Orders of Protection in Domestic Violence Cases: An Empirical Assessment of the Impact of the Reform Statutes

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Orders of Protection in Domestic Violence Cases: An Empirical Assessment of the Impact of the Reform Statutes

Kit Kinports* & Karla Fischer**

   A. Knowledge and Assistance Problems ................................ 169
      1. Simplified Forms ............................................. 170
      2. Court Personnel ............................................. 172
      3. Advocates .................................................. 173
      4. Attorneys .................................................. 174
   B. Logistical Problems ............................................. 178
   C. Financial Problems ............................................. 180
   D. Recommendations ............................................. 182

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1. Educate the Public About Orders of Protection ..... 182
2. Improve Sources of Legal Assistance for Petitioners ..... 182
3. Make Emergency Orders Available After Business Hours and Over the Telephone ..... 185
4. Eliminate Fees for Orders of Protection ..... 186

II. Issuance and Scope of Orders of Protection: Are Judges Granting Orders Promptly in Appropriate Cases, and Are They Awarding the Full Range of Remedies? ..... 186
A. Emergency Orders ..... 187
   1. Delay in Issuance of Emergency Orders ..... 187
   2. Denial of Emergency Orders ..... 188
   3. Denial of Particular Remedies in Emergency Orders ..... 194
B. Plenary Orders ..... 198
   1. Delay in Issuance of Plenary Orders ..... 198
   2. Denial of Plenary Orders ..... 199
   3. Denial of Particular Remedies in Plenary Orders ..... 205
C. Judicial Behavior and Attitudes ..... 207
D. Recommendations ..... 210
   1. Increase the Judicial Resources Allocated to Domestic Violence Cases ..... 210
   2. Educate the Judges ..... 210
   3. Hold Protective Order Hearings in Chambers ..... 212
   4. Facilitate Appeals of Unfavorable Decisions ..... 214
   5. Expand the Role of Advocates ..... 216
   6. Limit the Use of Mutual Orders ..... 218
   7. Miscellaneous Statutory Reforms ..... 219

III. Service and Enforcement of Orders of Protection: Are Emergency Orders Being Served Promptly, and Are the Police, Prosecutors, and Courts Responding Adequately to Violations? ..... 220
A. Service of Emergency Orders ..... 221
B. The Police Department’s Response to Violations ..... 223
C. The Prosecutor’s Response to Violations ..... 228
D. The Judge’s Response to Violations ..... 231
E. Recommendations ..... 233
   1. Implement Mandatory Arrest Laws ..... 234
   2. Educate Law Enforcement and Judicial Personnel ..... 237
   3. Implement a Coordinated Response Approach to Domestic Violence ..... 239
   4. File Civil Suits ..... 242
   5. Miscellaneous Statutory Reforms ..... 244
A number of the participants in this symposium have described the failure of various law reform agendas—efforts to modify the laws governing rape and sexual harassment, for example. They have drawn a distinction between the law on the books, which may appear quite progressive and protective of women, and the law in action, which continues to reflect longstanding cultural attitudes that demean, discredit, and subordinate women. Our message is very similar, although we focus on a different set of laws: the provisions governing orders of protection in domestic violence reform statutes.

During the 1980s, the legislatures in forty-eight states and the District of Columbia enacted domestic violence reform statutes. Among other things, the statutes permit a victim of domestic violence to obtain a civil order of protection—a binding court order that, at a minimum, prohibits an abuser from committing further acts of violence. The order may also enjoin other conduct, such as all contact whatsoever with the woman; award custody of the children to the woman and limit the man’s visitation rights; and grant the woman possession of the residence or other property, child support, or other economic relief. In most states, violations of protective orders are punishable as misdemeanors or criminal contempt.

These reform statutes typically create a two-step process for obtaining an order of protection. A battered woman first obtains an order commonly referred to as an emergency or ex parte order. Emergency orders are


3. We use the female pronoun to refer to petitioners because most victims of domestic violence are women. See Thurman v. City of Torrington, 595 F. Supp. 1521, 1528 n.1 (D. Conn. 1984) (noting that women are the victims in 29 of 30 spousal abuse cases); Bureau of Justice Statistics, U.S. Dep’t of Justice, Report to the Nation on Crime and Justice: The Data 21 (1983) (finding that 95% of domestic violence victims are women). See generally S. Rep. No. 545, 101st Cong., 2d Sess. 30-31 (1990) (describing the “gender gap” in domestic violence and noting that more women were abused by their husbands in 1989 than became married).

4. Finn & Colson, supra note 2, at 2. In some states, however, violations are treated only as civil contempt. Id. at 50-51.
temporary orders that usually expire after several weeks; they are issued based on the woman's petition alone and require no prior notice to the alleged abuser. The ex parte nature of the order is considered appropriate when the petitioner can make a credible claim that she will be subjected to further abuse if the respondent is notified of her intention to obtain an order of protection.\(^5\)

At the time an emergency order is granted, the judge typically sets a date for a hearing on the second order of protection, usually referred to as the plenary or permanent order.\(^6\) The emergency order and notice of the plenary hearing must then be served on the respondent, who has an opportunity to attend the second hearing to challenge issuance of the plenary order.\(^7\) If the judge decides to issue the plenary order at this second hearing, the order typically can remain in effect for six months to a year, although the maximum duration varies somewhat depending on the specific statute.\(^8\)

Civil protective orders thus give battered women a legal remedy other than, or in addition to, filing a criminal complaint or seeking a divorce. In theory, orders of protection have a number of advantages: they provide protection more expeditiously than the criminal justice system or the divorce court; they offer more complete relief than the criminal process by resolving issues such as custody, visitation, and economic remedies; they may be easier to obtain than a criminal conviction because the standard of proof in this civil action is presumably less exacting than the reasonable doubt standard;\(^9\) unlike divorce, they do not limit relief to spouses;\(^10\) and they may be a preferable option for women who wish to end the violence but not the relationship or who need the man's continued financial

\(^5\) E.g., ILL. ANN. STAT. ch. 40, para. 2312-17(a)(3)(i) (Smith-Hurd Supp. 1992) (allowing ex parte relief when "the harm which that remedy is intended to prevent would be likely to occur if the respondent were given any prior notice, or greater notice than was actually given, of the petitioner's efforts to obtain judicial relief").

\(^6\) Even if the judge finds that the petitioner has not satisfied the prerequisites for ex parte relief and therefore denies her request for an emergency order, the judge will still schedule a plenary order hearing.

\(^7\) See also infra note 130 and accompanying text (noting that most state statutes allow the respondent to contest the emergency order prior to the plenary hearing if it evicts him from the residence).

\(^8\) See FINN & COLSON supra note 2, at 16-17. Thirty-one states set the maximum duration somewhere between six months and a year, seven states provide no limit, three states allow orders to last more than one year, and the remaining eight states limit them to less than 180 days. Id.

\(^9\) See id. at 14 (noting that 11 statutes prescribe a preponderance of the evidence standard and that most of the others are silent regarding the standard of proof); cf. MD. FAM. LAW CODE ANN. § 4-506(e)(2) (Supp. 1992) (using a clear and convincing standard).

\(^10\) For example, 46 statutes protect former spouses, 39 protect those who are living in a spousal-type relationship with the abuser, and 36 protect those who previously lived in such a relationship. See FINN & COLSON supra note 2, at 8-9 (listing all categories of eligible petitioners for each state's protective order statute).
support. In practice, however, the effectiveness of protection orders depends on the willingness of judicial and law enforcement officials to issue and enforce them to the extent authorized by statute. Unless the reform statutes are fully implemented, they cannot provide the protection to battered women that the legislatures envisioned.

For example, the Illinois Domestic Violence Act of 1986 offers a broader range of remedies and extends protective relief for a longer period of time than almost any other statute. The Illinois Act compares quite favorably with other state statutes in terms of what type of abuse justifies a protective order and who is eligible to obtain relief. The statute also requires an expedited ex parte hearing and expedited service of the emergency order in an effort to provide protection as quickly as possible to victims of domestic abuse. Nevertheless, our experience in Champaign County, Illinois led us to question whether the statute was being effectively implemented.

Our concern that the reform statutes might not be having their intended effect sparked our decision to evaluate the protective order statutes empirically. We therefore distributed a lengthy survey to 843 domestic violence organizations nationwide that help battered women obtain protective orders. The survey focused on three issues. The first issue

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11. Id. at 2-3; U.S. Comm'n on Civil Rights, Under the Rule of Thumb: Battered Women and the Administration of Justice 41-43, 47-48 (1982).
13. See Finn & Colson, supra note 2, at 16-17, 38-39 (comparing the provisions of each state law).
14. Id. at 7-8, 12-13.
16. We worked with A Woman's Place, the local shelter for battered women, in setting up a program that trains University of Illinois law students to assist the shelter's legal advocates in helping women obtain orders of protection. Through this project, we discovered that the judge assigned to hear protective order petitions in Champaign County denies a significant percentage of requests for emergency orders and fee waivers and at times also refuses to grant certain remedies authorized by the Illinois statute. For example, the judge sometimes refuses to grant an emergency order if the petitioner previously filed for a protective order and then failed to pursue the petition or if she waited a few days after the violence to seek protective relief—regardless of the reasons for the delay. In addition, the judge is often unwilling to grant child support in protective orders, advising petitioners that they must contact child support enforcement authorities or file for divorce to obtain that remedy. Finally, the judge has denied motions to waive the fees for filing and serving orders of protection in cases where the petitioners were entitled to fee waivers under the terms of the statute.
17. In addition, Fischer conducted a formal study of the effectiveness of protective orders in Champaign County. Karla Fischer, The Psychological Impact and Meaning of Court Orders of Protection for Battered Women (1992) (unpublished Ph.D. dissertation, University of Illinois (Urbana-Champaign)). She observed 287 emergency order hearings over a 14-month period and extensively interviewed 83 petitioners, as well as attending their plenary hearings, in an effort to determine whether orders of protection provide battered women with the economic, social, and psychological resources they need to escape an abusive relationship.
17. We mailed a survey to every domestic violence organization that was listed as providing
was access to the courts: Is the protective order remedy accessible to battered women? The second issue related to the procedures for obtaining orders of protection: Are judges granting orders in appropriate cases, and are they awarding the full range of remedies contemplated by the reform statutes? The third issue involved the procedures for serving and enforcing protective orders: Are emergency orders being served promptly, and are the police, the prosecutors, and the courts responding adequately to violations? We were interested in discovering what types of problems exist in these three areas, and whether they are attributable to inadequacies in the domestic violence reform statutes themselves or simply to the way the statutes have been implemented by executive and judicial officials.\(^8\)

We received 326 completed surveys, for a reply rate of 38.7%. Responses came from all but three of the states and territories included in our mailing.\(^9\) Moreover, the answers to the survey questions fell along a broad spectrum, suggesting that the respondents—advocates who, admittedly, tend to be identified with only one of the parties in the proceeding\(^20\)—were not biased in any particular direction with respect to the strengths and weaknesses of the protective order system.

In general, the survey results show that while some statutory modifications would result in modest improvements, the domestic violence reform statutes are, on the whole, protective of battered women's interests. On the other hand, the responses uncovered serious implementation problems in all three areas of inquiry. In many instances, these problems are traceable to the attitudes of the judicial and law enforcement personnel charged with applying and enforcing the statutes. In addition, we found that ultimately the three issues are not quite so distinct; problems in one area spill over and create difficulties in the other areas as well.

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18. The survey was divided into two sections. The first section sought information about the particular features of the protective order process in effect in the respondent's community. The second section elicited the respondent's assessment of any problems that existed in our three areas of inquiry. For each potential problem identified in this part of the survey, we gave the respondent four choices: we asked her to indicate whether the issue was not a problem in her community, a slight problem, a significant problem, or a very serious problem. In describing the results of the survey in this Article, we classify something as a problem in a particular community unless the respondent said it was not a problem at all, and we also report the percentage of respondents who considered a problem either significant or very serious.

19. The three are Mississippi, Utah, and the Virgin Islands.

20. An advocate is someone who helps battered women obtain orders of protection by assisting them in completing the paperwork necessary to obtain the order and often by accompanying them to court. An advocate may be an attorney, but usually is not. See Finn & Colson, supra note 2, at 24-26 (describing the various ways advocates are used to assist victims filing for protective relief).
In setting out these findings, Part I of this Article explores the access question, Part II examines the issuance and scope of protective orders, and Part III discusses service and enforcement issues. Each part first analyzes the survey responses and identifies problem areas and then suggests steps to rectify those problems.

I. Access to the Courts: Is the Protective Order Remedy Readily Available to Battered Women?

Despite legislative efforts, orders of protection may be unavailable to battered women for a number of reasons. Battered women may (A) be unaware of the availability of protective orders or lack the legal knowledge or assistance necessary to obtain them; (B) face difficulties getting to the courthouse during the times judges are available to issue protective orders; or (C) lack the financial resources necessary to obtain such orders.

Before addressing these three specific access problems, it is important to note that the survey respondents identified some groups of women as particularly vulnerable to the barriers blocking access to orders of protection. Almost one-half (46.4%) of the respondents felt that women of color have more difficulty obtaining access to the courts in their county; 17.9% described this as a significant or very serious problem.21 Similarly, almost three-fourths (70.4%) reported that women with the fewest economic resources face greater access problems; more than one-third (37.6%) characterized this as a significant or very serious problem.22 Finally, access by non-English-speaking women was one of the most serious access problems identified in the survey. More than four-fifths (80.6%) of the respondents indicated that access problems are more acute for non-English-speaking women; more than one-half (53.5%) thought this was a significant or very serious problem.23

A. Knowledge and Assistance Problems

Victims' lack of familiarity with orders of protection was one of the most serious access problems identified by the respondents to the survey. Almost four-fifths (78.5%) of the respondents reported that lack of information was a problem in their counties, and more than one-third

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22. Id. at II, 28. However, women with the fewest economic resources fare better in obtaining fee waivers than women with minimal resources. See infra text accompanying notes 67-71.
Texas Journal of Women and the Law

(36.5%) described it as a significant or very serious problem.24 As one respondent from a rural northeastern community observed:

Although every effort is made to inform women of their legal rights and to provide transportation to legal appointments, many women in remote areas are unaware of the services available to them. Therefore, that faction may not come forward to exercise their legal claims as readily as women living in more populated areas.25

Various steps have been taken in an attempt to overcome these informational problems and assist a woman obtain an order of protection. For example, many domestic violence reform statutes require the use of simplified forms.26 These forms are designed to streamline the process for obtaining an order so that a battered woman theoretically does not have to hire an attorney.27 In addition, some statutes instruct court clerks to provide assistance to women who need help completing the forms.28 A battered woman may also be able to turn to an advocate or attorney for legal assistance. Nevertheless, the survey results suggest that efforts to provide battered women with legal assistance and information about their legal options have not been particularly successful.

1. Simplified Forms.—Many women have trouble completing even the so-called simplified forms on their own. Only about one-fifth (21.8%) of the respondents thought that the forms necessary to secure an order of protection in their county could be completed by petitioners without any assistance of some kind.29 More than one-half (57.5%) reported that petitioners need a limited amount of assistance, and an additional one-fifth (20.6%) thought they need a great deal of assistance.30 For example, one

24. Id. at II, 26.
25. Comments such as this one were made either in space provided in the survey for specific remarks or in separate letters some respondents attached to the survey. (All survey responses are on file with the authors.) When quoting these remarks, we identify the region of the country in which the respondent works and whether the county is an urban or rural one (based on whether the county population is higher or lower than 100,000). Following the practice of social science research, and because we want to protect the anonymity of respondents who were critical of the protective order procedures in their community, we provide no additional identifying information.
26. See FINN & COLSON, supra note 2, at 20-21 (noting that 35 states have explicitly provided for the use of simplified forms); see, e.g., WASH. REV. CODE ANN. §§ 26.50.030(3)-.035 (West 1986 & Supp. 1993) (requiring court clerks to provide simplified forms and ordering the court administrator to develop and provide these forms).
27. In fact, 30 state statutes specifically allow pro se filings for orders of protection. FINN & COLSON, supra note 2, at 20-21.
28. Id. at 26.
29. Survey, supra note 21, at I, 3(a).
30. Id. at I, 3(b)-(c); see also Rural Justice Center, Not in My County: Rural Courts and Victims of Domestic Violence 32 (Dec. 1991) (report available from the Rural Justice Center)
respondent listed the multiple forms required to obtain a protective order in her rural southern community: "Our superior court judges require a lengthy petition, lengthy temporary order, detailed pauper's summons (where applicable), sheriff's entry of service, verification, notification, [and] notarized sworn statement, along with copies of warrants, police reports, [and] medical records." Another respondent from a rural midwestern county reported that, although other counties in the state use a simpler form, "Our district judge redid the protective order form and doubled its length. . . . The revised one was done so 'a woman could not falsely accuse a man.'"

More specifically, approximately three-fifths (61.5%) of the respondents indicated that battered women have difficulty understanding the technical terms, or "legalese," in the petitions—terms such as "respondent" and "petitioner," for example. More than three-fourths (77.2%) said that petitioners have trouble understanding what the remedies mean or knowing what to ask for in the order. For example, one respondent from a rural northeastern county noted that some petitioners do not even consider requesting financial remedies in protective orders because they are simply unaware of their availability. In addition, almost two-thirds (63.4%) reported that petitioners have trouble describing the abuse so that the judge can understand what happened. As one respondent from an urban southern county explained, women tend to describe the abuse by saying "we were fighting," rather than "he hit me." These complexities are compounded for women who are not fluent in English. Only eleven (3.4%) of the respondents indicated that the simplified forms used to file for protective orders are available in any language other than English.

The number and complexity of the forms required to petition for a protective order discourage some women from turning to the courts for assistance. Almost one-half (49.9%) of the respondents indicated that the complexity or quantity of paperwork required to obtain an order of protection prevents women from filing petitions in their county; 16% characterized this as a significant or very serious problem. As one respondent from an urban southern county concluded, "Many low income battered women are daunted by court procedures and need an attorney or

(concluding that "from the victim's perspective, the forms may be far from simple to fill out").

31. Survey, supra note 21, at I, 4.

32. Id. at I, 3(e). The forms are available in more than one language other than English in only one of the counties served by the respondents.

33. Id. at II, 8. In addition, the Pearson correlation coefficients reported in connection with our regression analyses suggest that counties in which simplified forms are unavailable or difficult to complete have not only significantly higher access problems, but also significantly higher relief and enforcement problems. See App. C, Tables 3-5.
court advocate to guide them through. Simply having a bunch of forms available for the asking, without any back-up support, is not much real help.” Another respondent from an urban western community likewise reported, “Almost all petitioners who have first tried to fill out their own papers without our assistance give up because of the volume of papers, the lengthy instructions (12 pages) and an inability to fully understand the instructions.” Finally, a respondent from an urban southern county noted that “[w]omen are intimidated by the sheer number of forms” they are required to complete.

2. Court Personnel.—In a substantial number of counties (41.8%), court clerks help battered women complete the paperwork necessary to obtain an order of protection.34 In other jurisdictions, however, legislation prohibits court clerks from providing such services.35 Even where clerks are allowed to help, the survey results suggest that their assistance is of limited value for several reasons.

First, and not surprisingly, clerks are rarely available to accompany petitioners to court.36 Second, court clerks typically provide little assistance to women with special needs. Only about one-fourth (27.1%) of the respondents indicated that court personnel assist petitioners who have literacy barriers,37 and only 16% indicated that court personnel are available to provide translation services to non-English-speaking petitioners.38 As one respondent from an urban midwestern community reported, “If a woman doesn’t speak English, the clerk’s office says she must bring an interpreter or they can’t help her.” Third, more than one-half of the respondents (56%) indicated that the court clerks in their county do not provide enough assistance to petitioners, or even actively discourage them from filing for protective orders; more than one-fourth (26.3%) described this as a significant or very serious problem.39

A number of respondents provided narratives to illustrate this third point. One respondent from an urban northeastern community reported that “clerks are generally competent and courteous, but do not explain the process to the woman or offer her options. A woman who does not know her options before applying (for example, that she can have him vacated

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34. Survey, supra note 21, at I, 1(c).
35. FINN & COLSON, supra note 2, at 26-27.
36. See survey, supra note 21, at I, 1(d) (noting that only 2.8% of respondents reported that clerks accompany petitioners to court).
37. Id. at I, 5(c).
38. Id. at I, 5(d).
39. Id. at II, 7. For similar findings, see Rural Justice Center, supra note 30, at 22 (noting that only 44% of county clerks surveyed said they would tell a battered woman who had walked in their office about the availability of protective orders).
[from the home] or get custody) will probably not be informed of them, regardless of her needs.” Even more disturbing, another respondent indicated that the court clerks in her urban midwestern county evaluate the merits of the petition and “tell[] petitioners they do not have a right to file” for relief before the judge ever sees the case. When asked what changes could be made to improve the accessibility of the courts in her urban southern community, another respondent suggested hiring “more knowledgeable clerks who are informed about domestic violence and have not closed their mind to it.” Finally, a respondent from a rural southern community concluded, “Court personnel will avoid helping women in any way they can.”

3. Advocates.—Advocates seem to be quite helpful in facilitating access to the protective order remedy: the respondents’ overall rating of the courts’ accessibility improved substantially if advocates were available to provide assistance. When asked about the accessibility of the courts to petitioners accompanied by advocates, only about one-tenth (9.9%) reported that the courts are inaccessible or very inaccessible.40 By comparison, when asked the same question about petitioners who are not accompanied by advocates, almost one-fourth (24.3%) found the courts either inaccessible or very inaccessible.41

In addition to providing the technical assistance necessary to complete petitions for protective relief, advocates may be helpful in other ways. They are trained in the dynamics of domestic violence and experienced in working with battered women and therefore may be in the best position to provide the women with emotional support.42 Moreover, in many cases, advocates are available to assist battered women by accompanying them to court.43

Nevertheless, some women may not be able to obtain assistance from an advocate. More than one-half (50.4%) of the respondents reported that the demand for protective orders is so high that their advocacy program cannot help everyone who needs assistance; more than one-fifth (21.6%) characterized this high demand as a significant or very serious problem.44 In addition, location may impede some women’s access to an advocate. As one respondent from a rural midwestern county noted, “The distance

40. Survey, supra note 21, at II, 1.
41. Id. at II, 2. The mean accessibility rating for women who had advocates was 3.4 on a scale of one to four (with four reflecting the highest level of accessibility), whereas the mean rating for women who did not have advocates was only 2.9. Id. at II, 1-2.
42. FINN & COLSON, supra note 2, at 26; Fischer, supra note 16, at 72 (finding that 92% of the women interviewed in Champaign County rated their advocates as being very supportive).
43. Survey, supra note 21, at I, 1(b).
44. Id. at II, 6.
women have to travel to receive advocacy from our program is extreme. We are a program responsible for eight counties; if women want advocate services they may have to travel up to 100 miles.”

4. Attorneys.—Although lawyers help battered women obtain orders of protection in some cases,45 the survey results indicate that many petitioners cannot afford to hire private counsel and that pro bono assistance is unavailable in many communities. Even more fundamental, the results provide conflicting signals on the advisability of introducing more lawyers into the protective order process.

Financial constraints that prevent women from hiring attorneys for protective order hearings were identified by the respondents as the most serious problem in the entire survey. Two-thirds of the respondents thought that this was a significant or very serious problem, and less than one-fifth (19.7%) said it was not a problem at all in their community.46 Estimates of the cost of hiring counsel ranged from “as high as $500” in an urban county in the Midwest, to an “[a]verage cost of $900” in a rural community in the West, to anywhere “from $150 to $5,000” in an urban northeastern community.

Despite the prohibitive cost of retaining private counsel, only 11.4% of the respondents reported that their local bar association has a program to provide pro bono services for battered women seeking protective orders. Even fewer (6.5%) indicated that private attorneys are frequently willing to provide such services in the absence of an organized pro bono program. By contrast, more than two-fifths of the respondents (42.8%) noted that private attorneys rarely represent battered women on a pro bono basis.47

Attempts by domestic violence organizations to establish pro bono programs have often proved fruitless. For example, one respondent from an urban northeastern community reported that her organization “contacted 350 attorneys to try to set up a pro bono program. Currently we have 5 attorneys who will provide pro bono services on a one-per-month and rotating basis.” Likewise, another respondent from a rural midwestern community said that only one of the forty attorneys her organization contacted was willing to commit to represent even one woman a year on a pro bono basis. Finally, a respondent from an urban midwestern county

45. Overall, 27.3% of the survey respondents indicated that many petitioners appear with attorneys, while 31.4% reported that many respondents appear with attorneys. These figures increase when matters such as child custody or support are at issue. In such cases, 35.2% indicated that petitioners appear with counsel, and 44.8% said that respondents appear with counsel. Id. at I, 16.
46. Id. at II, 49.
47. Id. at I, 2.
said that her organization "has actively pursued this idea with the local bar association for ten years with no success."

A woman whose income level qualifies her for free legal assistance might pursue that alternative to obtain representation in a protective order hearing. But many legal assistance offices are too understaffed to provide much assistance. For example, one respondent from an urban midwestern community reported that her organization referred 367 women to the local Legal Aid office during the past year; only eighteen of those women were helped. Likewise, another domestic violence organization in a rural southern county requests Legal Aid's help with protective orders only in cases where the respondent has an attorney or the woman is seeking a divorce or custody of the children. Even with these limits, the Legal Aid office in that area is "[so] busy . . . that there are no lawyers available." Finally, a respondent from an urban northeastern community reported waiting lists for pro bono and Legal Aid lawyers.48

Before taking steps to alleviate these problems by increasing the availability of attorneys, it is critical to consider the impact of introducing more lawyers into the protective order process. Unfortunately, the survey results do not clearly resolve this issue. Some respondents thought that representation by counsel was a significant benefit for battered women, while others suggested that the presence of lawyers was problematic.

On the one hand, almost one-half (46%) of the respondents indicated that battered women in their county do not get what they need in an order of protection unless they have the assistance of counsel; 14.5% characterized this as a significant or very serious problem.49 In fact, in some communities, an attorney is a virtual necessity in order to obtain a protective order. In one rural midwestern community, for example:

You cannot get all forms of relief by filing one petition. For complete relief, you have to file for criminal and civil injunctions. Though victims are entitled to proceed pro se by statute, the process is so complicated that victims actually must have an attorney . . . . Victims are not emotionally or financially prepared following assault crimes to follow through with these complicated procedures.

Similarly, another respondent reported that the court in her urban western county actually discourages proceeding pro se because the system is so complex that a woman needs an attorney.

In other communities, the system is theoretically conducive to pro se petitions, but women represented by counsel obtain much better results. One respondent from a rural southern county reported that women without

48. For similar findings, see Finn & Colson, supra note 2, at 24.
49. Survey, supra note 21, at II, 48. For similar findings, see Finn & Colson, supra note 2, at 19.
attorneys wait about ten days for an emergency order, while private attorneys can obtain an order immediately. Likewise, the judge in one urban midwestern community "denies requests for anything other than protection against abuse [e.g., for custody or possession of the residence] unless an attorney draws up the order." Another judge in a similar community "will not issue protective orders to married women without a lawyer." As one respondent concluded, "[The] system works well for clients who have an attorney, but it is almost non-existent for one who has no attorney." 50

Some respondents suggested that battered women have a special need for an attorney when their husbands are represented by counsel. As one respondent from an urban southern county explained, "When defendants have an attorney, the plaintiff suffers a tremendous disadvantage and the case is often dismissed." Similarly, another respondent described several cases where women proceeding pro se became confused by the presence of counsel representing their husbands. 51

Although these reports suggest that additional assistance from the bar would improve the accessibility of the protective order remedy, other responses to the survey question the advisability of introducing more lawyers into the system. First, the presence of attorneys may create additional delays rather than simplify the process. One respondent from an urban midwestern community reported, "I wish we didn't need an attorney. [They] slow[ ] the process significantly [because] all of our attorneys do pro bono work and we are not their priority. I could get an order in one day without an attorney. With one, [the process] takes a week." Similarly, a respondent from a rural western county reported that for the few women in her town who can afford private counsel, "The waiting period for action can be up to six months or more." Second, more than three-fourths (76.6%) of the respondents indicated that attorneys in their county are unwilling to work with petitioners or are difficult to work with, and 43.7% described this as a significant or very serious problem. 52

Interviews with women seeking protective orders in Champaign County provide additional corroboration for these findings. Approximately one-fifth of those women were represented by counsel; of those, only forty-four percent were satisfied with their attorneys' performance. Thirty percent were dissatisfied, and the remaining twenty-six percent were

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50. An almost identical comment was made by a respondent from a rural midwestern county: "Procedures work well if an attorney is involved; however, very little is available for unrepresented victims."
51. For similar findings, see Finn & Colson, supra note 2, at 19.
52. Survey, supra note 21, at II, 50.
ambivalent. In addition, more than one-third (36%) thought that their attorney’s presence made absolutely no difference in the outcome of the hearing.53

Specifically, a significant percentage of the women interviewed expressed dissatisfaction because their attorneys tried to take charge of the case, either by making decisions about the order (38%) or by trying to discourage them from obtaining a plenary order (25%). In some cases, the women thought that their attorneys did not ask for the remedies they wanted or were willing to negotiate them away—to use the protective order as a bargaining chip by sacrificing their safety in return for a financial remedy they were entitled to anyway. In other cases, women felt that they were forced to agree to unfavorable settlements regarding custody and other issues.54

There are a number of possible explanations for these reports. Perhaps the attorneys were unwilling to take the time necessary to find out precisely what their clients wanted or were acting out of a paternalistic sense of benevolence.55 Alternatively, the clients might have been too intimidated to talk frankly with the lawyers. Whatever the explanation, these findings suggest that the simple presence of attorneys may not improve the protective order system.

