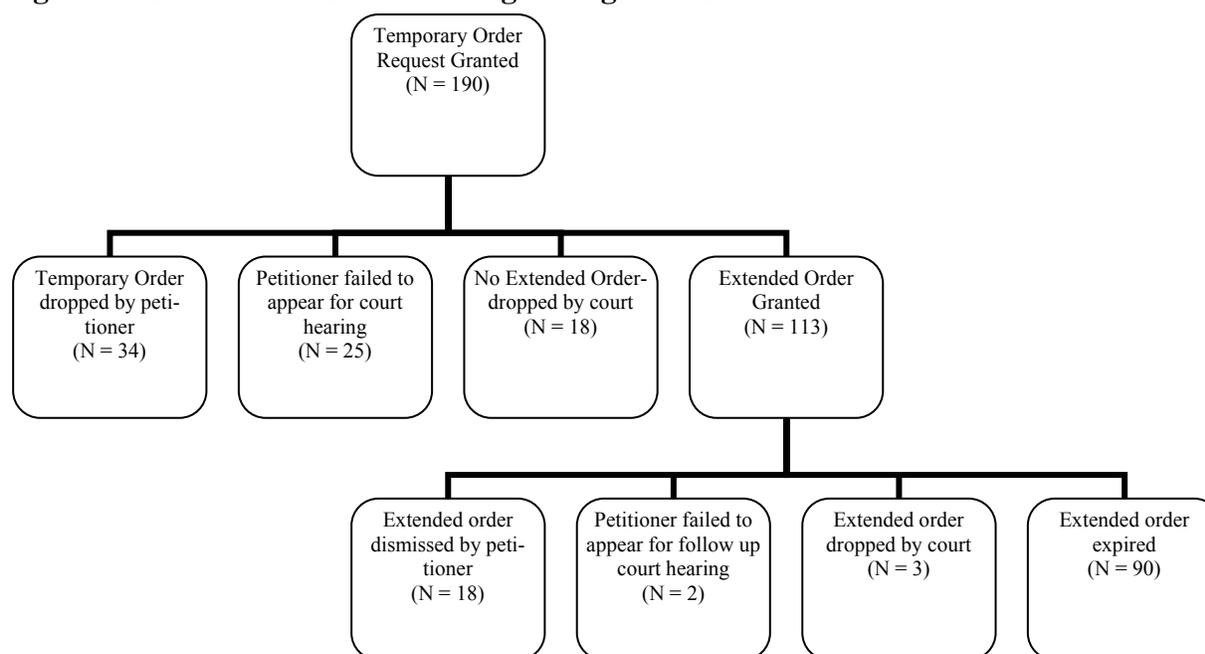
A little less than half (47%) of the cases result in an extended order that reaches expiration. Among those petitions that do not last through expiration, most (79%) are dismissed at the petitioner’s request or because the petitioner fails to appear at the extended order hearing. Few cases (21%) are dismissed by the court, but when they are, it is most often due to insufficient evidence. Figure 2 diagrams the outcomes of cases as they flow through the court process.

There are many factors that may distinguish the 47% of “successful” orders (those that reached expiration) from those that were dismissed by the court or dropped by the petitioner. In this sample, we found that the variables related to the successful filing of a protection order petition include party/relationship characteristics, abuse and incident characteristics, court processing characteristics, and requests made to the court. Specifically, orders reaching expiration more often involve male respondents, parties that have already terminated their relationship, and cases that do not involve minor children. These are cases in which future

contact is less likely since the parties have separated and have no children in common. The no contact provisions of the DVOP may be more cumbersome and unrealistic in cases involving parties that have not yet separated or who have children in common, leading to more limited system follow through. Petitions that include reports of physical abuse, weapon use, and alcohol and/or drug use are more likely to be dropped or dismissed before expiration. In addition, follow through is less likely when either the respondent is not served with the summons to appear and/or the respondent fails to appear at the hearing. Finally, when petitioners request financial support from or counseling for

when physical abuse is involved, and the violation is heard in criminal court with no civil court overlap. Where violations are non-physical, petitioners may not want to take the time to report the violation, may not know how to report the violation, and/or may be complicit in the violation and not want to report it—i.e., the couple may be trying to reconcile. Based on our observations, respondents are told that violation of the order may result in arrest and jail time. However, it appears petitioners are not given instructions on the procedures for reporting violations to the court beyond written instructions to call 911 if the other party violates any provision of the order. This lack of instruction to petition-

Figure 2. Outcomes of Cases Flowing through the Court Process



the respondent, they are less likely to follow through with the process, and therefore less likely to be granted an extended order of protection.

Violations of Protection Orders

Documented DVOP violations are notably uncommon among the cases in our sample. In total, 20 cases in our sample (11%) involve at least one reported violation. Most (N = 15) of these allegations include reports of violation of the no contact order, although none of the reported violations in our sample involve physical abuse. In the majority of these cases (65%), the court finds that a violation has occurred. Violations are more likely to be reported among the “successful” cases (those that had an order in place through its expiration, N = 15). The limited number of reported violations may indicate that DVOPs effectively protect petitioners from subsequent abuse. However, most violations only come before the civil court if one or both parties file a motion alleging violation; this occurs in 80% of the violations reported here. In some cases, the respondent is arrested and is required to be released by the Domestic Violence Court judge. The court is made aware of a violation this way in 20% of the cases. It is likely that petitioners call the police when violations occur, particularly

ers may account for the small number of violations reported to the court.