Whether or not attorneys are used to represent women seeking orders of protection, however, it is clear that many of the current systems are not as “user-friendly” as they should be, or as the reform statutes intended them to be. Many battered women are unaware of the protective order remedy, and those who are familiar with it often lack the legal knowledge or assistance necessary to obtain an order. In many cases, the simplified forms are still too complex for the average petitioner to complete, court clerks are unhelpful or even a hindrance, and advocates are not available in the numbers needed to meet demands. Finally, hiring a lawyer is expensive and may actually hinder the process.

53. See Fischer, supra note 16, at 75.
54. See id.
55. This possibility does not seem far-fetched given the concerns expressed by others that attorneys may not always have the same interests as their clients because of financial and other factors. See Judith Resnik, Tiers, 57 S. CAL. L. REV. 837, 1008 (1984) (observing that “[r]esource constraints on the public side and market incentives on the private side result in the divergence of attorneys’ and clients’ interests at discrete and identifiable points” in criminal cases); Louis M. Seidman, Factual Guilt and the Burger Court: An Examination of Continuity and Change in Criminal Procedure, 80 COLUM. L. REV. 436, 467-68 (1980) (explaining how the interests of a defendant and her attorney may diverge in criminal cases); Jeffrey M. Smith & Thomas B. Metzloff, The Attorney as Advocate: “Arguing the Law,” 16 GA. L. REV. 841, 842-43 (1982) (expressing the concern that appellate counsel may prefer to “educate the judge or the attorney for the other side in what the law ought to be” instead of attempting to win the client’s case).
B. Logistical Problems

A battered woman may find the protective order remedy inaccessible because (1) the courthouse where she must go to obtain the order is inconveniently located, (2) the courthouse is not open at the times when she is most in need of assistance, or (3) she has difficulty taking time off from work and finding babysitters for court proceedings that are unpredictable in length. The survey results indicate that these logistical problems are quite serious in many communities.

First, in terms of location, more than two-thirds (67.9%) of the respondents reported that women need to travel significant distances in order to obtain protective orders; almost one-third (30.5%) considered this a significant or very serious problem.\textsuperscript{56} As one respondent from the West reported, "The biggest access problem is the sheer enormity of our county. We are a rural, farming community whose county seat and only courthouse is a two-hour drive from the most outlying communities." Another respondent from the West explained, "One family court handles domestic violence, and it is far from many small rural cities. Many victims do not have the means to travel."

Second, in terms of timing, most abuse takes place during evenings or weekends,\textsuperscript{57} and battered women therefore need access to the courts on a twenty-four-hour basis in order to obtain emergency orders. Some women may not be able to secure temporary housing at a shelter or with family or friends while they wait for the courthouse to open.\textsuperscript{58} Even when a safe place is available, there is no reason why the victim should be the one forced from the home in the middle of the night—either packing up her children as well or leaving them with her violent partner—rather than the alleged perpetrator of the abuse. Ideally, a battered woman should know that she can call the police any time of the day or night and that they

\textsuperscript{56} Survey, supra note 21, at II, 9.


\textsuperscript{58} See U.S. COMM’N ON CIVIL RIGHTS, supra note I1, at 19, 77, 81-82; see also S. REP. No. 545, supra note 3, at 37, 39 (describing shortage of shelters and citing one study's finding that as many as half of all homeless women and children are fleeing domestic violence); Maria Henson, To Have and to Harm: Kentucky’s Failure to Protect Women from the Men Who Beat Them, LEXINGTON HERALD-LEADER, July 1992 (special reprint), at 5 (reporting that there are about 1,200 shelters for abused women in the U.S. compared to approximately 3,200 dog pounds). But cf. Mary Durkin, Domestic Violence in West Virginia: A Study of the Court Response 40, 47 (1991) (unpublished manuscript, on file with the authors) (finding that although some counties are two hours away from the nearest shelter, the filing rate for orders of protection in West Virginia is not affected by "the presence or absence of a shelter or other support facility or the actual distance from such a facility").
will respond promptly, arrest the accused, and obtain an emergency order for her over the telephone.\textsuperscript{59}

If this assistance is not available during the hours when domestic violence typically occurs, battered women's lives are placed in further jeopardy. Overall, more than three-fifths (63\%) of the respondents thought that judges' unavailability during certain hours increased victim risk; 17.7\% characterized this as a significant or very serious problem.\textsuperscript{60} As one respondent from an urban western community explained, closing the courts at night "causes the victim to stay in the presence of the abuser until morning when she can seek assistance."

Despite the critical need for after-hours assistance, less than one-fourth (22.8\%) of the respondents indicated that judges are available twenty-four hours a day to grant orders of protection. Moreover, 60.5\% reported that judges are unavailable during the lunch hour, and 23.8\% indicated that the clerk's office is closed at lunch.\textsuperscript{61} In fact, one respondent indicated that the judges in her urban midwestern community are only available from nine o'clock to eleven o'clock in the morning and then again from one o'clock to three o'clock in the afternoon: "The judges' hours are a barrier for working women," she said.\textsuperscript{62} Another respondent noted that judges in her rural midwestern community rotate among a number of counties. Therefore, if the judge is not in town, "we must go to the county he's in in order to get the initial order signed." Even more disturbing, a respondent from a rural southern county reported that judicial relief is often completely unavailable: "[I]f the . . . judge is out of town (which he frequently is), no one signs orders ex parte."

Even in jurisdictions where protective orders are purportedly available twenty-four hours a day, the reality may be quite different. For example, one respondent from an urban midwestern county said that orders "can be obtained theoretically, but to my knowledge it hasn't been done" after business hours. Overall, more than one-fifth (21.3\%) of the respondents

\textsuperscript{59} Alternatively, there might be less need to issue emergency orders after business hours if the police would respond to a woman's call for assistance, arrest the alleged abuser, and keep him in jail overnight until she has an opportunity to obtain an order the next morning. Unfortunately, however, the police often refuse to arrest. See infra notes 249-61 and accompanying text. Even when they do so, the accused is often released from custody immediately. See ATTORNEY GENERAL'S TASK FORCE, supra note 57, at 105; U.S. COMM'N ON CIVIL RIGHTS, supra note 11, at 42.

\textsuperscript{60} Survey, supra note 21, at II, 16. Somewhat fewer respondents reported that judges are available so infrequently or at such inconvenient times that filing for an order becomes impracticable: 36.3\% indicated that this was a problem, and 9.2\% considered it a significant or very serious problem. Id. at II, 15; cf. Rural Justice Center, supra note 30, at 30 (finding that judicial availability increases the number of emergency orders sought and granted).

\textsuperscript{61} Survey, supra note 21, at I, 10(a)-(c).

\textsuperscript{62} Another respondent likewise reported that judges are available to grant protective orders for only one and a half to four hours a day in her urban western county.
indicated that, although judges are supposedly available any time of day, there is some reluctance to request assistance after hours. This reluctance may be quite understandable given the experience described by one respondent from a rural southern community: "It is still hard at times to get magistrates out on the weekend if a petition is needed. And most of the time when they (magistrates) do come [to the courthouse], they are upset[,] . . . and it shows in [their] attitude towards the petitioner." Several other respondents reported that judges simply will not grant protective orders after business hours even though the state’s domestic violence statute mandates that they do so.

The final logistical difficulty reported by the respondents was one of the most serious access problems identified by the survey—that women must take time off from work or find babysitters for lengthy and often unpredictable amounts of time in order to attend the emergency hearing. More than three-fourths (77.9%) of the respondents thought this was a problem, and almost two-fifths (39.1%) characterized it as a significant or very serious problem. The more inconvenient it becomes to schedule and obtain emergency orders, the less likely women are to consider them a realistic option.

C. Financial Problems

Despite encountering substantial access problems in the areas described above, battered women have had a reasonable amount of success overcoming the financial hurdles involved in obtaining orders of protection. In many jurisdictions, petitioners can obtain orders of protection without

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63. Survey, supra note 21, at I, 10(d). A respondent from an urban western county explained:

Law enforcement agencies need to be better trained in the [types] of emergency protective orders ([such as] telephone restraining orders) available when police respond to . . . domestic violence calls after regular court hours. Officers are not generally willing to take the time to fill out paperwork and notify the judge on call for a signature.

64. Although the Pearson correlation coefficients reported in connection with our regression analyses suggest that statutes making emergency orders available 24 hours a day do not significantly reduce access problems (or relief or enforcement problems), see App. C, Tables 3-5, the absence of a correlation may be due to the fact that in practice emergency orders are not available after business hours. Alternatively, requiring judges to consider emergency orders after hours may exacerbate other related problems, such as negative attitudes and insensitive behavior on the part of judges, thus accounting for the lack of any systematic relationship between judges' availability and the extent to which problems arise in the protective order process.

65. For discussion of the related problem of court delays in issuing emergency orders, see infra text accompanying notes 93-97.

paying any filing or service fee. Those statutes that do impose fees almost uniformly provide waivers to indigent petitioners.

The survey results indicate that judges in most counties grant fee waivers in appropriate cases. Nevertheless, 13.7% of the respondents reported that judges sometimes refuse fee waivers even in cases where the petitioner has little income and cannot afford the filing fee; 4.1% characterized this as a significant or very serious problem. In addition, several respondents indicated that judges are unwilling to grant any fee waivers at all, even for petitioners who receive public assistance.

Although these problems are apparently somewhat isolated, one significant problem that does remain in this area is that court clerks do not always inform petitioners that fee waivers are available. Almost two-fifths (39.7%) of the respondents indicated that this was a problem, and almost one-fifth (19.5%) characterized it as a significant or very serious problem. As one respondent from a rural southern county reported, "[O]ften petitioners are not informed that fees can be waived by court clerks; rather they are told[,] 'It will cost $50.00 to file for a protective order.'" Even more disturbing, another respondent from a similar community said:

Clerks sometimes try to discourage petitioners from filing orders of protection, especially if the petitioner is requesting a fee waiver. At one time the clerk's office was even requiring the petitioner to bring a witness with her to court to verify her situation . . . before the fee waiver could be considered.

Even if these problems are overcome and fees are waived for all eligible women, orders of protection do not necessarily become affordable

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67. See FINN & COLSON, supra note 2, at 19-21 (listing six states that expressly prohibit filing fees and 19 others whose statutes do not explicitly provide for filing fees). Approximately 44% of the respondents reported that fees are not required for orders of protection. Survey, supra note 21, at I, 7(h).

68. FINN & COLSON, supra note 2, at 19 (noting that Hawaii is the only exception).

69. Survey, supra note 21, at II, 11 (reporting that 86.3% of the respondents indicated that denial of fee waivers to indigent petitioners was not a problem).

70. Id. Eighty-nine of the 120 respondents who provided the relevant data indicated that 100% of fee waiver requests were granted in their counties in 1991. The figures for the remaining 31 ranged from 0% to 99.68%, with an overall mean of 95.4% for all 120 responses. Id. at III, 4-5. Specifically, four of those 31 respondents reported that fewer than half of all fee waiver requests had been granted, two put the figure between 50% and 75%, four said between 75.01% and 90%, five said between 90.01% and 95%, and 16 said more than 95%.

Given that so many of the respondents failed to supply statistical information about fee waiver requests, however, these figures may be less representative of the entire sample than the other findings.

71. Id. at II, 10; see also Rural Justice Center, supra note 30, at 22, 32 (reporting that 70% of court clerks admit that they do not routinely inform women about fee waivers and concluding that failing to tell a petitioner about the availability of a fee waiver is tantamount to denying the waiver).
for women with minimal resources. As one respondent from an urban midwestern community noted:

The most common accessibility problem seems to be not for those women with fewest economic resources, because they can easily file to have costs waived, but [for] those who have some economic resources, [e.g.,] part time or minimum wage jobs. . . . Our judge is inconsistent at best in waiving costs in those situations but may defer or delay costs upon his discretion. I hear of more people not filing due to these circumstances than others.

D. Recommendations

Although the domestic violence reform statutes intended that battered women could use the courts for protection, the protective order remedy is currently inaccessible for many women. Some women are not aware that the remedy exists, and others do not have the legal expertise or assistance needed to obtain relief. Logistical difficulties create additional barriers to access. Women may be required to travel significant distances to the courthouse, and judges typically do not issue protective orders during the hours when most abuse occurs. Most significant, the fact that women must spend a great deal of time away from their work and children to obtain an order of protection substantially reduces the chances that they will seek judicial relief. Finally, financial constraints may make protective orders inaccessible for women who are unaware of or ineligible for fee waivers.

Our recommendations for improving access to orders of protection fall into four categories: (1) further educate the public about the protective order remedy; (2) improve the sources of legal assistance available to battered women; (3) make emergency orders available after business hours and over the telephone; and (4) eliminate all fee requirements for orders of protection.

1. Educate the Public About Orders of Protection.—Additional steps need to be taken to inform the community about the availability of protective orders so that battered women will realize they are an option. If a woman is not aware that orders of protection are available or does not know how to secure an order, even an ideal system for obtaining and enforcing protective orders will be under-utilized.

2. Improve Sources of Legal Assistance for Petitioners.—Legal assistance needs to be made available to battered women seeking orders of protection.

Orders of Protection. There are at least four ways to accomplish this goal. First, pro se filing can be facilitated by further simplifying the so-called “simplified” forms. The forms should be written in terms understandable to a person with no legal training who is experiencing a very traumatic event.

Providing written materials that explain the procedures and requirements for obtaining an order of protection would further assist those who file for protective relief pro se. Only about one-third (35.7%) of the respondents reported that the court currently provides petitioners with written guidelines that describe the procedures for obtaining protective orders, and fewer than one-fourth (24%) indicated that the court offers written guidelines outlining the requirements for obtaining orders or fee waivers.73 Our statistical analyses suggest that communities that do provide such guidelines tend to experience significantly fewer access and relief problems.74

In drafting these guidelines, care should be taken to ensure that they are comprehensible, so as to avoid the situation described by one respondent from a rural western community: “Many times written guidelines are worse than the forms.” In addition, all forms and materials should be available in languages other than English in areas with a significant non-English-speaking population.

Providing simplified forms and guidelines, thereby ensuring that the protective order process is conducive to pro se filing, may have the independent advantage of empowering battered women.75 As one respondent from a rural southern community noted:

[B]eing able to fill the forms out, . . . file them with the clerk, and talk[] with the judges makes a difference for women because it empowers them . . . to complete the process. It may take a bit longer . . . but we have seen this help break the cycle [of violence].76

Second, court clerks should be required to help petitioners complete protective order petitions as part of their job.77 They should be given

73. Survey, supra note 21, at I, 5(a)-(b).
74. See App. C, Tables 3-4.
75. Empowering battered women has long been a goal of the domestic violence movement. E.g., SUSAN SCHECHTER, WOMEN AND MALE VIOLENCE 169 (1982).
76. For similar findings, see Gary Brown et al., Comment, Starting a TRO Project: Student Representation of Battered Women, 96 YALE L.J. 1985, 2019 (1987) (“[T]he importance of the TRO [temporary restraining order] process as an empowering experience cannot be overestimated. For many abused women, a TRO can be an important first step toward breaking out of a battering relationship.”). Cf. David A. Ford, Prosecution as a Victim Power Resource: A Note on Empowering Women in Violent Conjugal Relationships, 25 LAW & SOC’Y REV. 313 (1991) (arguing that battered women should have control of the decision whether to prosecute abusers); Fischer, supra note 16, at 69 (suggesting that a major function of protective orders is their symbolic meaning to the victim).
77. This reform will require legislation in those states where clerks are prohibited by statute.
training and written guidelines concerning the state’s domestic violence statute so that they do not misinform women about the requirements for obtaining orders of protection and do not unintentionally usurp the judge’s function by rating the merits of the petition. Clerks should also be educated about domestic violence so that they understand, for example, why battered women find it difficult to leave an abusive relationship and why they may therefore drop their first request for protective relief only to return later to seek a second order. Refresher courses should be offered periodically. Additionally, court personnel should be instructed to provide special assistance to petitioners who are not literate or do not speak English. Finally, notices should be posted in conspicuous places in the courthouse informing potential petitioners of the services provided by the clerk’s office.78

Third, any battered woman who needs help filing for protective relief should have access to an advocate. Although advocates are already offering assistance in many communities, the demand for their time is high, and women in some areas may not be able to obtain this valuable service. Increasing funding for domestic violence organizations to enable them to hire additional legal advocates would help solve this problem.79

Finally, pro bono programs operated by local bar associations or law schools can help provide legal assistance to petitioners. In New Mexico, for example, the Young Lawyers Division on Assistance to Victims of Domestic Violence has set up a toll-free telephone number that battered women can call to receive legal assistance with orders of protection. Similarly, Yale Law School has established a student-run legal assistance program to help battered women obtain protective orders.80 In any such program, providing attorneys to women whose abusers are represented by counsel should be the first priority. Given our inconclusive findings about the effects of involving lawyers in the process, however, caution should be exercised before dramatically increasing the role attorneys play in a protective order system.81 In any event, those who participate in such

from providing such services. See supra note 35 and accompanying text; cf. State v. Errington, 310 N.W.2d 681 (Minn. 1981) (upholding a statutory requirement that court clerks help petitioners complete the forms necessary to obtain a protective order and rejecting claims that the provision involved court employees in the unauthorized practice of law).


79. See S. Rep. No. 197, supra note 72, at 55-56 (recommending federal grants to “boost[] resources for victim services programs”).

80. See Brown et al., supra note 76 (describing the program and its results). Recently, Duke Law School used the Yale model to start the Battered Women’s Law Project, which currently involves 90 law students from Duke, the University of North Carolina, and North Carolina Central assisting the shelter in Orange County, North Carolina.

81. See supra note 49 and accompanying text.
pro bono programs should be given special training regarding the dynamics of domestic violence.

3. Make Emergency Orders Available After Business Hours and Over the Telephone.—Judges should be available to grant emergency orders of protection twenty-four hours a day.82 Currently, twenty-three domestic violence reform statutes authorize the issuance of emergency orders during non-business hours, but some jurisdictions have not established procedures to put those provisions into effect.83 Similar legislation should be passed in the remaining states and should be implemented in all areas that have not yet done so.84

In addition, emergency orders should be available by telephone. Statutes in several states now authorize the issuance of short-term emergency orders of protection that can be obtained over the phone when the courthouse is closed.85 In these states, a police officer who responds to a battered woman’s request for assistance calls the judge for the short-term order; the woman then has several days to go to the courthouse to obtain a regular emergency order before the short-term order expires.86

Making emergency orders available twenty-four hours a day and over the phone would obviously alleviate the problem of judicial inaccessibility during non-business hours. It would also minimize access problems in areas where petitioners must travel long distances to reach the courthouse. In addition, issuing orders by phone during non-business hours rather than at the courthouse may not have an adverse effect on judicial attitudes and behavior because telephone orders require less of a judge’s time and effort.87

82. See ATTORNEY GENERAL'S TASK FORCE, supra note 57, at 40 (making the same recommendation).

83. FINN & COLSON, supra note 2, at 29.

84. Even in the absence of specific legislation mandating 24-hour access, motivated judges can open their courtrooms to issue emergency orders around the clock. See, e.g., Henson, supra note 58, at 8 (noting that Chief Justice Robert F. Stephens of the Kentucky Supreme Court publicly urged all state judges to make protective orders available 24 hours a day).


86. By contrast, the 24-hour system in place in Vermont is not quite so accessible. In that state, a court employee is on call and can be reached via a toll-free number during non-business hours. But after the petitioner speaks to the court employee over the telephone, she must go to the police station and the court employee calls the judge from there to obtain an emergency order. Rural Justice Center, supra note 30, at 30.

87. If judges or magistrates are available during non-business hours to issue warrants or hold bond hearings, it makes sense to give those individuals responsibility for issuing emergency orders of protection as well.
4. Eliminate Fees for Orders of Protection.—Fee requirements should be abolished for all petitioners. Eliminating fees would ensure that no victim of domestic violence is prevented from seeking protection because of financial constraints and would also symbolize society’s commitment to ending domestic abuse. Many states have already taken this step; the remaining jurisdictions should follow that lead.

II. Issuance and Scope of Orders of Protection: Are Judges Granting Orders Promptly in Appropriate Cases, and Are They Awarding the Full Range of Remedies?

Even if battered women gain access to the courts, the survey respondents indicated that the judges responsible for issuing protective orders also erect significant hurdles that prevent many women from securing the protection intended by the domestic violence reform statutes. In explaining this finding, we analyze separately the judicial record in issuing emergency orders and plenary orders and then discuss judicial behavior and attitudes toward battered women.

Initially, however, we note that minority and low-income women tend to find it more difficult to secure relief through the protective order process. As we found with access problems, more than one-third (35.5%) of the respondents reported that women of color have more difficulty obtaining what they need through an order of protection; almost one-tenth (9.4%) described this as a significant or very serious problem. Likewise, more than half (52.9%) of the respondents indicated that women with the fewest economic resources have more difficulty obtaining what they need. Almost one-fourth (24.6%) characterized this as a significant or very serious problem.

Again, the most serious problems confronted non-English-speaking women. Almost three-fourths (72.3%) of the respondents reported that non-English-speaking women have more difficulty obtaining what they need, and almost two-fifths (38.4%) considered this a significant or very serious problem.

88. See supra note 67 and accompanying text.
89. Any concern that abolishing fee requirements may encourage frivolous requests for protective relief reflects the same distrust of women’s credibility that has proven unfounded in rape and sexual harassment cases. See infra note 102. Moreover, there have been no reports of an increase in the incidence of frivolous protective order petitions in those states that have already eliminated fee requirements.
90. Survey, supra note 21, at II, 44.
91. Id. at II, 45. Several respondents, however, thought that women of color and indigent women may obtain orders of protection more easily—perhaps because myths about domestic violence influence judges to believe charges of abuse more readily when directed against minority and low-income men.
serious problem. For example, one respondent reported that her urban western county does not provide translators even to non-English-speaking women with low incomes, so that "if a domestic violence victim can't find someone to translate for her the whole process is almost impossible."

A. Emergency Orders

In order to effectively safeguard battered women, judges must issue emergency orders promptly in all appropriate cases and must include all appropriate remedies in those orders. Accordingly, our evaluation of the judicial record in issuing emergency orders focuses on three potential problem areas: delay in the issuance of the order, denial of the order altogether, and denial of certain remedies in the order.

1. Delay in Issuance of Emergency Orders.—Delays in issuing an emergency order can put a battered woman at considerable risk, especially if the abuser discovers that she has filed for protective relief. In fact, the most dangerous time for a battered woman is when she tries to leave her violent partner. Of course, the woman might be killed even if she has obtained a protective order. Unfortunately, such cases are not uncommon. But it is also possible that an order of protection, especially one issued in a system with adequate enforcement, will save her life.

Although almost one-half (45.2%) of the respondents reported that judges issue emergency orders within an hour after a petition is filed, almost one-fifth (19.6%) indicated that the process typically takes at least twenty-four hours. Moreover, more than one-third (37.6%) thought that petitioners must wait too long to obtain an emergency order and that the delay increases victim risk; 11% characterized this as a significant or very serious problem.

92. Id. at II, 46.
93. FINN & COLSON, supra note 2, at 2, 10; Martha R. Mahoney, Legal Images of Battered Women: Redefining the Issue of Separation, 90 MICH. L. REV. 1, 64-65 (1991); Rural Justice Center, supra note 30, at 24.
94. See, e.g., Flynn McRoberts & Teresa Wiltz, Slain Wife Had the Law Behind Her, CHI. TRIB., Mar. 19, 1992, § 1, at 1 (describing murder of Connie Chaney, whose husband shot her at her suburban Chicago office even though she had obtained a protective order against him); Don Terry, Stabbing Death at Door of Justice Sends Alert on Domestic Violence, N.Y. TIMES, Mar. 17, 1992, at A1 (describing murder of Shirley Lowery, who had obtained an emergency order the week before her death and was stabbed by her boyfriend in a Milwaukee courthouse when she arrived for the plenary hearing).
95. Survey, supra note 21, at I, 12.
96. Id. at II, 14. In addition, the Pearson correlation coefficients reported in connection with our regression analyses suggest that counties where emergency orders are issued within an hour have not only significantly fewer relief problems, but also significantly fewer access and enforcement
In a number of counties, both rural and urban, judges are not always available to grant emergency orders, and petitioners may therefore have to wait hours or even days to obtain emergency relief. For example, as noted above, one respondent from a rural southern community indicated that women without private counsel must wait approximately ten days for emergency orders. Another respondent from an urban western community said that emergency order hearings can be difficult to schedule: “Currently one might have to call numerous times to reach the person responsible for scheduling the hearings—she’s usually in court or away from her desk and messages don’t seem to get passed on to her.” Such delays substantially diminish the benefits of obtaining protective relief.

2. **Denial of Emergency Orders.**—In many jurisdictions, judges issue emergency orders of protection in virtually all cases. One respondent indicated, for example, that no emergency order had been denied in her rural southern county during the past ten years. Another respondent from a similar community said, “[I]n 5 years we have never been turned down on an ex parte... order.” Overall, ninety-four of the 168 (56%) survey respondents who supplied the relevant data indicated that all of the emergency order petitions filed in their county in 1991 were granted. In the seventy-four jurisdictions where some emergency orders were denied, the percentage of orders granted varied from 14.3% to 99.5%, with an overall mean of 94.7% for all 168 respondents.

Despite this high overall issuance rate, emergency orders are seldom granted in some jurisdictions. For example, one respondent from the Midwest observed that “[s]ome counties do not recognize the [domestic violence] law—they ‘don’t have’ ex partes.” Another respondent replied, “We have two judges in our [rural western] county and one judge refuses to even hear ex partes. He generally has an excuse of some sort.” A respondent from a rural northeastern community reported, “We have never obtained an ex parte order of protection... in this county; all petitions are scheduled on the court calendar for hearing at a date two weeks or more in the future.”

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97. See supra text accompanying note 50.
98. Survey, supra note 21, at III, 2-3. Specifically, five of the 74 respondents working in areas where some emergency orders were denied reported that fewer than half of all emergency order petitions had been granted, six put the figure between 50% and 75%, 15 said between 75.01% and 90%, 19 said between 90.01% and 95%, and 29 said more than 95%.

Given that so many of the respondents failed to supply the necessary statistical information about emergency order petitions, however, these figures may be less representative of the entire sample than the other findings.

99. See also Henson, supra note 58, at 4 (quoting one Kentucky judge as saying that he “refuse[s] to sign those things [emergency orders]”).
Such variations in the issuance rate for emergency orders are not found solely among localities that are very distant and very different from each other. In fact, several respondents commented on the disparities that characterize the process for obtaining emergency orders in their own community. For example, one respondent indicated that the judges in her urban western county grant all requests for emergency orders, whereas in a neighboring county, "a battered woman has less than a 25% chance of having her motion granted." A respondent from a rural midwestern community likewise reported:

We can take in two protective order petitions which are exactly alike and have the same income, and the judge will grant the protective order and fee waiver for one and deny both for the other. He is extremely inconsistent on his requirements. He will sometimes grant a protective order in a very mild case of abuse . . . and refuse one where there is severe abuse.

Because domestic violence is a widespread problem in all regions, and among all racial and socio-economic groups, there appears to be no justification for these inconsistencies—a conclusion that seems all the more obvious given the disparities found at even a very localized level. Moreover, domestic abuse in general is one of the most underreported crimes in this country, and there is no reason to suspect that false charges are a substantial problem. Emergency orders should therefore be granted whenever a petitioner makes a credible claim that ex parte relief is appropriate because notifying the abuser of her intent to obtain an order of protection is likely to be dangerous for her. In such cases, the risk of harm to the petitioner outweighs the order's temporary impact on the abuser.

100. S. REP. No. 545, supra note 3, at 37; ATTORNEY GENERAL'S TASK FORCE, supra note 57, at 2.
101. S. REP. No. 197, supra note 72, at 38; ATTORNEY GENERAL'S TASK FORCE, supra note 57, at 82; U.S. COMM'N ON CIVIL RIGHTS, supra note 11, at 1.
102. See, e.g., Report of the New York Task Force on Women in the Courts, 15 FORDHAM URB. L.J. 11, 39-40 (1986-87) (rejecting the notion that women seek protective orders as a litigation tactic for divorce). The specter of false charges has been raised and refuted on other occasions when legal reforms designed to reduce violence against women have been proposed. See, e.g., Karla Fischer, Note, Defining the Boundaries of Admissible Expert Psychological Testimony on Rape Trauma Syndrome, 1989 U. ILL. L. REV. 691, 696-700 (criticizing the fear of false charges reflected in the rape laws); cf. Nancy S. Ehrenreich, Pluralist Myths and Powerless Men: The Ideology of Reasonableness in Sexual Harassment Law, 99 YALE L.J. 1177, 1207-08 (1990) (comparing myths about sexual harassment to the fear of false rape charges and the "general distrust of women").
103. Most protective order statutes limit ex parte relief to cases involving some type of emergency, such as an "immediate and present danger" of domestic violence, a "substantial likelihood of immediate danger," or a likelihood of "irreparable injury." FINN & COLSON, supra note 2, at 14.
104. See id. (reporting that emergency orders typically last only between 10 and 20 days
Overall, more than two-fifths (43.2%) of the respondents indicated that judges’ unwillingness to accept that abuse was serious enough to justify issuing ex parte relief was a problem in their community; 14.6% characterized it as a significant or very serious problem. Specifically, one respondent reported that a judge in her rural western county “made a statement in public stating that he had not seen a ‘legitimate case of domestic violence go through his court.’” Another respondent described the judges in her urban western community as “more concerned with protecting the rights of the abuser rather than the safety of the petitioner.” Finally, a third indicated that emergency orders are “difficult to obtain” in her rural southern community “because [judges think that] most petitioners can stay in shelters and [be] safe.”

The respondents’ narratives describing specific cases in which emergency orders were denied because the judge did not think the abuse was sufficiently serious contained a number of common themes. First, while each of the domestic violence reform statutes authorizes emergency relief in cases involving physical abuse, some judges deny emergency orders unless the woman can produce physical evidence of the assault. As one respondent from an urban northeastern county commented, “Some judges need to see visible signs of abuse, [such as] bruises.” Another respondent reported that emergency orders are denied in her rural midwestern community if there are “no [physical] signs of abuse—even if several days have passed” since the violence. In effect, these judges are considering only certain forms of evidence and are refusing to credit the victim’s testimony.

Second, some judges deny emergency relief in cases of clear physical abuse because they do not deem the violence serious enough. For example, one respondent reported that some judges in her urban northeastern county “split[] hairs like ‘was his fist opened or closed?’” She continued, “Most women don’t know—their eyes are closed—but it somehow makes a difference [to the court].” Another respondent from the Northeast said that emergency orders are denied in her county unless the abuse was “life threatening.”

Third, some judges do not consider non-physical abuse or threats of physical abuse an adequate basis for an emergency order—even though the

because of the accelerated procedures for hearings in domestic violence cases); see also id. at 41 (noting that in most states abusers can request a hearing more quickly if the emergency order awards the petitioner sole possession of the residence).

105. Survey, supra note 21, at II, 33.
106. For a discussion of the respondent’s rights, see infra text accompanying notes 132-39.
107. See FINN & COLSON, supra note 2, at 10-11.
108. The evidentiary burdens placed on domestic violence victims in such cases are reminiscent of the special rules the courts imposed in rape cases. E.g., Fischer, supra note 102, at 695-96.
state's domestic violence statute authorizes protective relief in such cases. With respect to threats of violence, one respondent noted that the judges in her rural western county "feel that threats of shooting or stabbing aren't enough, even if past experience shows a violent pattern." Likewise, a respondent from the Northeast complained that the judge "narrowly interprets the law—a raised fist isn't a threat unless [the abuser also] says 'I'm going to kill you.'" With respect to non-physical abuse, one respondent said that the judges in her rural southern community "do not believe emotional or verbal abuse is abuse; 'when did he last hit you?' is a common question." Another respondent reported that the judges in her urban northeastern county had a similar attitude because they do not "understand the cycle of violence or escalation pattern."


The respondents quoted in this paragraph are all describing situations in which judges refused orders of protection even though the relevant state statute authorized protective relief in cases of threats or non-physical abuse.

110. For similar results, see Durkin, supra note 58, at 39 (finding that 47% of the West Virginia magistrates surveyed questioned the statutory rule providing that the threat of violence is an adequate basis for issuing a protective order); Rural Justice Center, supra note 30, at 24 (noting that judges often discount very real danger posed by pre-battering threats).

Refusing to issue protective orders in cases involving threats of abuse in effect requires victims of domestic violence to experience a further beating before obtaining legal relief and thus denies them the ability to avoid violence they can anticipate. E.g., Lenore E. Walker, The Battered Woman 55-59 (1979).

111. Although many states do not authorize protective relief in cases involving only non-physical abuse, see supra note 109, such abuse—verbal abuse, harassment, sexual abuse, and psychological abuse—often escalates into physical abuse. See, e.g., Walker, supra note 110, at xiv-xv, 59. In addition, non-physical abuse is quite injurious in and of itself. In fact, some women have described psychological degradation and humiliation as the most painful abuse they have experienced. See, e.g., id. at 172 ("Despite having suffered severe physical injuries, most of the women interviewed in this sample reported that verbal humiliation was the worst kind of battering they had experienced."); Diane R. Follingstedt et al., The Role of Emotional Abuse in Physically Abusive Relationships, 5 J. FAM. VIOLENCE 107, 114 (1990) (reporting that 72% of those sampled indicated that emotional abuse had a more severe impact on them than physical abuse).

In addition, research on the psychological impact of rape suggests that sexual abuse adversely affects the victim's mental health, causing depression, anxiety, suicidal ideation, and a loss of self-esteem. These effects are particularly likely when the woman knows the assailant. See Bonnie L. Katz, The Psychological Impact of Stranger Versus Nonstranger Rape on Victims' Recovery, in ACQUAINTANCE RAPE: THE HIDDEN CRIME 251 (Andrea Parrot & Laurie Bochhofer eds., 1991); Mary Koss et al., Stranger and Acquaintance Rape: Are There Differences in the Victim's Experience?, 12 PSYCHOL. WOMEN Q. 1 (1988). Thus, protective orders should be available in all cases of sexual abuse, as well as in cases involving other forms of non-physical abuse, at least where the abuse creates fear of physical harm. Cf. Lucke v. Lucke, 300 N.W.2d 231, 234 (N.D. 1980) (interpreting state statute to include "all forms of abuse, including mental harm").
In addition to refusing emergency relief because the abuse is not considered serious enough, some judges deny emergency orders on the basis of informal rules that are not contemplated by the statute. Almost three-fifths (59.6%) of the respondents reported that judges in their county rely on such informal rules, and almost two-fifths (19.2%) characterized these rules as a significant or very serious problem.  

Specifically, we found that judges commonly follow an informal practice of denying emergency orders to women who delay in filing for relief or who dropped a prior order. For example, one respondent from an urban northeastern county indicated that a battered woman who waits more than two days to file her petition may be denied an emergency order because the "judges feel she is not in danger." The judges in that county also tend to refuse emergency relief to a woman who failed to pursue a prior order of protection on the theory that "if she dropped it [once], she'll do it again and [thus] is wasting the court's time." Another respondent from a similar community reported that a woman who has dropped a prior petition may be denied an emergency order "even if years have elapsed and even if it is a different abuser."  

These informal rules not only circumvent the intent of the protective order statutes, but they also unfairly penalize battered women who are otherwise entitled to protection. First, there are many reasons why a woman might wait to seek relief: she might be undergoing treatment for injuries caused by the violence; the abuser might be in jail and therefore pose no immediate threat to her; she might be unaware of the availability of protective orders; she might not be psychologically ready to take what she sees as the dramatic step of obtaining a court order against her partner; she might be busy securing alternative shelter for herself and her children; she might wait until she gets a day off from work; or she might be too afraid to go to court to seek relief. Whatever the explanation for the delay, it has nothing to do with the danger the woman is likely to face once the abuser discovers she has gone to court to file for an order of protection. It is often the woman's decision to seek a protective order that puts her at greatest risk, and her need for protection while she waits for the plenary hearing is completely unrelated to the amount of time that has elapsed since the most recent abusive incident.

112. Survey, supra note 21, at II, 34.
113. For similar findings, see FINN & COLSON, supra note 2, at 11, 28 (noting that judges are reluctant to grant orders when petitioner delayed or dropped a prior order); Durkin, supra note 58, at 38-39 (finding that a majority of West Virginia magistrates consider petitioners "unworthy" if they dropped a prior petition).
114. The survey results suggest that this is a widespread problem. See supra notes 24-25 and accompanying text.
115. See supra note 93 and accompanying text.
Second, the petitioner's persistence in pursuing an earlier protective order has little to do with the likelihood that she will be injured if the abuser is notified of her intent to obtain an order of protection at a later date. In addition, there are a number of reasons why a woman might have dropped a previous order of protection. She might have done so in the face of further threats or violence on the part of the abuser, or because she believed his promises to reform. Almost all (95.2%) of the respondents indicated that some petitioners fail to appear for the plenary hearing because they believe the abuser's promises to change or leave them alone, and almost two-thirds (65.7%) characterized this as a significant or very serious problem.116 In fact, this was one of the most serious relief problems identified by the respondents. In addition, almost nine-tenths (88.8%) of the respondents reported that some petitioners do not appear for the plenary hearing because the abuser threatens to retaliate if the woman obtains an order of protection; almost two-fifths (38.3%) considered this a significant or very serious problem.117 Again, it was one of the most serious relief problems reported by the respondents.

There are other reasons why a battered woman might have dropped a prior request for an order of protection.118 She might have been discouraged by the court's refusal to issue the relief she sought in her emergency order.119 In addition, research has shown that battered women often do not make a clean break from an abusive relationship the first time they try; many make several attempts before they ultimately decide to leave.120 Thus, women who have dropped prior petitions and later return to court to obtain an order of protection are not necessarily abusing the process or filing frivolous claims. In fact, the results of research in Champaign County indicate that women who dropped prior

116. Survey, supra note 21, at II, 56. This finding is consistent with the description of domestic abuse as a cycle of violence. According to this theory, a violent episode is followed by a period of calm, during which the abuser is extremely contrite and seeks the woman's forgiveness for his abusive behavior; he claims to love her and promises not to subject her to further violence. E.g., WALKER, supra note 110, at 65-70.

117. Survey, supra note 21, at II, 55; see also Fischer, supra note 16, at 76 (finding that all of the women interviewed in Champaign County who were physically assaulted by their abuser after receiving an emergency order ultimately dropped their petitions).

118. More than one-third (34.2%) of the respondents, for instance, indicated that some petitioners fail to appear for the plenary hearing because they do not realize that they need to do so in order to obtain an order of protection; 4.9% considered this a significant or very serious problem. Survey, supra note 21, at II, 54.

119. See infra text accompanying note 141.

120. See, e.g., FINN & COLSON, supra note 2, at 29 ("[A] judge noted that, just as most cigarette smokers attempt to quit many times before they finally succeed for good, many victims of abuse make several unsuccessful attempts to try to stop the battering by themselves—or to leave the situation—before they are emotionally and economically able to seek legal protection."); WALKER, supra note 110, at 66-69.
petitions are significantly more likely to extend their emergency orders than are other petitioners.\textsuperscript{121}

Other respondents described various other informal rules judges use to deny emergency orders. For instance, one respondent from an urban southern county and another from an urban midwestern county each reported that judges refuse to issue emergency orders if there is no police report, even though police reports are not required by law.\textsuperscript{122} Another respondent from a rural southern community said that emergency orders are denied in cases involving the first incident of abuse\textsuperscript{123} or simply because the judge "feels [the petitioner] will go back" to the abuser.

Finally, a number of respondents indicated that informal rules regarding the nature of the petitioner's relationship with the abuser may dictate the court's response to her request for protective relief.\textsuperscript{124} For example, one respondent reported that the judge in her rural southern county "flat out refused to sign an ex-parte or even read it because the petitioner and respondent weren't married." On the other hand, a respondent from an urban western community commented, "If this is a marriage of long standing, one judge will set the petition for a hearing rather than issue the emergency [order]." Several respondents noted that the judges in their communities (an urban northeastern county and an urban southern community) would not grant emergency orders if the couple was in the process of obtaining a divorce. And finally, completing the circle, one respondent indicated that the judge in her rural midwestern community "told a woman she was not eligible [for ex parte protection] because she was divorced."

These reports starkly illustrate the inconsistencies found in the courts' treatment of emergency order petitions in some jurisdictions. Although the issuance rate for emergency orders is quite high in many communities, in others the purposes of the domestic violence statutes are being undermined by the judiciary's unwillingness to issue emergency relief in appropriate cases.

3. Denial of Particular Remedies in Emergency Orders.—Almost three-fourths (71.1\%) of the respondents reported that judges in their counties deny individual remedies in some emergency orders, thereby

\textsuperscript{121} See Fischer, supra note 16, at 38.
\textsuperscript{122} Cf. infra note 330 (noting that police often fail to file reports in domestic violence cases even when required to do so).
\textsuperscript{123} But cf. Fischer, supra note 16, at 36 (finding that women with no prior history of physical abuse are more likely to pursue protective order petitions than are others).
\textsuperscript{124} The respondents quoted in this paragraph are all describing situations in which judges refused orders of protection even though the petitioner was eligible for relief under the relevant state statute.
limiting the orders’ effectiveness; more than one-third (34.7%) thought that this was a significant or very serious problem.\textsuperscript{125} The two most common problems identified in this area were, first, that judges deny petitioners possession of the residence, and, second, that they grant the alleged abuser unrestricted visitation.\textsuperscript{126} As one respondent from a rural northeastern county explained, the judges “feel that the women should be satisfied with just being safe and [that] these other items can be taken care of in a divorce.”

Despite this sentiment, every domestic violence reform statute authorizes the court to award possession of the residence in an emergency order.\textsuperscript{127} They do so in an effort to fully protect the petitioner. Granting her possession of the residence is crucial because “family violence is not easily reversed and may escalate with continued access, [and] safety concerns dictate that the offender not be permitted to continue to live with the victim.”\textsuperscript{128} Although the couple could be separated by insisting that the woman find alternate living arrangements, “[r]equiring offenders to vacate provides an additional deterrence to criminal behavior, whereas requiring victims to do so would discourage them from seeking needed protection (and possibly reward the offender for his crime).”\textsuperscript{129} Given that most state statutes allow the alleged offender to request a hearing to contest the eviction within a few days,\textsuperscript{130} the balance of hardships favors awarding possession of the residence to a woman who has demonstrated that she is in danger of abuse.

Nevertheless, this remedy is denied in numerous cases. For example, one respondent noted that in her rural northeastern community, “[M]ost victims have children and want to remain in their homes, but over 70% are told to go somewhere else even if they are married.” Another respondent from a rural western county described a case where the judge permitted the alleged abuser to “spend nights in the home from 7:00 p.m. to 7:00 a.m. because [the man] said he had no place to go at night.” Similarly, a respondent from a rural southwestern county reported:

The judge was reluctant to remove Spanish-speaking offenders from the home since they did not speak English, did not have a place to live, and . . . it would be difficult for them to function without their English

\textsuperscript{125} Survey, \textit{supra} note 21, at II, 35.
\textsuperscript{126} Approximately 40 respondents commented specifically on the court’s refusal to grant petitioners possession of the residence, about 25 on unrestricted visitation.
\textsuperscript{127} \textsc{Finn} \& \textsc{Colson}, \textit{supra} note 2, at 33.
\textsuperscript{128} \textit{Id.} (referring to the remedy authorizing exclusive possession of the residence as “perhaps the key provision of protective order statutes”).
\textsuperscript{129} \textit{Id.} at 41 (reporting that “almost all of the judges interviewed agreed that the prevention of criminal violence is better served” by this alternative).
\textsuperscript{130} \textit{Id.}
speaking spouses. Trying to get [the judge] to understand that it would not be a problem if they were not batterers fell on deaf ears.\textsuperscript{131}

In some cases, this reluctance to award the petitioner possession of the residence seems to be based on the judge's belief that ex parte orders evicting alleged abusers raise due process concerns.\textsuperscript{132} As one respondent from a rural northeastern community reported, "One judge . . . believes 'the man's rights are always violated'" when he is evicted from his home as part of an ex parte order.\textsuperscript{133} Nevertheless, domestic violence statutes that authorize ex parte relief "fit[] in with a long history in American civil law of issuing temporary restraining orders as a means of preventing immediate and irreparable harm."\textsuperscript{134} Whenever there is a substantial risk of immediate and irreparable harm, the courts have traditionally rejected due process challenges to ex parte deprivations taken as an interim measure before a full-fledged hearing can be held.\textsuperscript{135} Here, too, the abuser's due process rights must be balanced against the risk to the victim. When notice to the respondent is likely to subject a battered woman to further violence, immediate and irreparable harm can be prevented only if the abuser is restrained from approaching both the home and the petitioner. As several courts have recognized, this temporary eviction fully comports with the law governing temporary restraining orders.\textsuperscript{136}

In addition to authorizing the court to award possession of the residence, most statutes allow emergency orders to include a temporary

\textsuperscript{131} For similar findings, see id. at 33 (finding that judges are reluctant to award possession of residence in emergency orders).

\textsuperscript{132} Because orders of protection are civil matters, concerns about the presumption of innocence and the rights of criminal defendants are not implicated.

\textsuperscript{133} For similar findings, see Durkin, \textit{supra} note 58, at 54 (reporting that many judges claim that eviction of the abuser violates individual rights).

\textsuperscript{134} FINN \& COLSON, \textit{supra} note 2, at 33.


\textsuperscript{136} See State \textit{ex rel.} Williams v. Marsh, 626 S.W.2d 223, 232 (Mo. 1982) (en banc) (rejecting due process challenge to statute that authorized ex parte orders to award custody and possession of the residence); Marquette v. Marquette, 686 P.2d 990, 995-96 (Okla. Ct. App. 1984) (finding that an ex parte order did not violate the appellant's due process rights even though it effectively denied visitation); \textit{cf.} Blazel v. Bradley, 698 F. Supp. 756 (W.D. Wis. 1988) (rejecting facial challenge to protective order statute, but finding order entered there unconstitutional because petition failed to allege risk of immediate harm).

A number of respondents also listed various other explanations judges have offered in refusing to grant women possession of the residence: "there are shelters available" to the petitioner; the judge "operates from the 'man's home is his castle' perspective"; the judge is "not going to throw a man out in the streets"; the apartment "belongs to him; the protective order says not to hurt and that should do"; and the "judges want to make sure that if a 'kick out' is granted . . . the abuser has another place to live that does not cause him financial hardship."
resolutions of custody issues.\textsuperscript{137} Awarding the petitioner temporary custody of the children and limiting the alleged abuser’s visitation rights is crucial because “[j]udges and victims alike agree that nowhere is the potential for renewed violence greater than during visitation.”\textsuperscript{138} Although a father obviously has a legitimate interest in maintaining contact with his children, his rights lose force when awarding him custody or unrestricted visitation is likely to pose a danger to the woman or the children.\textsuperscript{139}

Nevertheless, judges sometimes refuse to resolve temporary custody issues at the emergency hearing or to limit the abuser’s visitation rights. For example, one respondent noted that the judge in her urban northeastern community “feels that visitation has nothing to do with domestic violence.” Another respondent from an urban western county concluded, “Judges often feel the abuser’s right to visitation overrides the petitioner’s right to be free of abuse.” Some respondents indicated that judges are even stingy with custody orders when the welfare of the children is at issue. In one urban northeastern county, “[J]udges feel that the respondent has every right to see the children even if there has been physical and emotional harm to them.” Another respondent reported that the judge in her rural midwestern county “grants the abuser visitation rights even though he has threatened to kidnap or kill the children.”

A number of respondents described the adverse consequences that result when the woman is required to have continued contact with her abusive partner because the court insists on granting him unrestricted visitation rights. One respondent from an urban western county observed, “Many of our clients have trouble about visitation; the abusers often use the children as a way of continuing to control the woman.” Another respondent from a similar community reported that “the abuser uses the children to psychologically torment the petitioner.” A third pointed out that visitation allows the abuser to visit “ongoing harm and harassment on the petitioner and children.” Furthermore, our research in Champaign County indicates that contact with abusers may be psychologically harmful to women: we found that petitioners who had more contact with their abusers were more likely to experience depression and low self-esteem than other petitioners.\textsuperscript{140}

\textsuperscript{137} Finn & Colson, supra note 2, at 33.
\textsuperscript{138} Id. at 43.
\textsuperscript{139} Some states have expressly endorsed this point by enacting custody statutes that allow judges to consider a history of domestic violence in child custody proceedings, e.g., Md. Fam. Law Code Ann. § 9-101.1 (1991), or that create a rebuttable presumption that awarding custody or visitation to the abuser is not in the child’s best interest, e.g., N.D. Cent. Code § 14-05-22(3) (1991).
\textsuperscript{140} Fischer, supra note 16, at 107.
In some jurisdictions, judges are sensitive to these problems. One respondent from a rural western county reported that any disagreements about visitation typically arise when the judge wishes to deny visitation over the objection of the petitioner and respondent. In other communities, judges have crafted creative remedies that permit visitation while substantially minimizing the risk of further abuse. For example, one respondent noted that the judge in her rural northeastern county “does not like to separate a dad from his kids, [but] is very good in allowing the woman to demand and be granted supervised visitation.” Likewise, another respondent from an urban southern community reported that although “most judges strongly feel the abuser needs to have visitation with the children, we try to arrange a safe, neutral area—not the residence protected by [the order of protection].”

The judges who are not so sensitive to these and other issues—who delay the issuance of emergency orders, deny the orders altogether, or refuse to include certain remedies—not only place women at risk, but also affect their willingness to pursue a plenary order. Our experience in Champaign indicates that women who were denied an emergency order, a fee waiver, or the specific remedies they requested were much less likely to return to court to extend their orders than women who were granted the relief they felt they needed. By denying relief, the court sends a message that the legal system does not support the victim’s right to be free from violence.

B. Plenary Orders

Similar concerns arise in evaluating the procedures for issuing plenary orders, and we therefore examine the same three issues discussed above in connection with emergency orders: delay in issuing the order, denial of the order altogether, and denial of certain remedies in the order. Our findings suggest that the judicial track record here is similar, although slightly better in certain respects when compared to the emergency order process.

1. Delay in Issuance of Plenary Orders.—More than one-half (54.8%) of the respondents described the docket for plenary hearings as crowded—that is, a number of hearings are set for the same time. The number of hearings scheduled at one time varied tremendously, ranging from one to seventy-five, with a mean of 13.1.

141. See id. at 36-37, 46.
142. See id. at 40 (noting that denial of relief suggests to petitioners that “the abuse they have suffered is trivial compared to real victims”).
143. Survey, supra note 21, at I, 14(b).
The respondents' general assessment of the courts' promptness in issuing plenary orders was only slightly more positive than their assessment of the emergency order process. Almost one-third (32.5%) thought the docket is so crowded that the wait discourages battered women from seeking plenary orders; almost one-tenth (9.4%) characterized this as a significant or very serious problem. For example, one respondent from an urban western county described the procedure for obtaining plenary orders as "a long process." "The hearing calendar is usually lengthy so a petitioner may spend all afternoon at court," she explained. Another respondent from an urban northeastern community said that petitioners have a "long wait" on their day in court because all cases are set for a nine o'clock docket call.

In some cases, petitioners may have to wait on more than one occasion to obtain a plenary order, which only exacerbates the problems associated with arranging to be at the courthouse. In one rural southern county, for example,

[i]f respondents do not appear for the second order hearing sometimes the order is extended but only for a period of 10 days. The petitioner is required to return to court sometimes several times—this seems to be designed to "wear down" the petitioner and actually seems to favor the respondent, even in cases where the respondent continually fails to appear for scheduled hearings.

Likewise, nineteen percent of the women we interviewed in Champaign County were required to attend more than one plenary hearing (and some as many as five), either because the emergency order was not served in time for the plenary hearing or because the abuser requested an attorney and asked that the case be continued.

These delays are likely to discourage a woman from pursuing protective relief, not only by making it more inconvenient to obtain, but also by giving the respondent access to her while she waits in the courthouse for the hearing to begin. During this time, he can harass her, try to convince her to drop the order, or even subject her to additional abuse.

2. Denial of Plenary Orders.—In many jurisdictions, plenary orders are granted in virtually all cases. Many respondents who reported that all petitions for emergency relief are routinely granted in their counties said the same about plenary orders. But other respondents described

144. Id. at II, 22.
145. See Fischer, supra note 16, at 77, Table 12.
146. See supra note 94.
147. See supra text accompanying note 98. Overall, 69 of the 134 respondents who supplied
jurisdictions where protective orders are almost never issued. One respondent from a rural midwestern community reported that there simply are no orders of protection in one of the counties in which she works: "The prosecutor won't assist and the judges won't grant [them]." Another respondent from the Northeast concluded, you "have to be about dead" to get an order of protection in one of the counties in which she works. These disparities are no more justifiable than those we discovered in the emergency order process.148

Just as disparities in issuance rates can be found at both the emergency order and the plenary order stage, the survey results indicate that plenary orders, like emergency orders, are denied because the judge is unwilling to accept that the abuse or violence occurred. Approximately two-fifths (40.3%) of the respondents reported that this was a problem at the plenary stage, and 8.6% characterized it as a significant or very serious problem.149 These figures are comparable to, though slightly better than, the responses we received to a similar question concerning emergency orders.150

The respondents' descriptions of the reasons why courts deny plenary orders were very similar to those discussed above in connection with emergency orders.151 First, some judges impose unrealistic standards of proof in cases involving physical abuse. For example, one respondent reported that the courts in her rural northeastern county have refused to grant protective orders where there is "[n]ot enough documentation and/or evidence that abuse or violence has occurred (e.g., pictures, hospital bills, bruises etc.)." Another respondent from a rural southern community indicated that protective orders have been denied because the petitioner did not have "specific dates or medical records" or "lack[ed] physical evidence." Again, these judges appear to be willing to consider only

the relevant data indicated that 100% of plenary order petitions filed in their county in 1991 were granted; the figures for the remaining 65 ranged from 0% to 99.4%, with an overall mean of 93.8% for all 134 responses. Survey, supra note 21, at III, 6-7. Specifically, five of the 65 respondents working in areas where some orders were denied reported that fewer than half of all plenary order petitions had been granted, eight put the figure between 50% and 75%, 16 said between 75.01% and 90%, 14 said between 90.01% and 95%, and 22 said more than 95%.

Again, these figures may be less representative of the entire sample than our other findings because so many of the respondents failed to supply statistical information about plenary order petitions.

148. See supra notes 100-04 and accompanying text. In fact, there is even less reason to deny a plenary order because the heightened standard that might be appropriate at the emergency order stage, see supra note 103 and accompanying text, has no place when the hearing is not an ex parte proceeding and the abuser has an opportunity to attend and contest issuance of the order.

149. Survey, supra note 21, at II, 36.

150. See supra note 105 and accompanying text.

151. See supra notes 107-11 and accompanying text.
certain forms of evidence, thereby imposing a stricter standard of proof than is applied in other cases.

Second, some judges are reluctant to accept threats of physical abuse or non-physical abuse as serious enough to justify an order of protection, even though the statute authorizes relief in such cases. As one respondent from an urban southern county said, "Judges are reluctant to grant an order of protection just on a threat; many times the petitioner knows there will be violence and seeks an order of protection to prevent it and the system is not responsive." Another respondent from a similar community provided an even more egregious example: "[O]ne judge here told [a] victim that her husband was not raping her when he forced sex on her; [the judge] told her it was part of [the] marital contract." Finally, a respondent from an urban western community commented, "The judges don’t seem to believe in mental or psychological abuse and are reluctant to give an order without seeing any physical disorder such as abrasions [or] contusions."

In addition to relying on reasoning similar to that used in denying emergency orders, judges find insufficient evidence of abuse and therefore deny plenary orders on several other grounds as well. First, some plenary orders are denied because the judge focuses only on the specific incident that led the petitioner to seek the order and refuses to consider the violent history of the relationship between the parties. For example, one respondent from the Northeast said that the judge in her community "doesn’t see domestic violence as a problem, but as a fight between two people . . . . The judge focuses only on the most recent event which may, in isolation, not be especially abusive under the law but in its entirety [within the context of the relationship] points clearly to power and control, domination, and abuse." Likewise, another respondent reported that one of the judges in her urban midwestern county "refuses to listen to the pattern or history of abuse and makes decisions based on the one incident which may have caused a woman to obtain an order." Given that the domestic violence statutes broadly authorize relief to women who have suffered abuse, there is no justification for such a narrow focus.

Second, other respondents reported that battered women encounter some difficulty obtaining plenary orders in contested cases. For example, one respondent indicated that one of the judges in her urban midwestern community "will not sign an order if it is contested. He requires an

152. The respondents quoted in this paragraph are all describing situations in which judges refused orders of protection even though the relevant state statute authorized protective relief in cases of threats or non-physical abuse.

153. A respondent from a rural northeastern county likewise reported, "[O]rders have been denied because of lack of evidence and because the judge felt that a raised fist did not constitute abuse under the guidelines of the law."
unbiased witness to the abuse, which, of course, is a rarity." Likewise, another respondent from an urban northeastern county observed, "The standard ... is ... a preponderance of the evidence. When each side has only one witness, the petitioner and the respondent, the judge must test credibility. Some judges find this difficult and are unwilling to continue the order unless the respondent makes an admission."¹⁵⁴ This logic seems somewhat odd given that judges are required to make credibility determinations in contested cases on a regular basis;¹⁵⁵ there is no reason why they cannot question both parties and then make a judgment based on all the evidence in domestic violence cases as well.