OBJECTIVE 3 RELATIONSHIP PATTERNS, CHARACTERISTICS OF ABUSE, AND COURT OUTCOMES OVER TIME

Multiple Filings

Almost 30% of the sample involves cases with multiple filings. Multiple filings include two or more petitions for protection brought forth in the same case by the petitioner, the respondent or both. There is evidence to suggest that many of these cases involve parties who are engaged in complicated and ongoing abusive relationships and are legitimately using the court to seek protection from abuse.

Most multiple filing cases involve a single filer who successfully files at least one DVOP petition (i.e., a petition that is granted and expires). Cases that do not include any DVOPs that last through expiration generally involve couples who have reconciled or involve abuse that centers on children. Some cases involve dyadic filings: those cases where both parties file for protection from abuse. Com-

pared to other multiple filing cases, dyadic filings are less likely to be successful and more likely to have one or more dismissals for lack of evidence. Dyadic filings often include filings by males, who are typically less likely to file for orders of protection and whose filings may be questioned by the court. Additionally, dyadic filings often involve child related issues, which also may raise concerns about the veracity of the claims.

Overall, we find that the nature of the ongoing abuse (physical versus non-physical) is tied to the relationship and nature of contact between the parties. Physical violence is more likely in ongoing intimate partner relationships and among those who are in the process of separating, while other forms of abuse are more common among couples who have already separated. This suggests that physical abuse is partly opportunistic and emphasizes the importance of the no contact provisions that characterize DVOPs. Of course, where relationships are ongoing, compliance with these no contact provisions is complicated.

In a small number of multiple filing cases, the relationship between the parties is a non-intimate familial one. These cases are often drug related, and involve intimidation as well as property damage. They are less likely to involve physical abuse. The reasons for continued contact among non-intimate petitioners and respondents are similar to those observed in intimate party cases. Non-intimate petitioners are often involved in relationships where the respondent is financially dependent on the petitioner and they often share a residence.

Recommendations

The order of protection process is complicated by its heavy reliance on victim initiation and follow through. While recognizing that following through with an initial request for court protection is not always in the best interest of all petitioners, there are some ways to improve follow through for those who would benefit from a DVOP.

- Increase victim advocacy: advocates can provide emotional support, help victims understand and successfully navigate the court process, and refer victims to agencies that provide material support.
- Increase access to information: offering a packet that includes information about court procedures, including filing procedures and how to report violations to the court, may help petitioners to better understand and utilize the process. Verbal instructions on reporting violations to the court should also occur at the time the protection order is granted. Additionally, the written packet should include information about community resources, including places to obtain material support as well as places to seek legal advice.
- Enforcement of existing order: The police are more likely than the court to be notified in the case of a violation. However, data show that police are not likely to arrest respondents who violate protection orders unless

there is evidence of physical violence. Where there is probable cause, police should be encouraged to make arrests for violations that do not include physical violence, as mandated by state statute. Where probable cause is not evident, police can encourage protected parties to file a motion alleging violation with the court.

- Further assessment of the conditions under which DVOPs are most effective and for whom they are most effective is essential for intervention planning.

References

- Carlson, M. J., S. D. Harris, and G. W. Holden. 1999. "Protective orders and domestic violence: Risk factors for re-abuse." *Journal of Family Violence* 14:205-226.
- Holt, V. L., M. A. Kernic, T. Lumley, M. E. Wolf, and F. P. Rivara. 2002. "Civil protection orders and risk of subsequent police-reported violence." *Jama-Journal of the American Medical Association* 288:589-594.
- Holt, V. L., M. A. Kernic, M. E. Wolf, and F. P. Rivara. 2003. "Do protection orders affect the likelihood of future partner violence and injury?" *American Journal of Preventive Medicine* 24:16-21.
- McFarlane, J., P. Willson, D. Lemmey, and A. Malecha. 2000. "Women filing assault charges on an intimate partner: Criminal justice outcome and future violence experienced." *Violence Against Women* 6: 396-408.
- Malecha, A., J. McFarlane, J. Gist, K. Watson, E. Batten, I. Hall, and S. Smith. 2003. "Applying for and dropping a protection order: A study with 150 women." *Criminal Justice Policy Review* 14: 486-504.
- Roberts, J. C., L. Wolfer, and M. Mele. 2008. "Why victims of intimate partner violence withdraw protection orders." *Journal of Family Violence* 23:369-375.
- Zoellner, L. A., N. C. Feeny, J. Alvarez, C. Watlington, M. L. O'Neill, R. Zager, and E. B. Foa. 2000. "Factors associated with completion of the restraining order process in female victims of partner violence." *Journal of Interpersonal Violence* 15:1081-1099.

This research was supported by a grant from the State Justice Statistics program. The State Justice Statistics program is a component of the Office of Justice Programs which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime, Bureau of Justice Statistics, Agency Grant Number: 2007-BJ-CX-K051.

Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position of the Bureau of Justice Statistics or the U.S. Department of Justice.

**A full-length version of this report
can be obtained by contacting:**

**New Mexico Statistical Analysis Center
Institute for Social Research
University of New Mexico**

**2808 Central Avenue, SE
Albuquerque, NM 87106**

(505) 277-4257

Fax: (505-277-4215)

E-mail: nmsac@unm.edu

www.isrunm.net