Plenary orders, like emergency orders, are also denied based on informal rules that are not specified in the statute. Although the courts' use of these informal rules does not seem quite as widespread as it is at the emergency order stage, more than two-fifths (42.3%) of the respondents reported that the judges in their county deny some plenary orders based on informal rules, and one-tenth considered this a significant or very serious problem.¹⁵⁶ The informal rules mentioned most often were the same ones judges rely on most frequently in denying emergency orders—the petitioner's delay in filing for protective relief or her failure to pursue an order on some prior occasion.¹⁵⁷

In other cases, judges do not deny plenary orders altogether, but issue mutual orders, giving each the petitioner and the respondent a protective order against the other. Mutual orders of protection should be granted only when each party files a petition for protective relief and proves that the other engaged in abusive behavior. Issuing mutual orders in other cases sends the message that the abuser is not accountable for his violence.

¹⁵⁴. At least in Champaign County, few plenary hearings involve evidence other than the testimony of the parties. See Fischer, supra note 16, at 74 (finding that such evidence was presented in only six percent of the hearings, and on each occasion was presented by the petitioner).
¹⁵⁶. Survey, supra note 21, at II, 37.
¹⁵⁷. For example, one respondent from an urban western community reported that "[t]he judges think if the petitioner has waited then it must not be a serious problem." Likewise, another respondent from a rural northeastern county commented, "Judges still do not understand that a woman may be fearful even after . . . abuse occurring several weeks before." A third respondent said that the courts in her rural midwestern community have denied protective orders on the theory that the petitioner "is not serious about wanting one because she dropped the last one."

In addition, approximately one-tenth (10.6%) of the respondents reported that the courts will not issue even a basic order of protection enjoining further violence if the petitioner wishes to try living with the abuser again. Survey, supra note 21, at I, 18(b). Despite this judicial policy, the protective order statutes recognize that a woman's desire to continue a relationship does not mean that she wants the abuse to continue or that she is free from danger. Thus, the statutes do not require a woman to leave a relationship in order to obtain relief. See Finn & Colson, supra note 2, at 7-10 (noting that even the most restrictive statutes provide relief to women who are currently living with abusive spouses).
In addition, it further victimizes and stigmatizes the woman by suggesting that she is somehow responsible for the violence or is abusive herself.\footnote{158} As one study concluded, “Only ignorance of the dynamics of an abusive relationship could explain ‘mutual orders of protection.’”\footnote{159}

Nevertheless, mutual orders are quite common in some jurisdictions. Almost three-fifths (58.6\%) of the respondents indicated that judges tend to grant mutual orders in inappropriate cases; more than one-fifth (21.1\%) considered this a significant or very serious problem.\footnote{160} For example, one respondent from an urban midwestern community reported, “We have a problem with some judges only granting mutual restraining orders in many contested cases. This forces the survivor to accept restrictions in order to get protection.” Similarly, a respondent from an urban midwestern community noted, “Sometimes dual restraining orders are granted even though the person who is the respondent has not filed properly. . . . [I]t is quite victim blaming.” Another respondent from a rural western county said simply, “Our orders always pertain to both parties.” Several respondents even indicated that judges continue to grant mutual orders in inappropriate cases though expressly prohibited from doing so by the state’s domestic violence statute.\footnote{161}

Finally, some judges are unwilling to grant plenary orders for the maximum duration specified by the statute; instead, they grant the orders for some shorter period of time. For example, one respondent from a rural western county reported that the “[c]ourt is very reluctant to grant one year orders because it is skeptical that the petitioner will stay away from the respondent for a year.”\footnote{162} Another respondent from an urban northeastern community noted that the judge in one county in which she works grants orders for weeks or months instead of one year. Finally, a

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\footnote{158} In addition, mutual orders are often less enforceable because the police are “uncertain how to proceed when there is a mutual protection order” and “may be misled as to which party actually has a history of battering”; as a result, the police often choose to do nothing or arrest both parties. \textit{Finn & Colson}, supra note 2, at 47; see also Report of the New York Task Force on Women in the Courts, supra note 102, at 38-39.

\footnote{159} Rural Justice Center, supra note 30, at 25; see also Report of the New York Task Force on Women in the Courts, supra note 102, at 39 (“The domestic-violence victim with a mutual order of protection is in a worse position than if she had no order.”).

\footnote{160} Survey, supra note 21, at II, 41. For similar findings, see Report of the New York Task Force on Women in the Courts, supra note 102, at 38 (“Nearly two-thirds of male (sixty-five percent) and female (sixty-six percent) survey respondents reported that judges ‘often’ or ‘sometimes’ issue mutual orders even though respondents have not filed petitions.”).

\footnote{161} One judge in Kentucky takes mutual orders to an even further extreme: he orders the couple to socialize together—to attend church services or football games or go out drinking together. Henson, supra note 58, at 6.

\footnote{162} What the petitioner may or may not do while the order is in force should not be the issue because the protective order applies only to the respondent’s actions. See infra notes 255-61 and accompanying text.
third respondent reported that the court in her urban northeastern community typically grants plenary orders for twenty days rather than the thirty days allowed under the state statute, despite the fact that even the thirty-day maximum is "too short."

One possible explanation for some of the problems facing battered women who seek orders of protection is that judges may not credit a woman's testimony if she becomes emotional or confused in court. More than one-half (51.8%) of the respondents reported that the judge in their county tends to disbelieve women in such cases; 15.4% characterized this as a significant or very serious problem.163 A woman who decides to obtain a court order against her abusive partner—especially a woman with no legal training—is likely to find the experience traumatic and therefore can be expected to become emotional or confused. In fact, more than one-half (57.2%) of the respondents said that the courthouse environment is so intimidating that it is difficult for petitioners to explain what they need or to describe their experiences; almost one-fifth (19.4%) considered this a significant or very serious problem.164

Apparently, however, some judges do not understand this and instead interpret emotion or confusion as a sign that the petition lacks substance. One respondent from a rural western county explained, "The judge expects the petitioner to have 'her ducks in a row' and is not tolerant of the confusion and low self-esteem typical of the battered woman. She must know and be able to say what she needs and why she needs it in a clear manner." A second respondent from an urban southern county noted, "[S]ometimes the judges don't understand why the petitioner may not speak up during a hearing, [or why] she is not clear or is vague with wording; thus, the judge takes the position that abuse did not occur." Likewise, another respondent reported that plenary orders have been denied in her rural western county because petitioners were "not able to speak up for themselves due to nerves." Finally, a respondent from an urban midwestern community described a particularly sad case where a mentally handicapped woman was denied a protective order "because she was unable to remember a previous hearing."

The judiciary's tendency to discredit battered women's testimony may explain some of the difficulties women encounter when they attempt to obtain plenary orders: outright denial of the orders, inappropriate use of mutual orders, and issuance of plenary orders for less than the maximum duration. In refusing to issue complete relief in such cases, judges deny

163. Survey, supra note 21, at II, 42.
164. Id. at II, 20. In addition, a similar number (58.7%) of respondents reported that the intimidating courthouse environment prevents some women from seeking protective orders; 17.1% considered this a significant or very serious problem. Id. at II, 19.
battered women the protection they are entitled to receive from the domestic violence statutes.

3. **Denial of Particular Remedies in Plenary Orders.**—Limiting the remedies included in plenary orders is directly contrary to both the express language and the spirit of the domestic violence reform legislation. Most of the statutes envision that orders of protection will go beyond merely prohibiting further violence and will also determine custody and visitation issues and award possession of property and financial support. Although about one-half (51.9%) of the respondents indicated that the judge is always willing to consider granting each of the remedies requested by the petitioner, more than two-fifths (42.9%) said that the judge is typically unwilling to consider awarding certain remedies even though they are authorized by statute.

The particular remedies that are most often denied are requests for custody, child support, and other financial remedies, remedies that the legislatures wisely included in the domestic violence statutes. First, unless the order awards the petitioner custody of the children and limits the respondent’s visitation rights, the respondent may use his access to the children to subject the woman to additional violence or harassment. Moreover, a protective order without an award of custody is virtually useless to women who are unwilling to leave an abusive relationship unless they can take the children with them.

Nevertheless, 11.2% of the respondents indicated that the judges in their county will not consider awarding the woman custody of the children in an order of protection. As one respondent from a rural western county explained, “Some judges are reluctant to grant child custody, especially... if there is no abuse of the children.” Ultimately, she said, whether or not custody is awarded “[d]epends on which judge is hearing the petition.” Another respondent from an urban southern county

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165. See Finn & Colson, supra note 2, at 38-39 (reporting that 40 of the domestic violence reform statutes authorize an award of temporary custody, 27 allow temporary child support, 29 permit temporary spousal support, 14 authorize monetary compensation, and 24 allow compensation for the costs of obtaining the protective order (including attorney’s fees)).

166. We arrived at this figure by adding together all respondents who indicated that the judge in their county typically refused to consider granting at least one of the remedies listed in section I, question 18(b) of the survey. In answering this question, the respondents were instructed to indicate that the court was unwilling to grant a certain remedy only if that particular remedy was actually authorized by the state statute.

167. See supra text accompanying notes 138-40.

168. A number of researchers have noted that children tend to tie a woman to an abusive relationship. See, e.g., Del Martin, Battered Wives, 5, 73, 79-80, 85 (1976); Walker, supra note 110, at 149.

169. Survey, supra note 21, at I, 18(b).
commented, "Judges feel that child custody belongs with the divorce proceedings"; therefore, they "will not consider child custody issues in an injunction unless very extreme circumstances are involved, even though the state statute provides for it." Finally, one respondent reported that the judge in her rural southern community holds similar views, and she described the consequences as follows:

The [judge in these cases minimizes the dangerous nature of domestic violence and creates ambiguity in regard to issues that will keep the petitioner involved with the abuser. If child custody issues are not resolved the abuser still has rights to his children but no clearcut guidelines are set forth, so petitioners are forced into continually having contact with their abusers ([and] then they are accused of breaking the order of protection).

Second, unless child support and other financial remedies are included in an order of protection, the woman may have no choice but to continue living with the abuser in order to support herself and her children. Protective orders cannot simply shield women from further abuse; they must also provide them with the resources they need to survive on their own.

Nevertheless, almost three-fifths (58.6%) of the respondents reported that the judges in their county deny some economic remedies in plenary orders—for example, child support, maintenance or alimony, and compensation for losses suffered as a result of the abuse—thereby greatly reducing the petitioner's ability to provide financially for herself and her children. Almost one-third (30.5%) thought that the denial of such remedies was a significant or very serious problem. Specifically, more than one-fifth (22%) reported that the judge will not order the abuser to pay child support, and 16.1% said the judge will not award the petitioner possession of property.

In explaining this reluctance to award economic relief, one respondent from an urban northeastern county commented that judges do not feel they have authority to grant such remedies, even though they are plainly...

170. For example, in one case in Kentucky, a judge lectured the petitioner about her inadequacies as a mother rather than awarding child support. Two years later, she was still living with her abusive spouse. She sought a protective order from a different judge, who granted her child support, and she then divorced her husband within a month. Henson, supra note 58, at 5. See also JENNIFER B. FLEMING, STOPPING WIFE ABUSE: A GUIDE TO THE EMOTIONAL, PSYCHOLOGICAL, AND LEGAL IMPLICATIONS FOR THE ABUSED WOMAN AND THOSE HELPING HER 83-84 (1979) ("The husband invariably controls the family finances—usually with an iron hand. It is the rare victim who has more than a few dollars she can call her own."); MARTIN, supra note 168, at 83-84 (explaining why even battered women who have "a place to go . . . may not have the money to get there"); WALKER, supra note 110, at 127-44.

171. Survey, supra note 21, at II, 38.

172. Id. at I, 18(b).
provided for in the state's domestic violence statute. Another respondent said that the judges in her urban southern county “don’t want to deal with these problems at the hearing. They will deal with the violence only and tell victims to get a lawyer and settle [the rest] in divorce court.” Finally, a respondent from a rural southern county noted that judges refuse to award economic remedies because of “the attitude . . . that if the petitioner decides to leave she can provide for herself.”

Given the importance of custody and financial remedies, it should not be surprising that our experience in Champaign County indicates that women who requested more extensive relief in their emergency orders of protection were significantly more likely to follow through and seek plenary orders. In particular, the promise of both custody and child support seemed to provide a real incentive to extend an emergency order.173 Thus, the broader the remedies available in orders of protection, the more likely that a battered woman will seek judicial relief and that the protective order will serve her needs.174

C. Judicial Behavior and Attitudes

The survey results suggest that judges not only deny orders of protection and individual remedies in some cases, but also fail to give battered women and their petitions the consideration they deserve. First, they often treat petitioners in insensitive and disrespectful ways. Second, they do not seem to take protective order cases seriously and do not take steps to send the message that the abuser’s behavior is unacceptable. The humiliation and embarrassment caused by this behavior deters some women from seeking judicial relief.

With respect to the first problem, more than one-half (55.4%) of the respondents reported that the judges in their county express impatience and respond insensitively to women who become emotional or confused while testifying; 18.9% considered this a significant or very serious problem.175 Likewise, more than one-half (55.7%) indicated that the judge’s commentary during protective order hearings includes victim-

174. In addition, the Pearson correlation coefficients reported in connection with the regression analyses suggest that counties where judges routinely deny certain remedies have not only significantly more relief problems but also significantly more access and enforcement problems. See App. C, Tables 3-5.
175. Survey, supra note 21, at II, 43. In addition, judges tend to discredit the petitioner’s testimony in such cases. See supra notes 163-164 and accompanying text (explaining in addition why petitioners can be expected to become emotional or confused in court).
blaming statements, and 17.8% characterized this as a significant or very serious problem.\textsuperscript{176}

For example, one respondent described the judges in her rural western county as “sexist” and explained, “They refuse to try to understand domestic violence and often blame the victim. The judge who hears the majority of petitions ridicules, makes moral judgments and cites immaturity for the problem.” Another respondent characterized one of the judges in her rural northeastern county as “a macho-type . . . judge who makes the victim feel like the offender.” Finally, a third said that the “worst problem” in her rural southern community is “the embarrassing humiliation [tactics] some sexist magistrates use to ask questions at the hearing.”

This insensitive judicial behavior may be an even greater problem for women of color. For example, one respondent said that the judges in her rural southern county “often treat battered women in demeaning ways—giving them messages they don’t need. Women of color . . . are treated even worse. In addition to being ignorant about domestic violence, many court folks . . . are racist and arrogant.”

In addition to being generally insensitive and disrespectful, such behavior can also affect women’s willingness to pursue the protective order remedy. As one respondent from an urban midwestern community commented, the judges “shame the woman and scare her [into believing] that she is not going to get the order of protection. That prevents many women from going to the hearing.” Likewise, another respondent from a rural southern community noted, “Some petitioners don’t return for the second hearing because of the judge’s abusive behavior.”\textsuperscript{177}

With respect to the second problem, taking domestic violence seriously and communicating that fact to the parties can have an impact both on the petitioner, by emphasizing that the judicial system believes she “do[es] not have to tolerate assaultive behavior,”\textsuperscript{178} and on the respondent, by deterring future violence.\textsuperscript{179} Nevertheless, almost three-fifths (59.1%)....

\textsuperscript{176} Survey, supra note 21, at II, 52.

\textsuperscript{177} See also Rural Justice Center, supra note 30, at 29 (concluding that judges’ attitudes about domestic violence affect filing rates). Contra Durkin, supra note 58, at 46-47 (finding that magistrates’ attitudes did not affect filing rate in West Virginia).

\textsuperscript{178} FINN & COLSON, supra note 2, at 53.

\textsuperscript{179} See, e.g., ATTORNEY GENERAL’S TASK FORCE, supra note 57, at 36 (“Judges should not underestimate their ability to influence the defendant’s behavior. Even a stern admonition from the bench can help to deter the defendant from future violence.”); FINN & COLSON, supra note 2, at 53 (“Lectures from the bench, in particular, can be eye-opening to many batterers.”); GAIL A. GOOLKASIAN, U.S. DEP’T OF JUSTICE, CONFRONTING DOMESTIC VIOLENCE: A GUIDE FOR CRIMINAL JUSTICE AGENCIES 67-68 (1985) (recommending that judges make use of their status as “primary authority figures in our society . . . [to] take every opportunity to reinforce the message that battering is criminal behavior, and that the criminal justice system holds batterers accountable for the violence”); BARBARA E. SMITH, U.S. DEP’T OF JUSTICE, NON-STRANGER VIOLENCE: THE CRIMINAL COURT’S RESPONSE 96 (1983) (finding that “judicial warnings and/or lectures to
of the respondents reported that the judge’s behavior and commentary during the hearings fail to send the message that the judicial system supports the petitioner’s right to end the violence; more than one-fourth (26%) characterized this as a significant or very serious problem. Specifically, more than two-fifths (42.9%) of the respondents indicated that the judge does not routinely lecture the abuser about the inappropriateness and seriousness of his violent behavior. Almost one-third (32.7%) reported that the judge fails to tell the respondent that the protective order is an order of the court that the judge takes very seriously. And almost one-half (45.1%) reported that the judge does not inform the petitioner that she should report any violations of the order to the police.

As one respondent from a rural western county explained, “The judges offer very little [information], other than whether or not they will grant the petition, unless specifically asked.” Our “biggest problem,” she continued, is this “lethargy exhibited by the judges in our community, which adds insult and embarrassment to an already humiliating experience.” Another respondent from an urban northeastern community commented that judges “hate orders of protection and try to move those cases in and out of the courtroom as quickly as possible.” Finally, a respondent from an urban western county persuasively argued:

The courts need to recognize that these domestic violence restraining order cases, almost without exception brought by unrepresented and legally unsophisticated plaintiffs, deserve the court’s full attention. No case should be rushed through a five-minute so-called hearing. The judge should at least refer to the plaintiff’s allegations and comment on the seriousness of the acts alleged. But in reality, few judges ever read the plaintiff’s petition prior to the hearing and so are unfamiliar with the plight of the plaintiff. I sincerely feel it is judicial snobbery that treats these pro se cases like nuisance cases—to be dispatched quietly and quickly. This is morally wrong and hurtful to plaintiffs. Yes, the courts are extremely overburdened and understaffed. That reality, though, does not diminish the need for the full attention of the courts on domestic violence victims.

defendants concerning the inappropriateness and seriousness of their violent behavior apparently improved the future conduct of some defendants”).

In addition, the Pearson correlation coefficients reported in connection with our regression analyses suggest that counties in which judges take the protective order hearing seriously have not only significantly fewer relief problems, but also significantly fewer access and enforcement problems. See App. C, Tables 3-5.

180. Survey, supra note 21, at II, 51.
181. Id. at I, 17.
182. See also Fischer, supra note 16, at 25, 74 (finding that emergency order hearings in Champaign County typically lasted less than 15 minutes, most plenary hearings were shorter than five minutes, and the vast majority included no lecture or threat of imprisonment).
When judges exhibit impatience or disrespect toward battered women and their petitions, they send a clear message that the judicial system does not support the women's right to end the violence. In so doing, they act to undermine the objectives of the domestic violence reform statutes.

D. Recommendations

The survey results suggest that the issuance of protective orders is often delayed. In addition, judges in a substantial number of jurisdictions deny orders even though women are entitled to protection under the terms of the statute. Even more frequently, they refuse to grant battered women at least some of the remedies contemplated by the statute. Finally, disrespectful and insensitive behavior by judges discourages battered women from turning to the judicial process for relief.

Our recommendations for addressing these relief problems and improving the procedures for issuing orders of protection fall into six categories: (1) increasing the judicial resources allocated to domestic violence cases; (2) educating judges about the dynamics of domestic violence and the state's domestic violence statute; (3) holding protective order hearings in the judge's chambers; (4) facilitating appeals of unfavorable judicial decisions; (5) expanding the role of advocates in the judicial process; and (6) limiting the use of mutual orders of protection. In addition, we suggest a number of miscellaneous statutory reforms.

1. Increase the Judicial Resources Allocated to Domestic Violence Cases.—Crowded dockets and delays in issuing orders of protection discourage women from seeking protective relief and expose them to the risk of additional violence. Devoting more judicial resources to domestic violence cases should help minimize these problems.

2. Educate the Judges.—To some extent, the relief problems confronting battered women may be corrected by educating judges about both the state's domestic violence statute and the dynamics of domestic violence. Taking steps to improve judicial understanding of domestic violence and the parameters of the state's statute may reduce the number of cases in which judges deny protective orders altogether, refuse to include specific remedies, or engage in insensitive, victim-blaming treatment of the women appearing before them.183

183. In some communities, judicial training programs already exist. See, e.g., N.J. STAT. ANN. § 2C:25-20 (West Supp. 1992) (requiring development of a domestic violence training program); W. VA. CODE § 48-2A-13 (Supp. 1992) (mandating three hours of judicial training each year); FINN & COLSON, supra note 2, at 63 (describing programs implemented by chief
Approximately three-fifths (60.9%) of the respondents reported that the judges in their county deny some orders or some remedies due to a lack of knowledge or training about domestic violence; almost one-third (29.2%) characterized this as a significant or very serious problem.\textsuperscript{184} Even more surprising, about two-fifths (40.9%) believed that the judges in their county deny some orders or remedies due to a lack of knowledge or training about the domestic violence statute itself; 12.9% thought that this was a significant or very serious problem.\textsuperscript{185} As one respondent from an urban northeastern county commented, judges "need training badly [because] as a whole, they are the weakest link in the system."\textsuperscript{186}

Training might alleviate these problems, educating judges on issues such as

why it is hard for women to leave permanently, how a man who has beaten a woman can convince her that he's changed overnight, how to handle requests to drop the orders, how to handle repeated requests for protective orders by the same person, and why battered women are sometimes "nervous" wrecks in court while batterers are calm and collected.\textsuperscript{187}

Several respondents pointed to the benefits they had seen result from judicial training. One respondent from an urban northeastern county described the impact of a brief domestic violence training course recently conducted for the judges in her state: "Since the training I have noticed a greater effort on the judges' parts not to [victimize] and to explain the process in a more understandable way, as well as efforts to tell the defendant this is inappropriate behavior." Likewise, another respondent from a rural northeastern county reported, "More emotional abuse is being accepted [as the basis for protective relief] compared to one year ago. Our judges have had courses offered to them in domestic violence, [and] many have made themselves more aware of the issues."\textsuperscript{188}

\begin{itemize}
\item \textsuperscript{184} Survey, supra note 21, at II, 40; see, e.g., Durkin, supra note 58, at 29-30 (finding that 70% of West Virginia magistrates believed that their training regarding the dynamics of domestic violence was inadequate).
\item \textsuperscript{185} Survey, supra note 21, at II, 39.
\item \textsuperscript{186} For similar findings, see Durkin, supra note 58, at 53 ("[M]agistrates in general do not fully understand and accept the social and psychological dynamics of domestic violence. While they are apparently familiar with the concepts and endorse them as important considerations, they are somewhat intolerant of the actual behavior which is manifested."); Rural Justice Center, supra note 30, at 37 ("[J]udges without knowledge and understanding of domestic violence cannot have the capacity to justly decide abuse cases. Without comprehensive education, it is highly unlikely that a judicial decision maker will be able to discern life-threatening versus moderate levels of violence, to recognize common manipulative behaviors of abusers, to assess risks to young children, or to sentence abusers fairly.").\item \textsuperscript{187} Rural Justice Center, supra note 30, at 29-30; see S. Rep. No. 197, supra note 72, at 63 (recommending similar training).
\item \textsuperscript{188} For similar findings, see GOOLKASIAN, supra note 179, at 81 ("[A]ccording to battered
Others, however, said that efforts to educate judges had not been particularly successful. Some respondents noted that judges were often unwilling to participate in training programs. As one respondent from the Midwest reported, “Some [judges] have done education on their own and a selected few have been open to education from us, but overall, in this rural area, the judicial system is reluctant to learn about domestic violence from us.” Other respondents explained that judges resist training because “they already know it all” or because they “do not wish to visit with ‘special interest groups.’”

Conversely, some respondents indicated that the judges in their community had undergone training, but with no noticeable improvement in their treatment of battered women. For example, one respondent reported that the judge in her rural midwestern county has been trained, but still denies remedies in protective orders; “training is not the problem,” she concluded.

Judicial training programs might meet with less resistance if they were a collaborative effort involving both court personnel and domestic violence organizations and thus were legitimated in the eyes of the judges. In addition, refresher courses should be held periodically in order to maximize their effectiveness.

3. Hold Protective Order Hearings in Chambers.—Holding protective order hearings in an informal setting may alleviate some of the problems women encounter when they become emotional or confused while testifying and may also encourage more women to seek relief. Currently, however, the hearings are often formal courtroom proceedings. Although more than four-fifths (83.5%) of the respondents indicated that some judges will issue emergency orders without seeing the petitioner at all or after holding an informal hearing outside the courtroom, about one-third (32.2%) reported that some judges will sign an emergency order only after a courtroom hearing. Most of the formal proceedings occur in open court: only

women’s advocates, the attitudes of many judges have been ‘turned around’ completely as a result of efforts to educate them about domestic violence . . . ”); Rural Justice Center, supra note 30, at 27 (quoting a judge telling an abuser who had violated an order of protection, “‘Last week I would have let you go home. But I went to a domestic violence program on Friday and now I know better. You’re going to jail.’”).

189. Cf. Family Violence Training Law Ignored: ’89 Statute for Judges Not Implemented, Hous. Post, Sept. 19, 1992, at A23 (noting that a Texas statute requiring domestic violence training for judges has never been implemented because “details of how to accomplish the training were never spelled out”).

190. Such a collaborative effort might best be accomplished in connection with a coordinated response to domestic violence issues. For a discussion of the coordinated response approach, see infra notes 309-13 and accompanying text.

191. Survey, supra note 21, at I, 11. The responses to this question exceed 100% because in
5.9% of the respondents indicated that the judge refuses to permit observers in the courtroom during the hearing. The plenary hearing is even more likely to be a formal courtroom proceeding. Even if the abuser does not appear for that hearing, only about one-third (33.7%) of the respondents indicated that the judge will sign the order without seeing the petitioner or after an informal hearing outside the courtroom.

Moving protective order hearings to a less formal setting may have two advantages. First, women may find the protective order process less intimidating and therefore may be able to testify more clearly if not forced to do so during a formal hearing in open court. As a result, judges may be more inclined to credit their testimony and less likely to treat them in an impatient or insensitive manner.

Second, a less formal process might encourage more women to seek relief. About three-fourths (75.8%) of the respondents reported that the public nature of the procedures for obtaining orders of protection and the embarrassment of going to court prevent some women in their county from seeking protective relief; more than one-fifth (22.2%) considered this a significant or very serious problem. Moreover, our interviews in Champaign County suggested that women who were required to publicly describe the abuse they had experienced in order to obtain an emergency order were significantly less likely to return to court to obtain a plenary order.

Admittedly, a per se policy of holding all plenary hearings in chambers is likely to run afoul of the First Amendment right of public access to trials. The right of access is only a "qualified" one, however, that may be overcome by "an overriding interest based on findings that closure is essential to preserve higher values and is narrowly

some communities different judges have different practices.

192. Id.

193. Id. at I, 15.

194. Although an emergency order could probably be issued most quickly if the petitioner were not required to see a judge at all, allowing the woman to tell her story to a sensitive judge and having the court validate the seriousness of the abuse might serve as an important symbol of the judicial system's commitment to end domestic violence and might also have therapeutic value for the petitioner. See Fischer, supra note 16, at 13-14; cf. Finn & Colson, supra note 2, at 27-28 (summarizing the pros and cons of requiring the petitioner to see the judge before an emergency order is granted).


197. See, e.g., Press-Enterprise Co. v. Superior Court, 478 U.S. 1 (1986) [hereinafter Press-Enterprise II]; Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982). Although these cases discuss the right of access in the context of criminal proceedings, the federal courts have applied them to civil cases as well. See, e.g., Publicker Indus., Inc. v. Cohen, 733 F.2d 1059, 1066-71 (3rd Cir. 1984); In re Continental Illinois Sec. Litig., 732 F.2d 1302, 1308-09 (7th Cir. 1984).

tailored to serve that interest.” Just as protecting the victims of sex crimes from “the trauma and embarrassment of public scrutiny may justify closing certain aspects of a criminal proceeding,” allowing a battered woman to testify in chambers may be necessary to protect the woman or to fully elicit her testimony. Judges should therefore be required to make case-by-case determinations concerning the appropriateness of moving plenary hearings to less formal surroundings.

Holding emergency order hearings in chambers is much less likely to raise constitutional concerns. The qualified right of public access applies only when a certain proceeding has historically been open to the public and public access “plays a significant positive role in the functioning of the particular process in question.” Civil courts have traditionally had the authority to conduct business other than trials in chambers. Moreover, the emergency order is only intended to protect the petitioner temporarily, until a plenary hearing can be scheduled; denying the public access at this preliminary stage of the proceedings therefore does not seem particularly problematic.

4. Facilitate Appeals of Unfavorable Decisions.—Judicial oversight through the appellate process may help improve the courts’ record in issuing orders of protection. Encouraging battered women to appeal unfavorable rulings might provide a check on those judges who circumvent the state’s domestic violence statute by, for example, refusing orders in cases involving threats or non-physical abuse, enforcing informal rules, or denying remedies contemplated by the statute. The appellate process might also provide guidance to judges as to when orders of protection are appropriate and what remedies they ought to include.

Facilitating appeals by battered women requires, however, removing some barriers that hinder use of the appellate process today. Currently, it appears that very few protective order cases make their way to the appellate courts. Only 12.2% of the respondents indicated that both emergency and plenary orders can be appealed directly to the state court.

201. Cf. Globe Newspaper Co., 457 U.S. at 607-09 (striking down state statute that mandated closure of criminal sex offense trials during testimony of minor victims because trial courts were not required to find that closure was necessitated by a compelling governmental interest in each particular case).
204. Cf. Press-Enterprise II, 478 U.S. at 12 (coming to the contrary conclusion with respect to the preliminary hearing in criminal cases because the high incidence of guilty pleas often makes that hearing “the final and most important step in the criminal proceeding”).
of appeals, and even fewer remembered actual instances when orders had been appealed. In addition, the few appeals that are filed are more likely to involve the abuser challenging the issuance of the order than the petitioner appealing its denial.

These figures are not particularly surprising. The denial of an emergency order may be a nonappealable interlocutory decision. Although there should be no comparable legal bar to appealing the denial of a plenary order or the judge’s refusal to include certain remedies in that order, other factors make the appellate process unattractive. First, orders of protection last no longer than one year in most states, an appeal might still be pending at that time, and the petitioner might not see much benefit in ultimately being vindicated after the order would have expired anyway. Second, in many instances, no record is made of the rationale for the court’s ruling, making it difficult to challenge the decision on appeal. In Champaign, for example, the judge refuses to provide written, and sometimes even oral, reasons for his decisions, even though the Illinois statute explicitly requires a written explanation.

Third, women who cannot afford to hire an attorney to represent them at the protective order hearing presumably cannot afford to retain appellate counsel, and filing a pro se appeal is much more difficult than using the simplified forms to petition for an order of protection without counsel. As one respondent from a rural northeastern community reported,

205. Survey, supra note 21, at I, 22.

206. Id. (showing that with respect to plenary orders, only 4.7% of the surveys reported that petitioners had appealed, whereas 6.9% said that respondents had appealed; with respect to emergency orders, 4.1% indicated that petitioners had filed appeals, while 5.9% said that respondents had appealed).

207. In Coopers & Lybrand v. Livesay, 437 U.S. 463, 468 (1978), for example, the Supreme Court held that interlocutory appeals are permissible in the federal system only with respect to non-final orders that “conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and [are] effectively unreviewable on appeal from a final judgment.” The refusal to issue an emergency order conclusively denies the petitioner protection pending the plenary hearing, a decision that cannot be reviewed on appeal, and thus satisfies the first and third of these criteria. The second seems more problematic. In Mitchell v. Forsyth, 472 U.S. 511, 524-29 (1985), however, the Court allowed interlocutory appeals of orders denying defendants qualified immunity in § 1983 cases, even though the qualified immunity inquiry is “quite closely related” to the merits of the case. Id. at 545 (Brennan, J., concurring in part and dissenting in part).

208. See supra note 8.

209. More than one-third (37.7%) of the respondents indicated that the plenary hearing is not taped or recorded. In addition, more than four-fifths (81.8%) reported that judges do not issue written explanations describing their reasons for denying plenary orders or particular remedies in those orders, and almost one-fourth (22.8%) said that no oral explanations are given. Survey, supra note 21, at I, 15. The figures are even higher for emergency order hearings. Id. at I, 11.


211. See supra text accompanying notes 46-48.
“Victims rarely appeal due to cost and difficulty finding an attorney who will accept the case.”

Finally, if, as our experience suggests, women who are denied an emergency order tend to choose not to seek a plenary order, an unfavorable outcome at the plenary hearing is similarly likely to discourage women from pursuing an appeal. As one respondent from a rural southern community noted, “Women are very reluctant to appeal denials as they are intimidated by the judges who deny [the orders].”

Petitioners must be afforded legal assistance if they are to overcome these barriers and appeal unfavorable decisions. Perhaps, then, this is one area where lawyers and pro bono programs can be of the greatest help. In addition, the legislature could authorize an expedited appellate process to provide some additional incentive to appeal the denial of a protective order. To further facilitate the appellate process, protective order hearings should be taped or recorded by a court reporter. At a minimum, judges should be required to explain in writing why they denied an order of protection or refused to include certain remedies in the order.

5. Expand the Role of Advocates.—Allowing advocates to play a greater role in protective order hearings may help ensure that orders of protection are issued in all appropriate cases. First, the presence of an advocate may enhance the accountability of the judges. As one respondent from a rural southern community reported, “We believe our presence with women has made a significant difference—we know it’s different when we’re not there.” For example, she said, “We have one magistrate that routinely tells petitioners they must file criminal charges before he will grant an order of protection. Often this is inappropriate. When we accompany a woman this doesn’t happen. But many women come to us after such an experience and no order of protection.” In addition, she said, “Magistrates sometimes won’t grant petitions—then we go and they do.” Likewise, another respondent from a rural northeastern community concluded, “[W]e find when we write orders of protection ourselves and accompany victims before the judge, there is a much better chance that the order of protection will be granted.”

Second, the presence of an advocate may reduce the risk that the petitioner will be intimidated or become confused or emotional during the hearing. The support provided by the advocate may help the petitioner feel

212. See supra text accompanying note 141.

213. Increasing the number of petitioners who are represented by counsel at protective order hearings may have the same effect. For a discussion of this option, see supra text accompanying notes 49-55.
more comfortable,\textsuperscript{214} and thereby minimize the adverse impact that her confusion or emotion can have on both the outcome of the case and the judge's treatment of her.\textsuperscript{215}

Almost all (93.5\%) of the respondents indicated that domestic violence advocates accompany battered women to court for protective order hearings,\textsuperscript{216} and some said that judges welcome their presence and input. In many cases, however, the court places substantial limits on the role the advocate can play at the hearing. More than two-fifths (43.2\%) of the respondents reported that judges impose restrictions on the advocate during protective order hearings, and 17.4\% characterized these limitations as a significant or very serious problem.\textsuperscript{217} The restrictions imposed include barring advocates from the courtroom altogether, prohibiting them from sitting with the petitioner to provide emotional support, refusing to allow them to talk to the petitioner during the hearing, and denying them permission to speak in open court if the petitioner becomes upset or confused.

Some respondents reported that the judges in their counties were quite inconsistent in their treatment of advocates. One respondent from a rural northeastern community noted that, "[d]epending on the judge, the advocate's role changes. Sometimes advocates can speak for the client if the client is having a difficult time. Sometimes judicial behavior is insulting and demeaning to advocates . . . ." Likewise, another respondent from an urban southern community commented that the advocate's role "[d]epends on the personal mood of that judge at that time of the day."

A number of respondents observed that the limits placed on advocates in these courts have had adverse consequences on both the petitioner and the protective order process. For example, one respondent from a rural midwestern county reported, "Judges will not usually allow an advocate to approach the bench area with the survivor. This sometimes leaves a survivor feeling very vulnerable and alone—especially if the advocate is seated far back in the courtroom." Another respondent from an urban southern community suggested that "victim advocates should be allowed to speak on behalf of victims during hearings as most victims are scared to speak out when the abuser is sitting across the table from them. They are very intimidated." Finally, one respondent noted that the judges in her rural western county refuse to permit the advocate to accompany the petitioner to the bar; as a result, she said, women are often "so frightened they will not go for the hearing."

\textsuperscript{214} See \textit{supra} note 42 and accompanying text.
\textsuperscript{215} See \textit{supra} notes 163-64 and 175 and accompanying text.
\textsuperscript{216} Survey, \textit{supra} note 21, at I, 1(b).
\textsuperscript{217} Id. at II, 47.
In order to allay the petitioner's fears, the advocate should, at a minimum, be permitted to sit with the petitioner and provide her with information and support. In addition, the judge should have the discretion to allow the advocate to speak on behalf of a petitioner who is too upset or intimidated to present her case. The judge should be particularly open to the advocate's input at ex parte emergency order hearings, plenary hearings at which the alleged abuser does not appear, and any other hearings that do not strictly adhere to formal courtroom procedures.\(^{218}\) If the advocate merely tells the judge what the petitioner told her about the abuse she experienced and the relief she needs, the advocate functions essentially as a translator and therefore should not be guilty of practicing law without a license.\(^{219}\) Nevertheless, legislation may be required to authorize this reform, especially given the threats made in some states to charge domestic violence advocates with the unauthorized practice of law.\(^{220}\)

6. Limit the Use of Mutual Orders.—Mutual orders of protection should not be issued unless both parties have filed petitions and have proved that they are entitled to relief under the statute. Use of the appellate process is one way to end the practice of issuing mutual orders as a matter of course.\(^{221}\) Alternatively, legislation can be passed abolishing mutual orders, or at least specifying the limited circumstances in which they are appropriate. A number of states have already enacted such provisions.\(^{222}\)

\(^{218}\) See Fischer, supra note 16, at 75 (finding that almost 80% of plenary hearings in Champaign lacked any of the indices of courtroom formality).

\(^{219}\) See In re Domestic Abuse Advocates, No. C2-87-1089, 1991 Minn. LEXIS 34, at *1 (Minn. Feb. 5, 1991) (authorizing advocates to attend protective order hearings, sit at counsel's table, consult with the victim, and address the court at the judge's discretion, and providing that advocates are not practicing law when they do so).

\(^{220}\) For example, one respondent from a rural midwestern county commented, "[T]here is a very strong lobby from members of the Bar Association which has tried to exclude advocates from the courts, with the concern that they may be practicing law."

\(^{221}\) See Fitzgerald v. Fitzgerald, 406 N.W.2d 52 (Minn. Ct. App. 1987) (reversing issuance of mutual order where only the woman filed for relief and there was no evidence that she had engaged in any abusive behavior).

\(^{222}\) See, e.g., CAL. CIV. PROC. CODE § 545.5 (West Supp. 1992) (providing that mutual orders may be issued only if each party personally appears and presents evidence of abuse); ILL. ANN. STAT. ch. 40, para. 2312-15 (Smith-Hard Supp. 1992) (prohibiting mutual orders unless each party files written pleadings, gives written notice to the other party, proves that the other party engaged in abuse, and satisfies all the requirements for relief); ME. REV. STAT. ANN. tit. 19, §§ 761-A(5), 762(6), 766(7) (West. Supp. 1992) (prohibiting the issuance of mutual order unless respondent files separate complaint and serves the complaint and summons on petitioner and court finds that petitioner committed abuse); MASS. GEN. LAWS ANN. ch. 209A, § 3 (West Supp. 1992) (providing that mutual orders may be issued only if the court has made specific written findings of fact).
Orders of Protection

7. Miscellaneous Statutory Reforms.—In addition to the suggestions described above, some of which can obviously be implemented by the legislature, a number of other statutory changes could be made to help refine the procedures for obtaining protective orders.

First, the likelihood that orders of protection will be issued in all appropriate circumstances might increase if each statute explicitly authorized protective relief in any case involving one of the following types of abuse: physical abuse in any form; threatened or attempted physical abuse; sexual abuse; and non-physical abuse, including verbal abuse, harassment, or psychological abuse, at least where that abuse creates a fear of physical harm. In addition, the legislature should make clear that the informal rules used to deny orders—most notably, delay in filing for relief and failure to pursue a prior petition—are not proper grounds for refusing orders of protection and that the history of the abusive relationship as well as the most recent assault is relevant in deciding whether to issue protective relief. Finally, in order to facilitate oversight of the judicial process, the courts should be required to keep separate records detailing the number of protective order petitions filed and their disposition.

Second, in terms of remedies, the statute should authorize a broad range of relief, including possession of the residence and temporary custody at the emergency order stage, and custody, as well as child support and other financial remedies, at the plenary stage. Visitation should be denied when there is evidence that the abuser’s violence has been directed toward the children and should always be structured to safeguard the woman from further abuse. Therefore, if visitation is ordered, the judge should be instructed to impose conditions to protect the woman, such as limiting visitation to situations where a neutral adult is present, where arrangements are made for picking up and dropping off the children so as

223. In addition, the statute should specify that proof of physical abuse does not necessarily require physical evidence of the assault.

224. See, e.g., W. VA. CODE § 48-2A-2(a)(3) (Supp. 1992) (defining abuse to include the creation of "fear of physical harm by harassment, psychological abuse or threatening acts").

225. See MASS. GEN. LAWS ANN. ch. 209A, § 3 (West Supp. 1992) (providing that protective order may not be denied "solely because it was not filed within a particular time period after the last alleged incident of abuse"); cf. OR. REV. STAT. § 107.710(I) (1991) (providing that protective order may be issued if the abuse occurred within 180 days prior to filing of petition).

226. E.g., ILL. ANN. STAT. ch. 40, para. 2312-14(c)(1)(i) (Smith-Hurd Supp. 1992) (requiring that the judge consider "the nature, frequency, severity, pattern and consequences of the respondent’s past abuse" in determining whether to grant a particular remedy).

227. Only 37.4% of the respondents indicated that statistics about the number of protective order petitions that had been filed and granted in their county in 1991 were readily available to domestic violence programs. Survey, supra note 21, at III, 1.
to avoid contact between the couple, and where the abuser agrees not to use drugs or alcohol before or during visitation. 228

Finally, judges should be required to communicate certain information to the parties. For example, the legislature could require judges to emphasize to abusers that their behavior was inappropriate and to inform them that an order of protection is a court order that the judicial system takes very seriously. In addition, the judge could be asked to instruct the petitioner to report any violations of the order to the police.

III. Service and Enforcement of Orders of Protection: Are Emergency Orders Being Served Promptly, and Are the Police, Prosecutors, and Courts Responding Adequately to Violations?

Many others have documented the substantial difficulties that confront the woman who has survived the hurdles described above and then attempts to enforce her order of protection. 229 These defects in the enforcement procedures are particularly problematic: as one study concluded, "Enforcement is the Achilles’ heel of the civil protection order process, because an order without enforcement at best offers scant protection and at worst increases the victim’s danger by creating a false sense of security." 230

The respondents’ general assessment of the three areas we focused on—access to the courts, the judicial record in issuing protection orders, and the enforcement process—indicates quite clearly that enforcement is the weakest link in the system. Almost one-half (46.8%) described the enforcement procedures in their counties as poor or very poor, and only 5.8% said that they worked very well. 231 When asked what needed to be changed in the area of enforcement, one respondent from a rural midwestern county replied, "The entire system. The judge tells women to

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229. See, e.g., ATTORNEY GENERAL’S TASK FORCE, supra note 57, at 10-43; FINN & COLSON, supra note 2, at 49-63; U.S. COMM’N ON CIVIL RIGHTS, supra note 11, at 12-61.

230. FINN & COLSON, supra note 2, at 49.

231. Survey, supra note 21, at II, 58. The mean rating for the enforcement process was 2.4 on a scale of one to four (with one as the lowest rating). By comparison, the mean rating for the courts’ accessibility to petitioners who have no advocate was 2.9, with 24.3% ranking the courts inaccessible or very inaccessible. Id. at II, 2. The mean accessibility rating for petitioners who have advocates was 3.4, with 9.9% ranking the courts inaccessible or very inaccessible in such cases. Id. at II, 1. The mean rating for the procedures for obtaining protective orders was 3.1, with 15.5% ranking these procedures poor or very poor. Id. at II, 31.
call the police, the police refer her back to the judge and nothing is . . . accomplished."

Moreover, as we found with the access and relief issues, minority and low-income women are likely to encounter even greater difficulty enforcing their orders of protection. Almost one-half (47.3%) of the respondents indicated that women of color are less likely to have their orders enforced by either arrest or prosecution; almost one-fifth (19.3%) characterized this as a significant or very serious problem. Likewise, more than one-half (54.7%) reported that the women with the fewest economic resources are less likely to have their orders enforced; more than one-fourth (26.9%) considered this a significant or very serious problem. Again, women who do not speak English face the most serious problems. Almost two-thirds (64.2%) of the respondents reported that non-English-speaking women in their county are less likely to have their orders enforced, and almost one-third (32.1%) described this as a significant or very serious problem.

In describing the difficulties that these women—and all women—encounter in enforcing orders of protection, we focus on four areas: (A) service of emergency orders; (B) the police department's response to violations of protective orders; (C) the prosecutor's response to violations; and (D) the judge's response to violations.

A. Service of Emergency Orders

Law enforcement authorities first come into contact with the protective order process when they serve the emergency order on the alleged abuser, for in most jurisdictions, law enforcement officials perform this function. Unfortunately, this initial experience often proves negative for the petitioner because inordinate delays in service jeopardize her safety. When asked approximately how long it takes to serve emergency orders, the respondents' answers ranged from one to twenty-five days, with a mean of just under three days. In evaluating this record, only about one-fifth (21.1%) of the respondents described the procedures for serving

232. Id. at II, 72. On the other hand, one respondent from a rural western community reported that those who abuse women of color "have gotten some of the stiffest jail sentences." See also GOLKASIAN, supra note 179, at 24 (observing that women of color are often unwilling to report violations for this reason). For a discussion of what might explain this phenomenon, see supra note 91.

233. Survey, supra note 21, at II, 73.

234. Id. at II, 74.

235. FINN & COLSON, supra note 2, at 60.

236. Survey, supra note 21, at I, 13. Of the 229 respondents who answered this question, approximately one-third (34.9%) reported that service took one day, slightly fewer (31%) said two days, about one-tenth (11.4%) said three days, and the remaining 22.7% said four days or longer.
orders of protection as working very well.237 More than three-fifths (62.8%) thought that the sheriff is unable to serve emergency orders rapidly enough to meet petitioners’ needs; more than one-fifth (21.3%) considered delays in service a significant or very serious problem.238

To illustrate, one respondent characterized the efforts made to serve protective orders in her rural southern county as “at best haphazard.” Another respondent from an urban southern community explained that officers make one or two attempts to serve the order and then “get tired of trying and take the paperwork back to the sheriff’s department. They need to be more concerned with following through.” Likewise, another respondent from a rural southern county reported, “Deputies do not like to serve these orders. They take their time and don’t try [the abuser’s place of] work if the abuser is not found at home.” Finally, one respondent commented that the sheriff’s department in her urban midwestern community has trouble serving orders even when the abuser is in jail.

Some respondents attributed these delays in service to inadequate funding or staffing. For example, one respondent from the Northeast commented, “This is a 900 square mile rural county. The Sheriff’s Department consists of four officers who routinely serve all civil work, transport inmates and provide courtroom security. We need more bodies.” A second respondent from an urban southern county likewise noted, “We need funding for the civil sheriff’s office; there are too many lawsuits, not enough deputies to provide service; it’s so easy for a defendant to dodge service.” On the other hand, a respondent from a rural western county suggested that the delays were not caused by a lack of resources, but instead by “law enforcement attitudes.”

Slow service can create a number of problems for battered women. First, and most obvious, it leaves them vulnerable to further abuse without the protection afforded by the emergency order. One respondent from an urban midwestern county stressed the importance of protecting women “between the time of filing and serving; I find them to be in the most danger during this time, especially if the respondent is evading service.”239 Moreover, the police department may not be able to enforce an order until it has been officially served. In fact, this was one of the most pervasive enforcement problems identified by the respondents: more than one-half (52.3%) indicated that it was a significant or very

237. Id. at II, 4.
238. Id. at II, 17; see also id. at I, 13(c) (indicating that 18.7% of the respondents reported that the sheriff’s department assigns low priority to emergency orders and does not attempt to serve them promptly).
239. See supra note 93 and accompanying text.
serious problem, and fewer than one-fifth (18.3%) reported that it was not a problem at all in their county. 240

Second, delays in service may deter women from continuing the process of obtaining an order of protection. More than three-fifths (61.3%) of the respondents reported that some petitioners are discouraged by the sheriff’s inability to serve the emergency order and do not return to court to extend it; 15% characterized this as a significant or very serious problem. 241 Slow service is particularly likely to have this effect in jurisdictions where petitioners cannot renew the emergency order if it has not been served in time for the plenary hearing. 242 For example, one respondent explained that in her rural western community, a woman whose emergency order is not served before the plenary hearing is forced to “start . . . all over again. . . . We have had extensions thrown out as not mandated by statute.” 243

Even when law enforcement officials serve emergency orders relatively promptly, they apparently do nothing more than physically deliver a copy of the order on many occasions. Almost half (46.4%) of the respondents reported that the officer does not warn the abuser that violating the order can lead to arrest. 244 Even more (58.1%) indicated that the officer does not read the key terms of the order to the abuser. 245 Spending the few minutes necessary to communicate this information might go a long way toward reinforcing the terms of the order and sending the message that additional violence will not be tolerated. 246

B. The Police Department’s Response to Violations

Unfortunately, law enforcement’s record in enforcing orders of protection is no better after service has been completed. More than four-fifths (86.4%) of the respondents observed that the police respond very

240. Survey, supra note 21, at II, 63. In some jurisdictions, the officers who respond to a woman’s call for help can serve the emergency order if they find that service has not yet been effected. See id. at I, 13 (indicating that 29% of respondents said this is possible).
241. Id. at II, 18.
242. Almost three-fifths (57.9%) of the respondents indicated that renewal was possible in such cases. Id. at I, 13.
243. In addition, the Pearson correlation coefficients reported in connection with our regression analyses suggest that counties in which sheriffs serve emergency orders as soon as possible have not only significantly fewer enforcement problems, but also significantly fewer access and relief problems. See App. C, Tables 3-5.
244. Survey, supra note 21, at I, 13(f).
245. Id. at I, 13(f).
246. In addition, the Pearson correlation coefficients reported in connection with our regression analyses suggest that counties in which sheriffs warn the abuser that violating the order can lead to his arrest have not only significantly fewer enforcement problems, but also significantly fewer access and relief problems. See App. C, Tables 3-5.
slowly or ineffectively when violations of protective orders are reported; more than two-fifths (41.3%) characterized this as a significant or very serious problem. In addition, more than three-fourths (78.1%) indicated that the police response is so slow or ineffective that many petitioners do not even call to report violations; more than one-third (37.3%) considered this a significant or very serious problem.

When the police do respond to a battered woman's call for assistance, they often refuse to arrest the respondent. Even though arresting those who violate protective orders is necessary to protect women from further harm and to deter abuse, and, in some cases, is required by prosecutors before they will bring charges, violators are rarely arrested. More than one-third (36.1%) of the respondents indicated that the police have the authority to arrest when they are called to the scene of a violation but usually elect not to do so.

The police rely on a number of excuses for refusing to arrest. First, more than one-fourth (26.2%) of the respondents reported that the police will arrest only if the violation was committed in their presence, even though many states authorize the police to make warrantless arrests whenever they have probable cause.

247. Survey, supra note 21, at II, 60. For similar findings, see ATTORNEY GENERAL'S TASK FORCE, supra note 57, at 18-19 (finding that many law enforcement agencies give low priority to calls involving domestic violence because they consider it "a private, less serious matter than violence between strangers"); U.S. COMM’N ON CIVIL RIGHTS, supra note 11, at 14.

248. Survey, supra note 21, at II, 61. For similar findings, see Baker et al., supra note 57, at 27-28 (finding that the foremost reason victims do not call the police is the expectation that the police will do nothing).

249. Almost one-fifth (18.5%) of the respondents reported that the prosecutor in their county will not bring charges in connection with the violation of a protective order unless there was an arrest at the scene of the violation. Survey, supra note 21, at I, 24(d).

250. Id. at I, 23(g). For similar findings, see S. REP. No. 545, supra note 3, at 38 (noting that "arrest rates may be as low as 1 for every 100 domestic assaults"); FINN & COLSON, supra note 2, at 59 (suggesting that police officers often fail to arrest even when clearly authorized or required to do so); GOOLASIAN, supra note 179, at 36 (finding that police refuse to arrest even when the abuser caused injuries that would have led to arrest if the victim had been a stranger); U.S. COMM’N ON CIVIL RIGHTS, supra note 11, at 14 ("Police officers testifying before the Commission indicated that arrests in domestic abuse cases are rare . . . .").

The Pearson correlation coefficients reported in connection with our regression analyses suggest that counties in which the police elect not to arrest have not only significantly more enforcement problems, but also significantly more access and relief problems. See App. C, Tables 3-5.

251. Survey, supra note 21, at I, 23(c). For similar findings, see Baker et al., supra note 57, at 48 (finding that the police in the District of Columbia used that excuse to justify their failure to arrest in 9.9% of the cases surveyed).

252. FINN & COLSON, supra note 2, at 54-55 (noting that 35 states authorize or require the police to make warrantless arrests if they have probable cause to believe that a protective order has been violated and 31 states authorize or require warrantless arrests if there is probable cause of domestic abuse).
Second, almost one-fifth (17.6%) of the respondents indicated that the police will not arrest the abuser simply for violating the order. They refuse to arrest unless the violation itself constitutes a separate offense, such as battery, even though most states make the violation of the order an independent crime. For example, one respondent from an urban midwestern community observed, "Some officers do not realize that (1) the breaking of an order is, in itself, a misdemeanor crime or (2) an arrest can be made. We still hear 'Yes, ma'am he is on your porch, but he's not doing anything.'" Another respondent from an urban western county urged, "[T]he police need to arrest and the D.A. needs to prosecute 'stay away' violations before they turn into actual violence."

Third, some police officers refuse to enforce an order of protection because they believe the woman "broke the order" by inviting the respondent over or otherwise having voluntary contact with him. More than four-fifths (88.2%) of the respondents indicated that this was a problem in their communities, and more than one-half (56.1%) considered it a significant or very serious problem. In such cases, one respondent from an urban northeastern community explained, the police "tend to tell the woman that the order 'is no longer in effect.'"

Orders of protection are "orders of the court, not orders of the victims," and therefore can be invalidated only by a judge. Moreover, the order governs only the abuser's conduct; it cannot be

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253. Survey, supra note 21, at I, 23(d). Even more respondents—almost two-fifths (38%)—reported that the police will not arrest when the man violates the provisions in a protective order governing custody and economic issues. Id. at I, 23(f). For similar findings, see Baker et al., supra note 57, at 45 (noting that some police officers regard protective orders as "useless" or "good only if the victim had been physically hurt").

254. In 38 states, violating a protective order is itself either a misdemeanor or criminal contempt. Criminal contempt is treated like a misdemeanor in terms of authorizing the police to arrest, unless state law expressly provides to the contrary. FINN & COLSON, supra note 2, at 50-52.

255. Survey, supra note 21, at II, 62. In fact, this was the second most serious enforcement problem identified by the respondents.

256. Some respondents even reported that the police threaten to or actually do arrest the woman if she voluntarily has contact with the abuser. For example, one respondent from the Northeast said, "When a woman invites the abuser to the house to reconcile, our local police have charged her with a criminal statute because she was aiding the abuser to commit a crime—a very punitive and unhelpful response." Another respondent from a rural midwestern community indicated not only that the police threaten to arrest the woman in such cases, but also that "one town has a city ordinance making the woman liable if she 'lures or entices' him to the residence."

violated by the petitioner. If the order prohibits the man from having any contact with the woman, he is in violation even if the contact occurred at her initiative. Thus, as the Illinois Court of Appeals ruled in People v. Townsend, "a victim's invitation to violate the order" does not "free ... contemnors from conviction for wilful misconduct."\(^{258}\)

This ruling is not simply based on a technical reading of the law, but also reflects the legitimate concern that it may not be easy to ascertain whether a woman's invitation was truly voluntary. A battered woman may feel compelled to assure the police that she initiated or agreed to the contact for fear that the abuser will subject her to further violence for turning him in—particularly if she is questioned in his presence.\(^{259}\) In addition, the woman may have been forced to have continued contact with the abuser if the judge refused to limit visitation rights in the protective order.\(^{260}\)

Currently, however, some police officers not only assume that any contact between the parties is voluntary, but also refuse to enforce protective orders even when the woman's "invitation" was clearly not voluntary or when allegedly voluntary contact led to further abuse that was not part of the "voluntary" bargain. As one respondent from a rural western county noted, "A lot of our law enforcement believe that the order is broken once the petitioner lets the respondent into the home, even to visit the children, and they will not arrest the respondent if he has committed more acts of domestic violence."\(^{261}\)

In addition to relying on these excuses to avoid arresting abusive men, more than two-fifths (44.1%) of the respondents indicated that police officers make no further effort to find or arrest an abuser if he is no longer at the scene when they arrive.\(^{262}\) As one respondent from an urban

\(^{258}\) Id. at 1299. See generally 1 WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., SUBSTANTIVE CRIMINAL LAW § 5.11 (1986) (noting that the victim's consent to a criminal act is not a defense to criminal charges).

\(^{259}\) See FINN & COLSON, supra note 2, at 53 ("Many judges report being concerned when victims agree to allow an offender back into the home . . . [because they] fear that victims in these cases may be responding to intimidation or undue influence."); Fischer, supra note 16, at 104 (finding that women interviewed in Champaign rarely had voluntary contact with the abuser).

\(^{260}\) See supra text accompanying notes 139 and 169.

\(^{261}\) Other respondents cited a number of additional excuses police officers use to avoid arresting abusers who violate orders of protection. For example, one respondent from a rural northeastern community reported, "Although most orders are standardized forms, women are repeatedly told the order is not specific enough or 'invalid' or unenforceable." In fact, more than three-fifths (62.7%) of the respondents indicated that police sometimes refuse to enforce an order because its terms are so vague that it is unclear what behavior is prohibited; more than one-fifth (22.6%) characterized this as a significant or very serious problem. Survey, supra note 21, at II, 66. Another respondent said that the police in her urban northeastern community "will only make an arrest if a copy of the order is present in their out-dated manual system. . . . Police will not make an arrest even if the victim has her copy."

\(^{262}\) Survey, supra note 21, at I, 23(e); see FINN & COLSON, supra note 2, at 3; Baker et al.,
northeastern community reported, "A respondent who violates the order and is no longer on the premises is not pursued .... The petitioner has to go to the commissioner to file charges. Our commissioners are centrally located in our rather large county—transportation is a problem for many petitioners." Another respondent from an urban western county observed, "Many officers .... will not even make a report [when the abuser has fled the scene], thus making it very difficult for petitioners to file contempt charges."263

Rather than fulfilling their obligation to assist a battered woman themselves, either by arresting or searching for the abuser, the police who respond to the woman's call sometimes suggest that she look elsewhere for assistance. For example, a number of respondents indicated that the police advise a woman who already has an order of protection to contact an attorney or the judge to file a complaint instead of simply arresting the abuser on the spot for violating the order.264 On the other hand, if the woman has not yet obtained a protective order, the police may tell her they cannot help her for that reason.265

Other police officers refuse not only to assist the woman themselves, but also to tell her where she might find help. Directly flouting the mandate of many state statutes,266 they do not inform her that safe housing is available at a shelter, or that she can seek a protective order, file a criminal complaint, or make a citizen's arrest herself if the law enforcement system is not willing to initiate charges.267

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supra note 57, at 26-27, 42, 48 (finding that police also fail to obtain arrest warrants for absent abusers even though required to do so by pro-arrest policy); cf. Finn & Colson, supra note 2, at 59 (citing a small pilot study's finding that the number of repeat violations decreases when police obtain arrest warrants for absent abusers).

The Pearson correlation coefficients reported in connection with our regression analyses suggest that counties where the police make no further effort to find absent abusers have not only significantly more enforcement problems, but also significantly more access and relief problems. See App. C, Tables 3-5.

263. Rather than arresting or searching for those who violate protective orders, some police officers apparently threaten to or actually do arrest the woman instead. As one respondent from an urban midwestern county reported, "Individual law enforcement people (police and sheriff's deputies) still refuse to adequately determine 'just cause' and arrest abusers. There are frequent incidents of abuse victims in emotional crisis being arrested for disturbing the peace." Likewise, another respondent from a similar community reported that the police "charge women with disorderly conduct or mutual fifth degree assault when they are acting in self defense."

264. For similar findings, see Baker et al., supra note 57, at 45, 47.

265. See infra text accompanying note 308 (explaining that efforts to train the police about protective orders may backfire and lead them to refuse to act unless the woman has obtained an order).

266. See Finn & Colson, supra note 2, at 54-55, 60 (reporting that 30 state statutes require police to provide information about protective orders).

267. See Baker et al., supra note 57, at 47 (noting that police fail to provide women with information about available options although required to do so); cf. U.S. Comm'n on Civil Rights,
Finally, in addition to passively refusing to help a battered woman who calls for assistance, the police at times actively discourage her from enforcing her order of protection. Almost three-fifths (58.4%) of the respondents indicated that this was a problem in their community, and more than one-fifth (21.2%) described it as a significant or very serious problem. As one respondent from an urban western community noted, "Many law enforcement personnel will either try to dissuade the victim from pressing charges or flat out refuse to assist them. Some clients are actually afraid to call the police."

In short, law enforcement's response to violations of protection orders has been both slow and ineffective. The police are often tardy in responding to a battered woman's call for assistance and then fail to offer much help when they do arrive. Battered women realize that their orders are meaningless without adequate enforcement, and the police response to violations thus discourages them both from seeking orders of protection and from turning to the police for assistance.

C. The Prosecutor's Response to Violations

The picture is no brighter when we examine the prosecutor's response to violations of protective orders. Almost three-fourths (70.9%) of the respondents reported that prosecutors refuse to prosecute violations except in very limited circumstances; almost two-fifths (38.8%) described the failure to prosecute as a significant or very serious problem. In fact, more than two-fifths (42.9%) of the respondents indicated that the prosecutors in their county actively discourage battered women from enforcing their orders of protection, and 13.1% characterized this as a significant or very serious problem.

\( \text{supra note 11, at 17} \) ("A citizen's arrest statute cannot become a useful law enforcement tool in domestic assault cases... unless police officers inform victims of its existence and help them to meet its legal requirements.").

268. Survey, supra note 21, at II, 67; see ATTORNEY GENERAL'S TASK FORCE, supra note 57, at 19 ("Believing eventual formal prosecution uncertain, the responding officer may attempt to dissuade the victim from pressing charges or even filing a report."); cf. Ford, supra note 76, at 323-24 (finding that women are more likely to prosecute if police urge them to do so).

269. Survey, supra note 21, at II, 68. For similar findings, see GOOLKASIAN, supra note 179, at 56 ("Some prosecutors have even imposed special restrictions on battered women (such as a waiting period to let her 'cool off and think about it') before filing a case."); U.S. COMM’N ON CIVIL RIGHTS, supra note 11, at 24-31, 33-34; Catherine F. Klein, Domestic Violence: D.C.’s New Mandatory Arrest Law, WASH. LAW., Nov./Dec. 1991, at 24, 28 (describing policy applied by the U.S. Attorney’s Office in D.C. of refusing to press charges in domestic violence cases if the woman does not appear at the prosecutor’s office the morning after the violation, unless she is “physically unable” to do so); Rural Justice Center, supra note 30, at 23.

270. Survey, supra note 21, at II, 69.
Specifically, more than one-half (52.7%) of the 146 respondents who provided the relevant data estimated that no more than one-tenth of all violations result in prosecution. Approximately one-quarter (25.3%) of these respondents put the prosecution rate at zero or one percent.271 As one respondent from a rural midwestern community reported, “I have never been involved in or informed of a prosecution for a violation in the two and a half years I’ve worked here.” Another respondent from a rural western county likewise noted, “I have never seen a violation . . . prosecuted. Usually the woman leaves the area to avoid further violations.”272

In explaining this reluctance to prosecute, the respondents indicated that prosecutors use excuses similar to some of those relied on by the police in failing to arrest and by the courts in refusing to issue orders of protection. One respondent from an urban midwestern community reported:

Our statute includes a penalty of criminal trespass if the order is violated. The D.A. requires [either people who] are not related to the victim or . . . the police to witness the trespass. To my knowledge, very few, if any, cases of criminal trespass have been filed on protection order violations.273

Likewise, another respondent noted that the prosecutor in her rural midwestern community “routinely says that the petitioner invited the abuser back in the house or otherwise had contact with him” and thus invalidated the order.274 Finally, one respondent indicated that although violators are arrested in her rural western county, they are not prosecuted because the prosecutors believe that protection orders are unconstitutional and can only be enforced by contempt of court proceedings—even though the

271. Estimates of the percentage of violations that are actually prosecuted ran the gamut from 0% to 99%, with a mean of 24.7%. Id. at 1, 24(e). Approximately two-thirds (66.4%) of the 146 respondents who answered this question said that no more than one-quarter of all violations are prosecuted, and 83.6% said that no more than one-half are prosecuted. Given that many respondents failed to supply information about the likelihood of prosecution, however, these figures may be less representative of the entire sample than the other findings.

272. Even when prosecutors choose to prosecute, they often file misdemeanor charges when the facts warrant felony charges. See FINN & COLSON, supra note 2, at 4; U.S. COMM'N ON CIVIL RIGHTS, supra note 11, at 30-31; Rural Justice Center, supra note 30, at 23; cf. WASH. REV. CODE ANN. § 26.50.110(4) (West Supp. 1992) (classifying as a felony any protective order violation that constitutes assault or that consists of reckless conduct creating a substantial risk of death or serious physical injury to another).

273. Cf. supra text accompanying notes 154-55 and 252 (explaining that disinterested witnesses are not required in other cases, and that most states permit arrests even when police did not witness the violation).

274. Cf. supra notes 255-61 and accompanying text (explaining that petitioner's initiation of contact with the abuser does not violate or invalidate the order).
statute in her state expressly makes violations a crime rather than contempt of court.275

Other studies have found that prosecutors often explain their reluctance to prosecute abusers on the ground that battered women frequently change their minds and ultimately refuse to cooperate in the prosecution.276 Although fear of further violence may understandably make a battered woman reluctant to press charges,277 it is not clear that battered women are any less cooperative than other victims who know their assailants.278 In addition, the prosecutors’ attitudes may become “a self-fulfilling prophecy,”279 and battered women might be much more likely to press charges against their abusers if prosecutors did not discourage them from doing so.280

Admittedly, a battered woman does have another enforcement mechanism available in most states if the prosecutor refuses to bring criminal charges: she can file a petition asking that the respondent be held in civil contempt for violating the order.281 In fact, in some jurisdictions battered women have no alternative—the only way to enforce an order of protection is through the civil contempt process.282 That option does not seem particularly attractive, however, because bringing contempt charges is expensive, time-consuming, and likely to require the services of an attorney. For example, one respondent from an urban southern county observed, “As a practical matter, the petitioner needs a lawyer; there are no forms to assist her in filing contempt proceedings.”283 Not surprisingly, therefore, almost three-fourths (73%)
of the respondents indicated that enforcing an order of protection through the contempt process is so lengthy or complicated that most women do not attempt it; more than two-fifths (44.7%) characterized this as a significant or very serious problem.\textsuperscript{284} Thus, as one respondent from a rural southern community concluded, “Officers need to be able to arrest if someone has violated a protective order. It is far too cumbersome for the victim to call court services and report the violation, and then get scheduled for a very far off court date.”

Given that the civil contempt process is an unrealistic option for many women, the prosecutor’s unwillingness to press charges leaves them without an enforcement mechanism. As a result, many battered women are understandably reluctant to seek and enforce orders of protection. As one respondent from a rural western county noted, “The respondent needs to be prosecuted so that others who file [for protective orders] will know they are taken seriously. The more abusers are prosecuted, the less we’ll have of women not filing.” Likewise, a respondent from the Northeast commented, “[S]ince violations are rarely prosecuted, many women lose faith in the system and see no other option than to return to the batterer.”\textsuperscript{285}

D. The Judge’s Response to Violations

Like police officers and prosecutors, judges have been quite lax in enforcing orders of protection. First, approximately one-fifth (20.4%) of the respondents noticed that judges are reluctant to convict those who violate protective orders.\textsuperscript{286} Second, even when violators are convicted, they do not receive meaningful sentences.

Although incarceration is often called for in order to serve the goals of specific and general deterrence—to “clearly signal[,] the seriousness with which the offense is viewed by the community and provide[,] secure protection to the victim”\textsuperscript{287}—the judiciary’s refusal to impose

\textsuperscript{284} Survey, supra note 21, at II, 70.
\textsuperscript{285} The prosecutor’s failure to file charges also discourages the police from arresting abusers. GOOKKASIAN, supra note 179, at 22; Baker et al., supra note 57, at 8.
\textsuperscript{286} Survey, supra note 21, at I, 25(a); cf. Henson, supra note 58, at 16 (reporting that two Kentucky judges require police officers to call them in order to get permission to arrest for protective order violations the police personally witnessed).
\textsuperscript{287} ATTORNEY GENERAL’S TASK FORCE, supra note 57, at 34 (noting that “incarceration is the punishment necessary to hold the abuser accountable” whenever he causes the woman serious injury, has “a history of repeated abusive behavior,” or poses “a significant threat of continued harm”); see U.S. COMM’N ON CIVIL RIGHTS, supra note 11, at 54-55 (observing that inadequate sentences “dilute the effectiveness of protective orders as a remedy for spouse abuse” and send a “message to the defendant, as well as to police officers, prosecutors, and society, . . . that spouse abuse is not to be taken seriously as a crime against society”).
appropriate prison sentences on those who violate protective orders was the most serious enforcement problem identified by the respondents. More than three-fifths (61.5%) described inadequate prison sentences as a significant or very serious problem, and only 14.1% said it was not a problem at all. 288

In fact, more than two-fifths (42.1%) of the respondents reported that violators have never been sentenced to jail terms in their county. 289 For example, one respondent reported that no jail sentences or even fines have been imposed in her urban southern county and that violators have been sentenced to probation only twice. Another respondent from an urban northeastern county noted that abusers "routinely violate civil orders of protection—without having hardly any punishment (other than a lecture) as a result." Another, describing a similar community, said that "sometimes as many as a dozen violations are committed before a jail sentence is imposed."

Even when prison sentences are imposed, they tend to be light. Although many state statutes set the maximum sentence for violating a protective order somewhere between six months and one year, 290 the respondents reported that actual sentences never come close to the maximum in many jurisdictions. In many counties, they rarely exceed a few days. 291

The courts' failure to impose appropriate sentences on those who violate protective orders sends the clear message that these orders are not taken seriously. Apparently, the import of that message has not been lost on abusive men. As one survey respondent from an urban northeastern

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288. Survey, supra note 21, at II, 71. For similar findings, see Finn & Colson, supra note 2, at 3 (noting that judges seem reluctant to sentence even serious repeat offenders to prison terms or other punishment); U.S. COMM'N ON CIVIL RIGHTS, supra note 11, at 54-55; Fischer, supra note 16, at 113 (finding that only one violation in Champaign led to conviction, and the sentence in that case was a $200 fine).

289. See Survey, supra note 21, at I, 25(a). By comparison, 56.5% of the respondents reported that some violators had been lectured by the judge as punishment; 50.6% said they had been sentenced to probation; and 48.1% indicated that they had been fined. Id. at I, 25.

290. See Finn & Colson, supra note 2, at 50-51 (noting that 21 of the 28 statutes that specify maximum prison terms set the maximum between six months and a year).

291. For example, one respondent said that the maximum jail sentence imposed in her county was twelve hours; a number said two or three days; one said "until they post bail"; one said "time served has usually been the only punishment"; and two said that any prison sentence was suspended.

Instead of imposing prison sentences, some judges may be devising unusual ways of punishing those who violate protective orders. One respondent reported that a repeat violator in her rural western county "was urged to leave town or face a long sentence. He was ordered not to return for one year, and he was escorted to the airport by the police."
community explained, "Very few respondents obey restraining orders—unfortunately, the court does little to send a clear message to the respondent about his behavior." Likewise, a respondent from an urban midwestern county convincingly argued:

Judges should enforce a stricter penalty for violating the order. Usually a $50 fine is all that is received in our county. The fine should be around $500 and some jail time should be served. . . . Repeat offenders should serve the maximum penalty the law allows. . . . The way our community enforces these orders I feel we say it is okay to abuse or harass your partner for $50. . . . This doesn't send the message that it is a crime and it's wrong.

The message communicated by judicial leniency is apparent to others as well, most notably the police and victims of domestic violence. For example, one respondent reported that in her rural northeastern community, "[T]he police arrest and the judge usually releases the abuser after a hearing. . . . [T]he police hesitate to arrest as a result of the judge's failure to prosecute." Likewise, a respondent from a rural western county suggested:

[If law enforcement and our judges took this seriously and put the abusers in jail we would have a better chance of protecting the victims. We tell the victims that if the abuser breaks the order he probably won't go to jail; many victims are aware of this and do not try to get out of the situation. Law enforcement is discouraged by the fact that when they do arrest, any sentence given is usually suspended by lenient judges.292

E. Recommendations

The most serious defects in the protective order process arise at the enforcement stage. Law enforcement officials are slow in serving emergency orders, and the police refuse to arrest violators and to offer victims any meaningful assistance. Prosecutors are reluctant to press charges against those who violate protective orders, and, most significant, judges impose minimal sentences even on repeat violators.

Our recommendations for improving the procedures for enforcing orders of protection fall into four categories: (1) enact mandatory arrest laws; (2) educate law enforcement and judicial personnel; (3) implement a coordinated response approach to domestic violence; and (4) file civil litigation in appropriate cases. In addition, we suggest a number of miscellaneous statutory reforms.

292. For similar findings, see Finn & Colson, supra note 2, at 58; Goolkasian, supra note 179, at 22, 55 (noting that both police and prosecutors are discouraged by lenient sentences).
1. Implement Mandatory Arrest Laws.—Enacting mandatory arrest laws may help improve the police department’s record in enforcing orders of protection. By late 1991, fifteen states and the District of Columbia had some form of mandatory arrest law. Some of these laws require police officers to make arrests when they have probable cause to believe that an act of domestic violence has been committed, and some mandate arrest when they have probable cause to believe that a protective order has been violated. Ideally, arrest should be mandated in both contexts, and warrantless arrests should be permissible even if the police did not witness the incident themselves. Pro-arrest policies that stop short of requiring arrest have not proven particularly effective.

Other studies have suggested that arresting batterers is the most effective way to end domestic violence, and analysis of the survey.

293. Lawrence W. Sherman, The Influence of Criminology in Criminal Law: Evaluating Arrests for Misdemeanor Domestic Violence, 83 J. CRIM. L. & CRIMINOLOGY 1, 2 (1992). In addition, 84% of urban police departments had a mandatory or pro-arrest policy in effect by 1989. Id.; see FINN & COLSON, supra note 2, at 54-55 (listing jurisdictions with mandatory arrest statutes).

294. Three of the 16 mandatory arrest laws apply only in suspected cases of abuse; six apply only in suspected cases of protective order violations; and seven apply in both situations. FINN & COLSON, supra note 2, at 54-55.

295. For example, an empirical study conducted by the District of Columbia Coalition Against Domestic Violence and the Women’s Law & Public Policy Fellowship Program at the Georgetown University Law Center concluded that a pro-arrest policy promulgated by the District’s Police Department had little effect on police behavior. See Baker et al., supra note 57, at 25-27. Six months after the policy was issued, there had been “no noticeable change in the treatment of domestic violence” in the District. Id. at 27. Despite the pro-arrest policy, the police made arrests in only five percent of the domestic violence incidents studied by the D.C. Coalition, id. at 46, and the decision whether or not to arrest had little to do with the seriousness of the abuse, the existence of an order of protection, the severity of the woman’s injuries, or the woman’s request that the abuser be arrested. See id. at 36-40, 45-46. Instead, the most important factor leading to arrest was the abuser’s attitude toward the police: the officers were far more likely to arrest if the abuser was smug, argumentative, or insulting to them. See id. at 49-50.

296. See S. REP. No. 545, supra note 3, at 38 (noting that arrest can reduce assaults by as much as 62%); ATTORNEY GENERAL’S TASK FORCE, supra note 57, at 22-25 (recommending that arrest be the preferred response in cases of family violence); GOOLKASIAN, supra note 179, at 33 (“Among experts in domestic violence, there is growing agreement that arrest, consistent with state law, should be presumed the most appropriate response to domestic violence incidents.”); Sarah M. Buel, Recent Developments, Mandatory Arrest for Domestic Violence, 11 HARV. WOMEN’S L.J. 213, 215-16 (1988) (describing studies finding that arrest reduces the frequency and intensity of family violence); Lawrence W. Sherman & Richard A. Berk, The Specific Deterrent Effects of Arrest for Domestic Assault, 49 AM. SOC. REV. 261 (1984) (discussing a study conducted in Minneapolis over an 18-month period, which showed that arresting abusers, instead of using mediation techniques or ordering them to leave the residence for eight hours, reduced repeat violations by almost one-half); Baker et al., supra note 57, at 1-2 (finding that mandatory arrest decreases the incidence of domestic violence homicides whereas non-punitive mediation techniques may “encourage[1] further violence by communicating to the abuser and his victim that beating one’s mate is not a serious crime”); cf. Lawrence W. Sherman et al., From Initial Deterrence to Long-Term Escalation: Short-Custody Arrest for Poverty Ghetto Domestic Violence, 29 CRIMINOLOGY 821 (1991) (finding that short-term three-hour arrest was not as effective a deterrent as longer twelve-hour detainment and
Orders of Protection

results leads to the same conclusion: jurisdictions with mandatory arrest requirements have significantly fewer overall problems with the enforcement process. Specifically, respondents in mandatory arrest jurisdictions gave substantially higher ratings to the enforcement procedures in their community. They were also significantly less likely to report that the police response is so slow or ineffective that many women do not even call to report violations; that the police refuse to enforce a protective order because the woman has "broken" the order by having contact with the abuser or because the emergency order has not yet been served; that the police and prosecutor discourage women from enforcing their orders; and that women with the fewest economic resources face greater enforcement problems.

Although mandatory arrest laws might be expected to make a difference with respect to enforcement issues, the survey results indicate that they may also significantly improve both access to the courts and the procedures for obtaining orders of protection. Respondents from mandatory arrest jurisdictions reported a lower overall rate of access problems, and they gave a higher rating to the procedures for obtaining protective orders. In addition, respondents in these jurisdictions were significantly less likely to experience a number of the specific access and relief problems we identified.

These differences suggest that mandatory arrest policies, along with the education and training of police officers that often accompany them, may tend to improve the overall responsiveness of the protective order system. These findings may also indicate that in counties where ending domestic violence is a priority—as illustrated by the presence of a mandatory arrest policy—the judicial and enforcement systems also take violence against women seriously. If adequate enforcement is the key to an effective protective order system, it should not be surprising that

that longer detention had a deterrent effect on employed abusers, but not on those who were unemployed, whose abuse escalated after their release).

Recently, Lawrence Sherman has suggested that the results of a decade of police studies do not support wide-scale use of mandatory arrest policies. See Sherman, supra note 293, at 43. According to Sherman, the police studies demonstrate that arrest increases domestic violence among abusers who are not bonded socially with their communities, especially the unemployed. LAWRENCE W. SHERMAN, POLICING DOMESTIC VIOLENCE 247 (1992). Several other researchers have persuasively criticized Sherman's work, however. See, e.g., Joan Zorza, The Criminal Law of Misdemeanor Domestic Violence, 1970-1990, 83 J. CRIM. L. & CRIMINOLOGY 46, 65-72 (1992) (questioning the methodology of the police studies relied upon by Sherman and criticizing his distortion of the findings concerning the impact of arrest on subsequent abuse).

297. App. B, Table 1.
298. Id.
299. Id. Respondents from these jurisdictions also tended to report a lower overall rate of relief problems, although the differences here were not statistically significant.
300. Id.
improving the enforcement component would have a beneficial impact on the other areas as well.\textsuperscript{301}

Nevertheless, laws mandating arrest are not a panacea; they are not effective if police departments or individual officers resist their implementation. For example, one respondent from an urban midwestern county reported that “instead of arresting like the statute demands, the police make a report and send it to the county attorney and then the county attorney decides whether to prosecute or not.”

More specifically, several respondents noted that because mandatory arrest policies only require the police to arrest when they have probable cause, officers who are reluctant to arrest violators can rely on the probable cause requirement to justify their inaction. As one respondent from a rural western county noted, it is “very easy for law enforcement to be blind to probable cause.” Another respondent from a similar community observed that even after the adoption of a mandatory arrest policy, enforcement practices “var[y] widely between departments (sheriff [and] city) and even among officers.”

Finally, several respondents reported that while mandatory arrest laws may increase the number of arrests, some of the arrests are unjustified. For example, one respondent from a rural northeastern county commented, “We are finding that many arrests are inappropriate and that the number of dual arrests is increasing sharply.” Another respondent likewise noted that “[m]ore arrests are being made but with a minimum of investigation, so the victim may also be arrested.”\textsuperscript{302} In addition, others have pointed out that mandatory arrest laws may lead the police to arrest men of color in disproportionate numbers.\textsuperscript{303}

Several states have addressed the problem of dual arrests by amending their mandatory arrest laws to authorize the arrest of only the primary physical aggressor.\textsuperscript{304} The other problems found in mandatory arrest jurisdictions do not reflect shortcomings in the statutes, but attitudes on the part of the police, which can perhaps best be addressed by the recommendations described below.

\textsuperscript{301} Because the t-test analyses summarized in App. B, Table 1 report only a correlation between mandatory arrest policies and a reduction in access, relief, and enforcement problems, they do not necessarily reflect a causal relationship.

\textsuperscript{302} For similar findings, see Goolkasian, \textit{supra} note 179, at 37; Buell, \textit{supra} note 296, at 225-26.

\textsuperscript{303} See Goolkasian, \textit{supra} note 179, at 37 (discussing fear that police will use mandatory arrest laws to harass minority men).

\textsuperscript{304} At least seven states have enacted such provisions. See Klein, \textit{supra} note 269, at 28, 29 n.49.
2. **Educate Law Enforcement and Judicial Personnel.**—Educating police officers, prosecutors, and judges, and then periodically retraining them, may help make them more responsive when protective orders are violated. More than four-fifths (84.1%) of the respondents reported that the police in their county fail to enforce orders of protection because they lack training concerning the domestic violence statute; more than one-third (37.1%) characterized this as a significant or very serious problem. An even greater number (86.7%) indicated that the police fail to enforce orders because they lack training about domestic violence; almost one-half (47.3%) described this as a significant or very serious problem. For example, one respondent from a rural western county noted, "Outlying communities are still run by the 'good-ol-boys' and a lot of those officers still feel that men can do as they please with 'their' women and children. . . . We need sensitivity training and evaluations of police officers to change their attitude on male 'privileges.'" Educating the police about the requirements of the domestic violence statute and the dynamics of domestic violence may help sensitize them to the problems facing battered women and thereby improve their track record in enforcing orders of protection.

Some respondents described creative steps they have taken to educate law enforcement personnel. For example, one respondent from an urban midwestern community noted, "I . . . ride with the city police two times a month and I do a lot of educating during those rides." Another respondent from a rural western community reported, "Our sheriff's office has initiated one-on-one training for deputies to understand victims' . . . feelings and responses to domestic violence. They attend court for hearings with our organization, and, we hope, learn to understand the mixed emotions victims have."

Other respondents, however, indicated that their attempts to educate police officers have not been successful. First, a number said that their overtures have generally been rebuffed. For example, one respondent from a rural northeastern county commented, "We have offered training sessions to all local, county and state police, district attorneys, judges and

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306. Survey, supra note 21, at II, 64; cf. supra note 185 and accompanying text (discussing similar question regarding judges).

307. Survey, supra note 21, at II, 65; see GOOLKASIAN, supra note 179, at 50-51 (quoting a deputy chief of police as saying, "[T]he real reason that police avoid domestic violence cases to the greatest extent possible is because we do not know how to cope with them"); cf. supra note 184 and accompanying text (discussing similar question regarding judges).

308. For examples of the topics that might be covered in such training sessions, see supra text accompanying note 187.
emergency rooms” because “[w]e believe they need to know more about the Battered Woman’s Syndrome and many other dynamics of domestic violence. . . . Only a very few have accepted.” Likewise, a respondent from an urban western community reported that efforts by her office to initiate training programs “are sometimes met with resistance. The bottom line is, they don’t know and they don’t want to know.” Finally, one respondent from a rural midwestern county reported an even more extreme reaction to her organization’s efforts to set up a training session for local prosecutors and judges: the “state’s attorney told us he could read and that I didn’t know anything he didn’t. Then he spread rumors that those damn women were trying to tell people how to do their jobs.” Not surprisingly, a training program never materialized in that community.

Second, some respondents reported that training had actually taken place but had not changed ingrained attitudes towards battered women. For example, one respondent from a rural northeastern county observed that “[l]aw enforcement officers are now required to be trained, but there is much cultural and habitual resistance to enforcement.” Another respondent from an urban northeastern county likewise reported, “They’ve all had training—sometimes it doesn’t sink in, or it is eroded by their department’s attitude.” Finally, a respondent from a rural midwestern community commented:

Police officers have been given copies of the statute and information is printed within the protective order itself. They have been trained repeatedly. They do not arrest mainly because of personal beliefs about domestic violence and the victims of domestic violence. They still feel a “man’s home is his castle” and he can do as he pleases. This is the prevailing belief system of the criminal justice systems in our area.

Efforts to train the police may not only be unproductive, but may even backfire, especially if they focus only on the domestic violence statute and do not help alter the negative attitudes many officers have toward victims of domestic violence. For example, one respondent observed that in her urban western county, “More education of police on protective orders often seems to result in requiring a protective order before the police are willing to do anything—even enforce other criminal laws.”

Training programs might have a greater chance of success, however, if they were conducted jointly by police officials and domestic violence advocates. For example, one respondent from an urban midwestern county described a cooperative training program put into place by her domestic violence organization and local law enforcement authorities:

I co-chaired the formation of our county’s Domestic Violence Task Force with the Patrol Commander of the County Sheriff’s Office. Together, we have provided training to law enforcement and court personnel. He teaches arrest procedure. I teach the dynamics of family
violence and how to work effectively with victims.

Such efforts to include a law enforcement presence in the training process might legitimate the program in the eyes of the police, and thereby make them more receptive to it. This type of collaborative training effort might best be accomplished in connection with a coordinated response to domestic violence, described in the following section.

3. Implement a Coordinated Response Approach to Domestic Violence.—Creating a coalition or task force that facilitates communication among the relevant constituencies seems to be a particularly effective way of improving enforcement procedures. Typically, these coordinated response systems include representatives from the local domestic violence program, the police department, the prosecutor's office, the judiciary, and perhaps local hospitals and private attorneys. They create an organized structure whereby these various groups can communicate with each other about the domestic violence issues facing their community.

Statistical analysis of the survey results unequivocally confirms that jurisdictions with coordinated response systems have significantly fewer overall problems in each of the three areas we focused on—access to the courts, the procedures for obtaining orders of protection, and the enforcement process.\textsuperscript{309} The coordinated response approach has the greatest impact on the incidence of enforcement problems. The respondents' general rating of the enforcement process was much higher in jurisdictions that have implemented such an approach. Respondents from these communities were also significantly less likely to report experiencing problems in fourteen of the fifteen enforcement areas we identified. The only enforcement problem for which we found no statistically significant difference related to police officers' failure to enforce orders of protection because they lack training regarding the domestic violence statute itself.\textsuperscript{310}

In addition, a coordinated response approach seems to reduce the problems women face gaining access to the courts and obtaining relief. With regard to access, respondents in coordinated response jurisdictions were significantly less likely to report experiencing problems in thirteen of the twenty-four areas we identified.\textsuperscript{311} With regard to relief issues, the respondents' general rating of the procedures for obtaining orders of protection was much higher in jurisdictions with coordinated response systems. Respondents from those communities were also significantly less likely to report experiencing problems in eight of the twenty-four relief

\textsuperscript{309} App. B, Table 2. \textsuperscript{310} Id. \textsuperscript{311} Id.
areas we identified.\textsuperscript{312} Thus, like a mandatory arrest policy, a coalition or task force designed to focus on domestic violence issues and improve communication among the various components of the protective order system may dramatically reduce problems at all levels of the system.\textsuperscript{313}

A number of respondents described features of their coordinated response systems that have proven particularly effective for them. One respondent explained that the task force in her urban southern county meets every month and "resolve[s] issues before they become problems." A respondent from a rural midwestern community reported that her domestic violence organization "optimally likes to have a representative from law enforcement on the Board of Directors. Law enforcement also provides a liaison to our organization. The liaison also is responsible for training officers in regards to domestic violence." Another respondent from an urban midwestern county commented:

> The biggest issue my agency has with protective orders is enforcement. . . . [W]e have a police response log when problems occur. We keep the original and place copies in the client's file and send a stack to a responsive sergeant monthly so she can confront individual officers and the system periodically . . . .

Finally, one respondent concluded:

> Being a small rural Southern county has some advantages. Over the . . . years that we've been in this business, we have spent a good amount of time "just hanging out with the good ole boys." Through this effort we have built relationships from tolerance to friendship and all that is in between. We have learned that we cannot become complacent and that we don't have to "like" the people we work with.

Even some respondents whose counties have not actually set up a coordinated response system reported that informal efforts to communicate with judicial and law enforcement personnel have been productive. For example, one respondent from a rural midwestern community noted, "Our program director has coffee with the sheriff weekly. This seems to have been the most successful thing we've done—open up lines of communicating." Another respondent from an urban midwestern county reported:

\textsuperscript{312} Id.

\textsuperscript{313} Again, the t-test analyses summarized in App. B, Table 2 report only a correlation between a coordinated response to domestic violence and a reduction in access, relief, and enforcement problems, and therefore do not necessarily reflect a causal relationship. It may be that the various constituencies find it easier to develop a coordinated response approach and communicate with one another in communities with fewer problems. But see ATTORNEY GENERAL'S TASK FORCE, supra note 57, at 14-15 (recognizing the benefits of a coordinated response approach).
When we hear of an officer not arresting, I call the deputy chief and scream at him and he screams at the officer. The system works so long as we know about the screw-ups, but we don't know about all of them. . . . Establishing a good working relationship with the cops, sheriff and prosecutor . . . allows us to get feedback to them on how they are doing.

The same respondent also reported that advocates from her organization “are allowed to ride along with police officers,” at which time “significant information about domestic violence is exchanged.” She concluded that “[r]elationships with people like the cops and prosecutor seem to be a key to getting the system to work for women.”

As we found with other reform efforts, however, attempts to set up a coordinated response system have been resisted by criminal justice personnel in some areas. For example, one respondent said that the judge in her urban northeastern county “has formed a task force but police departments seldom attend.” Another respondent indicated that a coordinated response approach was adopted in her rural southern community, but did not include the local judiciary because for eight months the judge was too busy to set up an appointment. A respondent from a similar county said that she “requested a meeting with the clerk of court and his staff, but no such meeting has yet taken place. (Basically, it was not felt that a need for such a meeting existed).” Finally, a respondent from a rural midwestern community reported that her organization is “currently attempting to assemble a coordinated response team (for the third time in five years). . . . We have strategized until we are blue in the face.”

And even where coordinated response systems have actually been set up, some respondents expressed dissatisfaction with the results. For example, one respondent reported that coordinated efforts undertaken in her rural southern community had been discontinued because “we learned about each other’s attitudes and procedures but didn’t effect change.” Similarly, a respondent from a rural northeastern county observed that “[o]n paper, our coordinated response works well,” but “[p]ersonal attitudes and biases on the part of individual criminal justice personnel continue to hamper the response at times.” Finally, one respondent said that training and networking efforts in her rural western county were “working pretty well” locally, but “[f]or the departments run in the ‘good-ol’-boy’ way, the upper echelon will have to die before there will be any major changes.”

Here, as well as in other areas, then, attitudes can get in the way of reform. Nevertheless, our statistical analysis of coordinated response approaches suggests that they may dramatically reduce many of the
problems facing battered women who seek protective relief and therefore are worth the effort.

4. File Civil Suits.—Filing civil suits under both federal constitutional law and state tort law to challenge the failure to enforce orders of protection may give the authorities an incentive to step up their enforcement efforts. Recently, a number of such suits have been initiated.

In perhaps the most widely publicized case, Thurman v. City of Torrington, a battered woman filed a section 1983 suit claiming that the Equal Protection Clause prohibits the police from treating domestic violence less seriously than stranger assaults. The jury found that the police department had violated the plaintiff's constitutional rights by failing to respond to her calls for assistance and awarded a substantial sum of damages. Other courts have ruled that police officers have a special

314. Filing civil suits may be another area in which attorneys and pro bono programs can provide the greatest assistance.


317. See Buel, supra note 296, at 218 & n.34 (noting that the jury awarded Thurman $2.3 million, and the parties ultimately settled for $1.9 million). For similar § 1983 cases, see Bulitteri v. Pacifica Police Dept., 901 F.2d 696, 700-02 (9th Cir. 1990) (finding that plaintiff's equal protection claim was supported by officer's comment that he "'did not blame plaintiff's husband for hitting her, because of the way she was "carrying on,"'" thus suggesting "an intention to treat domestic violence cases less seriously than other assaults, as well as an animus against abused women"); Watson v. City of Kansas City, 857 F.2d 690 (10th Cir. 1988) (reversing order granting defendant summary judgment where plaintiff's claim that police department had policy or custom of responding differently to victims of domestic violence was supported by statistics showing that arrest rate in domestic assault cases was 16% compared to 31% in nondomestic assault cases involving a known perpetrator, and by evidence that police department training program advised officers to arrest only as a last resort); Bartalone v. County of Berrien, 643 F. Supp. 574, 576-78 (W.D. Mich. 1986) (denying defendants' motion to dismiss plaintiff's equal protection claim because complaint stated an adequate claim for relief by alleging that defendant police officer failed to respond to plaintiff's request for assistance "at least in part because she was a spouse seeking protection from an abusive husband," and that defendant police chief "consciously chose not to institute, promulgate, publish and enforce a policy of police intervention in spouse abuse cases").

The Supreme Court's decision in DeShaney v. Winnebago County Dep't of Social Servs., 489 U.S. 189 (1989), that the state's failure to protect a child from his father's abuse did not violate substantive due process because the state has no duty to protect individuals from private violence, makes it difficult for a battered woman to file a § 1983 claim alleging that the failure to enforce an order of protection violates due process. But cf. Coffman v. Wilson Police Dep't, 739 F. Supp. 257, 263-66 (E.D. Pa. 1990) (finding that a battered woman's allegation that a protective order created a property interest under state law protected by the Due Process Clause survives DeShaney). Nevertheless, DeShaney's restrictive reading of the Due Process Clause should not affect equal protection claims like that at issue in Thurman. See James T.R. Jones, Battered Spouses' Section 1983 Damage Actions Against the Unresponsive Police After DeShaney, 93 W. VA. L. REV. 251, 331-39 (1990-1991). Overcoming the DeShaney hurdle does not necessarily guarantee victory in a § 1983 suit, however: the defendant may, for example, be able to prevail on a qualified immunity
duty to enforce orders of protection and thus can be sued in tort when they fail to discharge that duty. In response to similar suits, police departments in other jurisdictions have entered into consent decrees that required them to pay damages to the plaintiff, implement mandatory arrest policies, or both. Several respondents described the gains realized as a result of such suits. For example, one respondent from a rural western county noted:

Holding the systems accountable for their screw-ups (publicly) is helpful, and therefore we need class-action civil lawsuits against legal agencies to get their attention that this is a serious problem. I truly feel that the Tracy Thurman case was the main push for police departments to change their procedures on men beating women.

Another respondent from an urban western community said that in response to a civil suit filed by her organization, the city “instituted the state’s first mandatory arrest policy. . . . They finally stopped seeing us as a bunch of crazy feminists and realized we were offering help and technical assistance that would actually help them in their jobs . . . .”

Although prevailing in these suits may not be easy, those that do succeed may help make the law enforcement system more responsive to the victims of domestic violence.


318. See Raucci v. Town of Rotterdam, 902 F.2d 1050, 1055-58 (2d Cir. 1990) (upholding verdict against town and police officers for failing to arrest husband who ultimately injured wife and killed son after repeatedly violating protective order); Sorichetti v. City of New York, 482 N.E.2d 70 (N.Y. 1985) (upholding verdict against city for injuries father caused to child protected by order of protection where police failed to respond to mother’s request for help enforcing the order, knew of father’s violent nature and threats, and failed to act despite promising mother they would do so); Nearing v. Weaver, 670 P.2d 137 (Or. 1983) (holding that police officers can be held liable for harm to the beneficiaries of an order of protection when they knowingly fail to enforce the order).

Again, however, these suits are not always successful. See James T.R. Jones, Battered Spouses’ State Law Damage Actions Against the Unresponsive Police, 23 Rutgers L.J. 1, 11-13 & nn.33-34, 15-19 (1991) (describing immunity defenses available to defendants and cases finding that police cannot be held liable for failing to protect specific individuals).

319. See, e.g., Bruno v. Codd, 419 N.Y.S.2d 901, 905 (describing consent decree that obligated police department to respond promptly to battered women’s calls for assistance and to make arrests when they have reasonable cause to believe a protective order has been violated or a felony has been committed); see also Finn & Colson, supra note 2, at 59-60 (discussing other consent decrees); Amy Eppler, Note, Battered Women and the Equal Protection Clause: Will the Constitution Help Them When the Police Won’t?, 95 Yale L.J. 788, 805 n.73 (1986) (same).

320. A respondent from an urban southern county likewise reported, “The police have the authority to arrest on probable cause, with or without an order of protection, but usually fail to do so. One local police department has been sued for failure to protect and so they are making arrests now.”

321. See supra notes 317-18.
5. Miscellaneous Statutory Reforms.—In addition to the suggestions described above, some of which can be implemented by legislation, a number of other statutory reforms could be made to help improve the enforcement process.

First, delays in serving emergency orders would be minimized by mandating expedited service. Service by mail, publication, or both should be permitted, either as a matter of course, or at least in cases when the sheriff is unable to serve the emergency order promptly. If orders are served personally, the sheriff should be required to communicate certain information to the abuser at the time of service—describing the terms of the order and warning the abuser that violating the order will lead to arrest, for example. Finally, the statute should expressly require police officers to enforce a protective order that has not been served so long as the abuser was aware that the order had been issued. Thus, the order would be fully enforceable if, for example, the petitioner had shown a copy to the abuser or the police had read it to him.

Second, improvements in the police response could be effected by criminalizing the violation of any provision of a protective order, even if the misconduct does not involve an assault or other independent criminal behavior. The statute should also specify—and should require that the defendant be made aware—that violations cannot be excused based on the woman’s actions and that the order remains fully in effect even if she initiates contact with the abuser. Moreover, police officers should be


323. See, e.g., MINN. STAT. ANN. § 518B.01(5) (West 1990) (permitting service by publication if attempt at personal service was unsuccessful because respondent is avoiding service and a copy of the order was mailed to respondent); TEX. FAM. CODE ANN. § 71.17(a) (West Supp. 1992) (allowing protective orders to be served by registered or certified mail); cf. N.J. STAT. ANN. § 2C:25-28(o) (West Supp. 1992) (allowing the court to order other appropriate means of service if personal service cannot be accomplished); W. VA. CODE § 48-2A-3(f) (Supp. 1992) (allowing service of plenary order by publication if attempt at personal service was unsuccessful or evidence indicates that respondent left the jurisdiction, and copy sent by registered or certified mail was returned).

Although the Due Process Clause requires “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections,” Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950), the Supreme Court has “repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice.” Tulsa Professional Collection Servs., Inc. v. Pope, 485 U.S. 478, 490 (1988).


325. See FINN & COLSON, supra note 2, at 49.

326. See, e.g., MINN. STAT. ANN. §§ 518B.01(14)(e), 518B.01(18)(2) (West 1990); TEX.
required to provide assistance to a battered woman even if they do not arrest. They should also inform her about other resources—for example, orders of protection and shelters—and help her gain access to those services.

In addition, legislation could require law enforcement authorities to develop written policies giving police officers guidance concerning the appropriate response to reports of domestic violence. Written guidelines could supplement the statute by describing in detail, for example, what information ought to be communicated to an abuser when he is served with an emergency order; what steps can be taken to aid a battered woman who calls the police for assistance; in what circumstances arrests are appropriate; and what information about other services and remedies should be conveyed to victims of domestic violence.

Finally, recordkeeping should be mandated. A state-wide computer network should be created and made available twenty-four hours a day to track each protective order petition that is filed, its disposition (whether it was granted or denied, and whether a plenary order was issued), the date of service, and any reported violations, even if no arrest was made. Including orders of protection in such a network, which already exists in many states for other crimes, would send the message that domestic violence is deemed as serious as other criminal behavior. This computer network would enable police officers to quickly verify the existence of a protective order even if the petitioner could not locate a copy of the order or there was some question concerning its current validity. It would also give them additional information that might

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FAM. CODE ANN. § 71.16(c) (Vernon Supp. 1993).

327. Twenty-four of the domestic violence reform statutes already require officers to provide assistance to battered women, see FINN & COLSON, supra note 2, at 54-55, although at least some officers fail to do so. See Baker et al., supra note 57, at 47, 55-56 (describing police practices in the District of Columbia).

328. Thirty state statutes already require the police to provide information about protective orders, FINN & COLSON, supra note 2, at 54-55, 60, although again they often fail to do so. See supra notes 266-67 and accompanying text. Information about such resources should be available in written form in languages other than English in any area where there is a substantial non-English-speaking population and the police are not bilingual.


330. Twenty-two of the domestic violence statutes already mandate that police keep a record of all reports of domestic violence, FINN & COLSON, supra note 2, at 54-55, but the requirement is often honored in the breach. See U.S. COMM’N ON CIVIL RIGHTS, supra note 11, at 20-21; Baker et al., supra note 57, at 42-43.

331. See Henson, supra note 58, at 17 (describing the computer network that was set up in Kentucky to track all civil protection orders at a cost of $9,700, or approximately $81 per county).

332. Twenty-eight states already require that procedures be established so that officers can
be useful in determining how to handle a particular situation: for example, they could arrest the abuser if the order had already been served and serve the order if it had not yet been served. Finally, a tracking system would give judges access to information about the abuser’s history and would also help ensure that police departments are held accountable for lax enforcement.

Third, the judicial record for enforcing protective orders could be improved by prescribing mandatory sentences for violations. The sentencing scheme should be a graduated one, with heavier penalties imposed on repeat violators.

IV. Conclusion

Unfortunately, the promise of the domestic violence reform statutes remains unfulfilled in many cases. Victims of domestic violence still face substantial hurdles in gaining access to the courts, obtaining relief, and enforcing orders of protection. In fact, these three components of the protective order system are interdependent, with problems in one area tending to infect the other areas as well.

In some instances, minor statutory adjustments are called for. To a substantial degree, however, the statutes themselves are fairly thorough and protective of women. The real challenge is much more difficult—to effect changes in the ways the legislation is implemented. To a large extent, that goal requires altering the attitudes of the officials charged with applying and enforcing the statutes.

Further statutory reform—clarifying the responsibilities of executive and judicial officials, minimizing their discretion, and imposing additional obligations on them—may prove somewhat helpful. But those who have been willing to circumvent the current domestic violence reform statutes are likely to respond similarly to additional legislation. For some officials, education and communication may heighten sensitivity to domestic violence issues. For others who are less responsive, taking steps to ensure that they are held accountable for their unwillingness to implement the statutes—by appealing adverse decisions, filing civil suits, and generally publicizing verify the existence of a protective order. FINN & COLSON, supra note 2, at 54-55.

333. See, e.g., IOWA CODE ANN. § 236.8 (West Supp. 1992) (providing that abuser found in contempt as a result of violating protective order must serve time in jail, but not specifying minimum sentence); N.J. STAT. ANN. § 2C:25-30 (West Supp. 1992) (mandating minimum 30-day sentence for second and subsequent violations); W. VA. CODE § 48-2A-10(d) (Supp. 1992) (mandating that violator serve at least one day in jail and pay $250 fine). But see CAL. PENAL CODE § 273.6(b) (West Supp. 1993) (repealing provision that mandated a prison term of at least 48 hours for violations that cause physical injury).

334. See, e.g., CAL. PENAL CODE § 273.6(e) (West Supp. 1993).
their recalcitrance—may encourage greater faithfulness to the dictates of the legislation. However this change in attitudes is accomplished, orders of protection will not be effective in safeguarding women from abuse until the law in action catches up with the law already on the books.
APPENDIX A: SURVEY ON THE IMPLEMENTATION OF ORDERS OF PROTECTION

General Instructions

1. This survey is about court "orders of protection"—also called protective orders, temporary protection orders, restraining orders, and adult abuse orders. Orders of protection, at a minimum, restrain the abuser from harming, harassing and/or contacting the victim.

2. If you are not a domestic violence advocate who assists battered women in obtaining orders of protection, please pass this survey along to a co-worker who does.

3. This survey asks for both a description of the system for obtaining orders of protection in your community and your assessment of the problems linked to that system. If you assist battered women in multiple counties, please answer the questions based on the county in which you do the most work or the system you are most familiar with.

Section I: Description of the Implementation System for Orders of Protection

1. Who assists petitioners with orders of protection in the county that your domestic violence program serves?

82.2% a. Domestic violence program's advocates assist with court paperwork, including petitions and fee waivers.
93.5% b. Domestic violence program's advocates accompany petitioners to court/attend hearings.
41.8% c. Court clerk(s) assist with court paperwork, including petitions and fee waivers.
2.8% d. Court clerk(s) accompany petitioners to court/attend hearings.
11.7% e. State's/District's Attorney's Office assists with court paperwork, including petitions and fee waivers.
9.5% f. State's/District's Attorney's Office accompanies petitioners to court/attends hearings.
35.4% g. Lawyers or law students assist with court paperwork, including petitions and fee waivers.
40.6% h. Lawyers or law students accompany petitioners to court/attend hearings.
21.5% i. Other.

2. If lawyers or law students assist petitioners seeking orders of protection, who are they?

30.5% a. The majority of the lawyers are "public" (legal aid/services) attorneys.
24.0% b. The majority of the lawyers are private attorneys.
6.5% c. Public and private attorneys represent an equal number of petitioners.
7.4% d. Law students assist some petitioners.
11.4% e. The local bar association has developed a program that provides pro bono services for battered women seeking orders of protection.

1. The following abbreviations are used in this Appendix: "N" refers to the total number of responses received for a given question; "R" gives the range of answers received for that question; and "M" denotes the mean answer to the question.
2. In answering the questions in this section of the survey, the respondents were usually asked to check all answers that applied to the protective order system in their county. As a result, the percentages reported typically add up to more than 100%.
6.5% f. There is no organized pro bono program, but private attorneys frequently provide pro bono services to battered women seeking orders.
42.8% g. Private attorneys rarely provide pro bono services to battered women.
14.8% h. Other.

3. Which of the following describes the petitions for obtaining orders of protection in the county that your domestic violence program serves?

21.8% a. The "simplified" forms (also called state mandated forms or request forms; refers here to anything except blank paper) provided can be easily completed by the petitioner without any assistance or interpretation from anyone else.
57.5% b. The simplified forms provided can be completed by the petitioner if she has limited assistance from the court clerk or advocate.
20.6% c. Petitioners need a great deal of assistance/interpretation in completing the simplified forms.
15.4% d. No simplified forms available in our county.
3.4% e. The simplified forms are available in one language other than English.
15.7% f. The simplified forms are available in more than one language other than English.
0.3% g. Other.

4. Do women have any trouble completing any of the following section(s) of the petition?

61.5% a. Understanding the technical terms/legalese (e.g. "respondent," "petitioner" etc.).
63.4% b. Describing the abuse so the judge can understand what happened.
77.2% c. Understanding what the remedies mean or what to ask for in the order.
16.9% d. Other.

5. What kinds of assistance do court personnel provide to petitioners?

35.7% a. The court provides petitioners with written guidelines that explain the procedure for obtaining orders of protection.
24.0% b. The court provides petitioners with written guidelines that outline the requirements for obtaining orders and/or fee waivers.
27.1% c. Court personnel are available to assist petitioners who have literacy barriers with completing the forms.
16.0% d. Court personnel are available to provide translation services to non-English speaking petitioners.
33.2% e. Other.

6. On the petition, how extensively or in what detail must the petitioner describe the abuse?

11.1% a. Petition requires only that specific boxes be checked (e.g. "physical abuse"; "emotional abuse"; "threats to harm", etc.).
88.0% b. Petition requires detailed description of most recent incident of abuse.
47.4% c. Petition requires detailed description of prior abuse.
72.0% d. The respondent abuser receives a copy of the section of the petition where the abuse is described when he is served with the order of protection.
12.3% e. Other.

7. Can the filing or service fees for the order of protection be waived for indigent petitioners?

59.1% a. Forms are available for requesting a waiver of fees.
10.5% b. The abuser's income and assets must be listed on the form.
2.8% b. No forms are available for requesting a waiver of fees.
39.4% c. Fee waivers are routinely granted by the judge if the paperwork is completed.
20.0% d. Most but not all of the fee waivers are granted by the judge.
2.5% e. Fee waivers are not typically granted by the judge.
6.8% f. If a fee waiver is not granted, the judge routinely grants a deferral of payment of the fees until a later date.
1.2% g. Fees cannot be waived.
44.0% h. Other.

8. In what county are petitioners required to file requests for orders of protection?

17.8% a. Petitioners who are residents of the state may file in any county, even if the abuse/violence occurred outside the state.
8.3% b. Petitioners who are residents of the state may file in any county, but only if the abuse/violence occurred in the state.
34.2% c. Petitioners may only file in the county they reside in.
17.2% d. Petitioners may only file in the county in which the abuse occurred.
28.9% e. Petitioners may file in either their county of residence or where the abuse occurred.
46.5% f. Petitioners may file in the county they reside in, the county where the abuse/violence occurred, or any county to which they flee to avoid further abuse.
15.8% g. Other.

[DEFINITION: An ex parte order of protection is a temporary order that usually expires after 14-21 days. It is typically the first order that the petitioner obtains and it is available without notification to the abuser.]

9. Which of the following describes the procedure for obtaining ex parte orders of protection in the county that your domestic violence program serves?

NOTE: If a court officer other than a judge grants ex parte orders in your county, please answer the following questions as they apply to that individual's procedure.

14.2% a. A single judge is assigned to hear orders of protection, holds hearings at a fixed time every day of the week (Monday-Friday).
10.8% b. Hearings are held at a fixed time every day of the week; judges rotate by day or week.
7.7% c. The schedule is predictable; we know on any given day who the judge hearing orders of protection will be.
8.7% d. A single judge is assigned to hear orders of protection, holds hearings at a fixed time on a less than daily basis.
6.8% e. Hearings are held at a fixed time on a less than daily basis; judges rotate by day or week.
2.5% f. The schedule is predictable; we know on any given day who the judge hearing orders of protection will be.

- If you checked (e) or (d), how often are hearings held?
  4.3%  2-4 times per week.
  5.9%  once per week.
  1.2%  less than once per week.
52.6% g. After petition is filed at courthouse, the first available judge hears petition/signs order.
13.0% h. A court officer other than a judge (e.g. magistrate; court clerk) may grant an ex parte order of protection. Who?
33.4% i. Other.

10. How accessible are judges and the courthouse to ex parte petitioners over the lunch hour or after business hours?

23.8% a. Clerk's office is closed over the lunch hour.
60.5% b. Judges are unavailable over the lunch hour.
22.8% c. Judges are available to grant orders of protection 24 hours a day.
  What is the procedure for obtaining orders after hours?
21.3% d. Judges are available 24 hours a day, but there is some reluctance to request assistance.
Orders of Protection

for petitioners after hours.

14.5% e. An order granted after hours needs to be renewed by the petitioner by the end of the next business day.

11. Which of the following describes the hearing required to obtain ex parte orders of protection?

NOTE: If a court officer other than a judge grants ex parte orders in your county, please answer the following questions as they apply to that individual's procedure.

44.8% a. Ex parte orders are signed by the judge without a hearing (petitioner does not see the judge).
38.7% b. Ex parte orders are signed by the judge after an informal hearing (hearing takes place outside courtroom, e.g. in chambers).
32.2% c. Ex parte orders are signed by the judge only after a courtroom hearing.
10.0% The judge takes a recess from an ongoing trial to hear orders of protection; the trial participants wait in the courtroom while the petitioner presents her petition.
29.2% The petitioner's family/friends are allowed to be in the courtroom while she presents her petition.
19.7% "Official" observers (e.g. police trainees, court watchers) are sometimes present in the courtroom.
25.6% Hearings are public; casual observers are sometimes present in the courtroom.
5.9% The judge does not allow any observers in the courtroom while she presents her petition.
24.1% d. The hearings for ex parte orders of protection are taped or recorded by a court reporter.
59.7% e. If the judge denies the order or any remedy requested, the reasons for the denial are explained (orally) to the petitioner.
11.2% f. If the judge denies the order or any remedy requested, the reasons for the denial are explained in writing.
14.4% g. Other.

12. How long do petitioners typically wait between the time they file the petition and the receipt of a hard copy of the granted ex parte order of protection?

45.2% a. less than 1 hour.
25.2% b. 1-2 hours.
19.9% c. 2-4 hours.
11.8% d. longer than 4 hours.
10.0% e. petitioner must call courthouse later that week to check if order has been signed.

How long is the typical waiting time?

5.9% 24 hours.
5.3% longer than 1 but less than 2 days.
4.7% 2-4 days.
3.7% 5 days or longer.

13. Which of the following describes the process for serving ex parte orders of protection in the county that your domestic violence program serves?

a. Approximately how long does it take (# days) to serve the respondent?
N=229; R=1-25; M=2.9
69.8% b. Sheriff's Department serves the order as soon as possible and makes every attempt to find the respondent.
18.7% c. Sheriff's Department serves the order but they are assigned low priority and do not get served rapidly.
29.0% d. Police Department can serve the order if they arrive on the scene and find that the respondent has not been served.
32.4% e. A third party may serve the order on the respondent.
8.7% f. Petitioner may serve the order on the respondent.
21.8% g. Orders are entered into the law enforcement computer system before they are served.
31.4% h. Orders are entered into the law enforcement computer system only after service.
41.9% i. The officer serving the order reads the key terms of the order to the respondent.
53.6% j. The officer serving the order warns the respondent that violation of the order can result in an arrest.
57.9% k. If the order is not served in time for the next hearing, it can be renewed by the petitioner. How is it renewed?
16.1% l. Other.

[DEFINITION: A "second" order of protection is an order granted after there has been notice to the respondent abuser. It is the order that stays in effect for the longest period of time available under the statute. It is usually an extension of the ex parte order of protection.]

14. Which of the following describes the process for obtaining the second order of protection?

54.0% a. Requests for orders are heard by the same judge that considered the ex parte order of protection.
54.8% b. Many cases are set for the same time (crowded docket). Approximately how many are set for a single time?
   N=126; R=1-75; M=13.1
32.7% Only order of protection cases are set for this time.3
61.7% Cases not involving orders of protection are also set for this time.
47.6% c. Many respondents do not appear for the hearing.
   d. Approximately what percentage of respondents do not appear?
   N=215; R=0-95%; M=36.4%
45.0% e. Many hearings are uncontested by the respondents that do appear.
   f. Approximately what percentage of hearings are uncontested?
   N=204; R=0-98%; M=53%
62.7% g. Many hearings focus extensively on whether or not there has been abuse or violence.
   h. Approximately what percentage of hearings focus on the abuse?
   N=197; R=0-100%; M=82.9%
35.8% i. Many hearings focus on matters unrelated to the abuse/violence (e.g. possession of the residence, amount of child support).
   j. Approximately what percentage of hearings focus on unrelated matters?
   N=128; R=0-100%; M=43%
20.4% k. Many petitioners do not appear for the hearing.
   l. Approximately what percentage of petitioners do not appear?
   N=172; R=0-95%; M=21.6%
14.5% m. Other.

15. Which of the following describes the hearing(s) required to obtain the second order of protection?
   Note: Each of the following assumes the petitioner has appeared at the hearing.

17.0% a. If the respondent abuser does not appear, the order is signed by the judge without a hearing (petitioner does not see the judge).
16.7% b. If the abuser does not appear, the order is signed by the judge after an informal proceeding that takes place outside courtroom, e.g. in chambers.
63.9% c. If the abuser does not appear, the order is signed by the judge only after a hearing in the courtroom.
73.5% d. If the abuser appears for the hearing, the order is signed by the judge only after a hearing in the courtroom.

3. The figures reported in this line and the following one indicate what percentage of those who said that many cases are set for the same time checked each individual response.
25.3%  e. If the abuser appears for the hearing, a courtroom hearing is held only if the abuser contests the order.

19.1%  f. If the abuser appears and the parties offer a proposed order upon which they have agreed, the judge grants the order after the abuser acknowledges guilt/responsibility.

52.5%  g. If the abuser appears and the parties offer a proposed order upon which they have agreed, the judge grants the order without requiring the abuser to acknowledge guilt or responsibility.

62.3%  h. The proceedings for orders of protection are taped or recorded by a court reporter.

77.2%  i. If the judge denies the order or any remedy requested, the reasons for the denial are explained (orally) to the petitioner.

18.2%  j. If the judge denies the order or any remedy requested, the reasons for the denial are explained in writing.

8.6%  k. Other.

16. To what extent are attorneys and other court personnel involved in hearings for the second order?

27.3%  a. Many petitioners appear with attorneys.

31.4%  b. Approximately what percentage of petitioners appear with attorneys?

N=198; R=0-100%; M=34.6%

35.2%  c. Many respondents appear with attorneys.

d. Approximately what percentage of respondents appear with attorneys?

N=222; R=0-100%; M=32.1%

44.8%  d. Respondents appear with attorneys when matters such as child custody or support are to be resolved at the hearings.

30.9%  e. Petitioners appear with attorneys when matters such as child custody or support are to be resolved at the hearings.

14.5%  f. The attorneys usually work out the contested matters prior to the hearing so a contested hearing is unnecessary.

25.9%  g. Court-appointed specialists or court workers make recommendations to the court about contested issues.

17. To what extent does the judge routinely provide the information about the order of protection at either the ex parte order or second order hearings?

57.1%  a. The judge routinely delivers a warning and/or lecture to the respondent about the inappropriateness and seriousness of his violent behavior.

82.4%  b. The judge tells the respondent exactly what the order of protection prohibits.

79.6%  c. The judge tells the respondent that violation of the order is a punishable offense.

67.3%  d. The judge tells the respondent that while the order is for the petitioner's protection, it is an order of the court and is taken very seriously by the court.

54.9%  e. The judge instructs petitioners to report any violations of the order to the police.

30.6%  f. The judge informs petitioners that they must come back to court to modify the order of protection if they decide to try living with the abuser again.

19.8%  g. Other.

18. To what extent can the petitioner obtain all the remedies available by statute in her second order of protection?

51.9%  a. The judge is always willing to consider granting each of the remedies requested in the petitioner's second order of protection.

29.8%  b. The judge is typically unwilling to consider granting specific remedies requested in the petitioner's second order of protection.

Note: do not check a remedy below if it is not available by statute.

10.6%  c. The judge will not grant "no abuse" orders if the petitioner wishes to try living with the respondent abuser again.
22.4% The judge will not require counseling for the abuser.
16.1% The judge will not grant property possession.
22.0% The judge will not grant child support.
11.2% The judge will not grant child custody.
9.9% Other requests not granted.

14.3% c. Typically the judge will not grant an order for the longest period of time available under the statute.
14.9% d. Other.

19. What happens when a petitioner appears in court to vacate her order of protection?

22.3% a. Judge expresses exasperation or frustration at this request.
42.4% b. Judge asks careful questions to determine the voluntariness of this request.
32.8% c. Judge advises her of her right to refile for another order of protection if there should be further abuse/violence.
15.5% d. Judge refuses to vacate the order if she/he does not believe this request is voluntary.
3.4% e. If the respondent abuser also appears, the judge requires him to leave the room while she/he speaks to the petitioner.

f. Approximately what percentage of petitioners ask to vacate?
   N=170; R=0-95%; M=18.7%

31.3% g. Other.

[DEFINITION: A "renewal" of an order of protection is granted after the order of protection has expired. This is not a new order of protection; it is an extension of the old order for the same amount of time.]

20. How are renewals of second orders of protection obtained?

33.0% a. Petitioners may obtain renewals pro se.
7.1% b. Petitioners need an attorney to obtain renewals.
16.4% c. There is a simplified form available for renewals.
44.4% d. Renewals are granted only after a hearing that requires notification to the abuser.
30.0% e. Other.

21. How frequently are renewals of second orders of protection obtained?

17.7% a. Renewals are routinely granted with minimal application by the petitioner.
39.1% b. Renewals are not routinely granted, but new orders are issued after petitioner has filed a second petition and alleged that there is still a substantial threat of abuse.
32.0% c. Renewals are not routinely granted, but new orders are issued after petitioner has filed a second petition and if there has been abuse since the issuance of the previous order.
8.7% d. Judges are resistant to second applications or extensions, believing that relief should be temporary.
15.2% e. Other.

22. To what extent can orders of protection be appealed and has this occurred?

12.2% a. Both ex parte and second orders of protection can be appealed directly to the state appeals court.
10.0% b. Appealing requires a lawyer.
12.8% b. Ex parte orders cannot be appealed.
20.3% c. Ex parte orders of protection can be appealed, but this has never occurred.
20.3% d. Second orders of protection can be appealed, but this has never occurred.
4.1% e. Denials of ex parte orders of protection have been appealed by petitioner(s).

What happened?
3.1% Denial of order was upheld on appeal (petitioner lost appeal).
3.1% Denial of order was struck down on appeal (petitioner won appeal).
Orders of Protection

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>5.9%</td>
<td>Ex parte orders of protection have been appealed by respondent(s). What happened?</td>
</tr>
<tr>
<td>6.3%</td>
<td>Order of protection was upheld on appeal (respondent lost appeal).</td>
</tr>
<tr>
<td>3.4%</td>
<td>Order of protection was struck down on appeal (respondent won appeal).</td>
</tr>
<tr>
<td>4.7%</td>
<td>Denials of second orders of protection have been appealed by petitioner(s). What happened?</td>
</tr>
<tr>
<td>2.5%</td>
<td>Denial of order was upheld on appeal (petitioner lost appeal).</td>
</tr>
<tr>
<td>2.8%</td>
<td>Denial of order was struck down on appeal (petitioner won appeal).</td>
</tr>
<tr>
<td>6.9%</td>
<td>Second orders of protection have been appealed by respondent(s). What happened?</td>
</tr>
<tr>
<td>5.9%</td>
<td>Order of protection was upheld on appeal (respondent lost appeal).</td>
</tr>
<tr>
<td>2.8%</td>
<td>Order of protection was struck down on appeal (respondent won appeal).</td>
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<tr>
<td>21.8%</td>
<td>Other.</td>
</tr>
</tbody>
</table>

23. How and under what circumstances are orders of protection enforced by the police?

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Event Description</th>
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</thead>
<tbody>
<tr>
<td>57.4%</td>
<td>a. Petitioner must have a copy of her order with her to prove to the police that she has an order of protection before they can arrest.</td>
</tr>
<tr>
<td>67.6%</td>
<td>b. Arrests can only be made if order has previously been served on abuser.</td>
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<tr>
<td>30.2%</td>
<td>There is a 24-hour registry whereby a police officer can verify the existence of an order of protection within the county or state.</td>
</tr>
<tr>
<td>26.2%</td>
<td>c. When the police are called to the scene of a violation, they only arrest the respondent if he committed the violation in their presence.</td>
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<tr>
<td>17.6%</td>
<td>d. The police will not arrest the respondent for simply violating the order unless that violation constitutes a separate crime (e.g. battery).</td>
</tr>
<tr>
<td>44.1%</td>
<td>e. If the respondent is no longer present by the time the police arrive at the scene of a violation, the police make no further efforts to find or arrest him.</td>
</tr>
<tr>
<td>38.0%</td>
<td>f. The police do not arrest for violations of custody or economic provisions of the order.</td>
</tr>
<tr>
<td>36.1%</td>
<td>g. Police have the authority to arrest when called to the scene of a violation but usually elect not to arrest.</td>
</tr>
<tr>
<td>40.7%</td>
<td>h. Police department has a policy of mandatory arrest for violations of orders of protection.</td>
</tr>
<tr>
<td>20.1%</td>
<td>i. Other.</td>
</tr>
</tbody>
</table>

24. To what extent are arrests for violations of orders of protection followed by contempt proceedings?

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Event Description</th>
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</thead>
<tbody>
<tr>
<td>52.5%</td>
<td>a. If the police do not arrest, a petitioner can file a private criminal complaint related to the violation of the order of protection and any other substantive crimes.</td>
</tr>
<tr>
<td>25.0%</td>
<td>b. The State's/District's Attorney's Office routinely prosecutes violators.</td>
</tr>
<tr>
<td>24.1%</td>
<td>c. The State's/District's Attorney's Office infrequently prosecutes violators.</td>
</tr>
<tr>
<td>18.5%</td>
<td>d. The State's/District's Attorney's Office will only prosecute violators where there has been an arrest at the scene of the violation.</td>
</tr>
<tr>
<td></td>
<td>e. Approximately what percentage of violations of orders of protection result in prosecution? N=146; R=0.99%; M=24.7%</td>
</tr>
<tr>
<td>27.2%</td>
<td>f. Violations are brought back to the court that issued the order and the court convenes a violations hearing at which the petitioner or her attorney prosecutes the violation.</td>
</tr>
<tr>
<td>47.8%</td>
<td>g. A petitioner may file a petition, asking that the respondent be held in civil contempt for violation of the order of protection.</td>
</tr>
<tr>
<td>37.0%</td>
<td>Petitioners may initiate contempt proceedings pro se.</td>
</tr>
<tr>
<td>14.5%</td>
<td>Petitioners must have an attorney to initiate contempt proceedings.</td>
</tr>
<tr>
<td>49.1%</td>
<td>h. If there has been a violation, a petitioner may ask that the current order of protection be modified to strengthen the protections granted in that order.</td>
</tr>
<tr>
<td>21.9%</td>
<td>i. Violation hearings are held promptly and occur much sooner than in the ordinary course of criminal prosecution.</td>
</tr>
<tr>
<td>33.0%</td>
<td>j. Violations are not given expedited hearing dates.</td>
</tr>
</tbody>
</table>
| 31.5%      | k. Violations are consolidated with the other substantive crimes charged during the
incident where the violation of the order of protection occurred.

11.7%  I. Other.

25. What kinds of punishments for violations of orders of protection have been imposed?

20.4% a. Judges or juries are reluctant to convict abusers of violating orders of protection.
56.5% b. Violators have been lectured by the judge as punishment.
50.6% c. Violators have been sentenced to probation as punishment.
48.1% d. Violators have been fined as punishment.
57.9% e. Violators have been sentenced to jail.
15.8% f. Other.

26. If you work in more than one county assisting petitioners seeking orders of protection, how similar are the other county systems to the one you described above?

46.9% a. The counties not described in this survey are basically the same as the one I described above.
31.8% b. The counties not described in this survey vary along minor dimensions.
18.0% c. The counties not described in this survey are substantially different.

4. These figures reported below indicate what percentage of those answering the question checked each individual response; almost half of the respondents did not answer the question at all, presumably because they work in only one county.
Section II: Problems with the Implementation System for Orders of Protection

### A. Access to the courts

<table>
<thead>
<tr>
<th>Question</th>
<th>Mean</th>
<th>Percentage Responses</th>
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<tbody>
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<td>Scale:</td>
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<tr>
<td></td>
<td></td>
<td>1 = very inaccessible</td>
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<td>2 = inaccessible</td>
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<td></td>
<td>3 = accessible</td>
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<tr>
<td></td>
<td></td>
<td>4 = very accessible</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>1. How accessible are the courts in your county to potential petitioners who need orders of protection and who are accompanied by advocates?</td>
<td>3.4</td>
<td>8.0</td>
</tr>
<tr>
<td>2. How accessible are the courts in your county to potential petitioners who need orders of protection and who are not accompanied by advocates?</td>
<td>2.9</td>
<td>11.2</td>
</tr>
<tr>
<td>3. What needs to be changed? n.a.</td>
<td></td>
<td>n.a.</td>
</tr>
<tr>
<td>4. How well do you think the procedures for serving an order of protection in your county work?</td>
<td>3.0</td>
<td>2.8</td>
</tr>
<tr>
<td>5. What needs to be changed? n.a.</td>
<td></td>
<td>n.a.</td>
</tr>
<tr>
<td>6. The demand for orders of protection is so high that our domestic violence program can't help everyone who needs assistance.</td>
<td>1.8</td>
<td>49.5</td>
</tr>
<tr>
<td>7. The court clerks in our county do not provide enough assistance to or actively discourage petitioners who are filing for orders of protection.</td>
<td>1.9</td>
<td>44.0</td>
</tr>
<tr>
<td>Question</td>
<td>Mean</td>
<td>Percentage Responses</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>8. The complexity or quantity of paperwork required for orders of protection in our county prevents people from filing petitions.</td>
<td>1.7</td>
<td>50.2 33.9 11.3 4.7</td>
</tr>
<tr>
<td>9. Petitioners may have to travel significant distances in order to obtain an order of protection.</td>
<td>2.1</td>
<td>32.1 37.4 24.0 6.5</td>
</tr>
<tr>
<td>10. The court clerks in our county do not inform petitioners filing for orders by themselves that the filing and service fees can be waived.</td>
<td>1.6</td>
<td>60.3 20.2 13.8 5.7</td>
</tr>
<tr>
<td>11. The judge in our county refuses to grant some fee waivers, even in cases where the petitioners have little income and cannot afford to pay for the order.</td>
<td>1.2</td>
<td>86.3 9.6 3.1 1.0</td>
</tr>
<tr>
<td>12. The judge in our county refuses to grant some fee waivers because of the abuser's income and/or assets.</td>
<td>1.2</td>
<td>87.5 9.3 2.8 0.3</td>
</tr>
<tr>
<td>13. In our county, hearings for ex parte orders of protection require petitioners to take off from work and/or find babysitters for lengthy and often unpredictable amounts of time.</td>
<td>2.3</td>
<td>22.1 38.8 28.4 10.7</td>
</tr>
<tr>
<td>14. Petitioners in our county must wait too long between filing for the ex parte order and the signing of the order; the delay increases victim risk.</td>
<td>1.5</td>
<td>62.4 26.6 7.2 3.8</td>
</tr>
<tr>
<td>15. The times that the judge in our county is available to hear ex parte orders of protection are so few or so inconvenient that filing for an order becomes impracticable.</td>
<td>1.5</td>
<td>63.7 27.1 7.0 2.2</td>
</tr>
<tr>
<td>16. Judges' unavailability during certain hours to grant ex parte orders of protection increases victim risk.</td>
<td>1.9</td>
<td>37.0 45.3 13.0 4.7</td>
</tr>
<tr>
<td>17. The sheriff's department in our county does not serve ex parte orders of protection rapidly enough to meet petitioners' needs.</td>
<td>1.9</td>
<td>37.3 41.5 15.8 5.5</td>
</tr>
<tr>
<td>18. Some petitioners are discouraged by the sheriff's inability to serve the respondent abuser and do not return to court to get their ex parte orders extended.</td>
<td>1.8</td>
<td>38.8 46.3 10.1 4.9</td>
</tr>
<tr>
<td>19. The courthouse environment in our county is so intimidating that it prevents women from seeking orders of protection.</td>
<td>1.8</td>
<td>41.3 41.6 10.9 6.2</td>
</tr>
<tr>
<td>Question</td>
<td>Mean</td>
<td>Percentage Responses</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
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<td>----------------------</td>
</tr>
<tr>
<td>20. The courthouse environment in our county is so intimidating that it is difficult for petitioners to explain what they need from an order of protection or to describe their experiences adequately.</td>
<td>1.8</td>
<td>42.8 37.8 13.1 6.3</td>
</tr>
<tr>
<td>21. The public nature of the procedures for obtaining orders of protection and/or the embarrassment of going to court prevent some women from seeking orders of protection in our county.</td>
<td>2.0</td>
<td>24.1 53.6 16.6 5.6</td>
</tr>
<tr>
<td>22. In our county, the docket for hearings for second orders of protection is so crowded that the delay discourages petitioners from seeking these orders.</td>
<td>1.4</td>
<td>67.6 23.1 6.9 2.5</td>
</tr>
<tr>
<td>23. Respondent abusers are sometimes successful in changing the place of the order of protection hearing to another county.</td>
<td>1.1</td>
<td>92.7 6.6 0.6 0.0</td>
</tr>
<tr>
<td>24. Rules about which county petitioners are required to file petitions in prevent women from obtaining orders of protection.</td>
<td>1.4</td>
<td>62.6 32.4 4.0 0.9</td>
</tr>
<tr>
<td>25. Rules about which county petitioners are required to file petitions in prevent women from obtaining particular remedies available in orders of protection (e.g. possession of residence).</td>
<td>1.5</td>
<td>62.4 29.5 5.6 2.5</td>
</tr>
<tr>
<td>26. Many victims of domestic violence in our county do not realize that orders of protection are an option; the police and other service agencies do not adequately educate people about orders.</td>
<td>2.2</td>
<td>21.6 42.0 26.9 9.6</td>
</tr>
<tr>
<td>27. Access problems in our county (e.g. any of the problems in #6-26 above) are more serious for women of color seeking orders of protection.</td>
<td>1.7</td>
<td>53.5 28.5 12.8 5.1</td>
</tr>
<tr>
<td>28. Access problems in our county are more serious for women who have the fewest economic resources.</td>
<td>2.2</td>
<td>29.7 32.8 25.9 11.7</td>
</tr>
<tr>
<td>29. Access problems in our county are more serious for women who do not speak English.</td>
<td>2.6</td>
<td>19.4 27.1 32.2 21.3</td>
</tr>
<tr>
<td>30. Other access problems exist in our county (please describe) or additional comments.</td>
<td>n.a.</td>
<td>n.a. n.a. n.a. n.a.</td>
</tr>
</tbody>
</table>
B. Obtaining the Requested Judicial Relief

<table>
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<tr>
<th>Question</th>
<th>Mean</th>
<th>Percentage Responses</th>
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<td>Scale:</td>
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<td></td>
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<td>1 = very poorly</td>
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<td>2 = poorly</td>
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<td>3 = pretty well</td>
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<td>4 = very well</td>
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<td></td>
<td>3.1</td>
<td>3.5</td>
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<tr>
<td>31. How well do you think the procedures for obtaining an order of</td>
<td>3.5</td>
<td>12.0</td>
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<tr>
<td>protection in your county work?</td>
<td>57.6</td>
<td>26.9</td>
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<tr>
<td></td>
<td>n.a.</td>
<td>n.a.</td>
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<td>n.a.</td>
<td>n.a.</td>
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<tr>
<td>32. What needs to be changed?</td>
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<td>1.6</td>
<td>56.8</td>
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<td>28.6</td>
<td>10.2</td>
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<td></td>
<td>4.4</td>
<td></td>
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<tr>
<td>33. The judge in our county denies some ex parte orders of protection</td>
<td>1.8</td>
<td>40.4</td>
</tr>
<tr>
<td>because the judge is unwilling to accept that the abuse or violence is</td>
<td>40.4</td>
<td>13.8</td>
</tr>
<tr>
<td>serious enough to justify an order without notice to the abuser.</td>
<td>5.4</td>
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<tr>
<td></td>
<td>1.8</td>
<td>40.4</td>
</tr>
<tr>
<td></td>
<td>40.4</td>
<td>13.8</td>
</tr>
<tr>
<td></td>
<td>5.4</td>
<td></td>
</tr>
<tr>
<td>34. The judge in our county denies some ex parte orders of protection</td>
<td>2.2</td>
<td>28.9</td>
</tr>
<tr>
<td>on the basis of informal rules (i.e. non-statutory grounds), such as</td>
<td>36.4</td>
<td>22.4</td>
</tr>
<tr>
<td>the petitioner has waited too long since the last abusive incident or</td>
<td>12.3</td>
<td></td>
</tr>
<tr>
<td>the petitioner has dropped a previous order of protection.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2.2</td>
<td>28.9</td>
</tr>
<tr>
<td></td>
<td>36.4</td>
<td>22.4</td>
</tr>
<tr>
<td></td>
<td>12.3</td>
<td></td>
</tr>
<tr>
<td>35. The judge in our county denies individual remedies in some ex parte</td>
<td>1.5</td>
<td>59.6</td>
</tr>
<tr>
<td>orders of protection that decrease the effectiveness of the order, such</td>
<td>31.7</td>
<td>8.0</td>
</tr>
<tr>
<td>as denying the petitioner possession of the residence or requiring the</td>
<td>0.6</td>
<td></td>
</tr>
<tr>
<td>petitioner to allow the abuser to have visitation with the children.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1.5</td>
<td>59.6</td>
</tr>
<tr>
<td></td>
<td>31.7</td>
<td>8.0</td>
</tr>
<tr>
<td></td>
<td>0.6</td>
<td></td>
</tr>
<tr>
<td>Question</td>
<td>Mean</td>
<td>Percentage Responses</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>------</td>
<td>----------------------</td>
</tr>
<tr>
<td>37. The judge in our county denies some second orders of protection on the basis of informal rules (i.e. non-statutory grounds), such as the petitioner has waited too long since the last abusive incident or the petitioner has dropped a previous order of protection.</td>
<td>1.5</td>
<td>57.7 32.3 8.0 2.0</td>
</tr>
<tr>
<td>38. The judge in our county denies some remedies in orders of protection that greatly reduce the petitioner’s ability to economically provide for herself and/or children, including child support, maintenance/alimony, or compensation for losses suffered because of the abuse.</td>
<td>2.0</td>
<td>41.4 28.1 19.5 11.0</td>
</tr>
<tr>
<td>39. The judge in our county denies some orders of protection or some remedies because of lack of knowledge and/or training about the order of protection statute.</td>
<td>1.6</td>
<td>59.2 28.0 9.0 3.9</td>
</tr>
<tr>
<td>40. The judge in our county denies some orders of protection or some remedies because of lack of knowledge and/or training about domestic violence.</td>
<td>2.0</td>
<td>39.0 31.7 18.4 10.8</td>
</tr>
<tr>
<td>41. The judge in our county grants “mutual” orders of protection (petitioner and abuser both have orders against the other) even in cases where an order against the petitioner is inappropriate.</td>
<td>1.8</td>
<td>41.3 37.5 16.3 4.8</td>
</tr>
<tr>
<td>42. The judge in our county tends to disbelieve a petitioner when she becomes emotional or confused while testifying.</td>
<td>1.7</td>
<td>48.3 36.4 12.9 2.5</td>
</tr>
<tr>
<td>43. The judge in our county expresses impatience and responds insensitively to a petitioner who becomes emotional or confused while testifying.</td>
<td>1.8</td>
<td>44.7 36.5 15.1 3.8</td>
</tr>
<tr>
<td>44. In our county, women of color have more difficulty obtaining what they need through an order of protection.</td>
<td>1.5</td>
<td>64.5 26.1 8.1 1.3</td>
</tr>
<tr>
<td>45. In our county, women who have the fewest economic resources have more difficulty obtaining what they need through an order of protection.</td>
<td>1.9</td>
<td>47.0 28.3 15.6 9.0</td>
</tr>
<tr>
<td>46. In our county, women who do not speak English have more difficulty obtaining what they need through an order of protection.</td>
<td>2.3</td>
<td>27.6 33.9 24.3 14.1</td>
</tr>
<tr>
<td>Question</td>
<td>Mean</td>
<td>Percentage Responses</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>------</td>
<td>----------------------</td>
</tr>
<tr>
<td>47. The judge in our county restricts the advocates' role in the hearing for orders of protection in some way.</td>
<td>1.7</td>
<td>56.8 25.8 11.3 6.1</td>
</tr>
<tr>
<td>48. In our county, petitioners don't get what they need in an order of protection unless they have an attorney.</td>
<td>1.7</td>
<td>53.9 31.5 8.8 5.7</td>
</tr>
<tr>
<td>49. Petitioners' financial circumstances prevent them from being able to hire attorneys to represent them in the hearings for orders of protection.</td>
<td>2.9</td>
<td>19.7 13.7 27.9 38.7</td>
</tr>
<tr>
<td>50. Attorneys in our county are either unwilling to work with petitioners on orders of protection or are difficult to work with because of non-financial reasons.</td>
<td>2.4</td>
<td>23.4 32.9 27.3 16.4</td>
</tr>
<tr>
<td>51. The judge's behavior and/or commentary during the hearings for orders of protection fails to send the message that the court system supports the petitioner's right to end the violence.</td>
<td>1.9</td>
<td>40.9 33.1 16.6 9.4</td>
</tr>
<tr>
<td>52. The judge's commentary during the hearings for orders of protection includes victim-blaming statements.</td>
<td>1.8</td>
<td>44.3 37.9 12.1 5.7</td>
</tr>
<tr>
<td>53. The judge who hears orders of protection suffers from some degree of burnout that makes her/him less responsive to battered women.</td>
<td>1.9</td>
<td>42.3 37.0 12.8 7.9</td>
</tr>
<tr>
<td>54. Some petitioners do not appear for the hearing for their second order of protection because they do not know that they must appear to obtain the order of protection.</td>
<td>1.4</td>
<td>65.8 29.3 3.6 1.3</td>
</tr>
<tr>
<td>55. Some petitioners do not appear for the hearing for their second order of protection because the abuser threatens to retaliate if they obtain the order.</td>
<td>2.4</td>
<td>11.3 50.5 28.0 10.3</td>
</tr>
<tr>
<td>56. Some petitioners do not appear for the hearing for their second order of protection because they believe the abuser's promises to reform or to leave them alone.</td>
<td>2.8</td>
<td>4.8 29.5 44.2 21.5</td>
</tr>
<tr>
<td>57. Other problem obtaining judicial relief exists in our county (please describe) OR additional comments.</td>
<td>n.a.</td>
<td>n.a. n.a. n.a. n.a.</td>
</tr>
</tbody>
</table>
### C. Enforcing Orders of Protection

<table>
<thead>
<tr>
<th>Question</th>
<th>Mean</th>
<th>Percentage Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Scale:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1 = very poorly</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2 = poorly</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3 = pretty well</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4 = very well</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>58. How well do you think the procedures for enforcing an order of</td>
<td>2.4</td>
<td>15.1</td>
</tr>
<tr>
<td>protection in your county work?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>59. What needs to be changed?</td>
<td>n.a.</td>
<td>n.a.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Scale:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1 = not a problem</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2 = slight problem</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3 = significant</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4 = very serious</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>60. Police response in our county is very slow or ineffective when</td>
<td>2.4</td>
<td>13.6</td>
</tr>
<tr>
<td>violations of orders of protection are reported.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>61. Police response in our county is so slow or ineffective that many</td>
<td>2.3</td>
<td>21.8</td>
</tr>
<tr>
<td>petitioners do not even call the police when the order is violated.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>62. Police officers in our county refuse to enforce the order if they</td>
<td>2.7</td>
<td>11.9</td>
</tr>
<tr>
<td>believe that the petitioner has &quot;broken the order&quot; by inviting the</td>
<td></td>
<td></td>
</tr>
<tr>
<td>respondent over or having other voluntary contact with him.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>63. Police officers in our county refuse to enforce the order unless</td>
<td>2.6</td>
<td>18.3</td>
</tr>
<tr>
<td>it has been officially served.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>64. Police officers in our county sometimes fail to enforce an order</td>
<td>2.3</td>
<td>15.9</td>
</tr>
<tr>
<td>of protection because they lack training about the order of protection</td>
<td></td>
<td></td>
</tr>
<tr>
<td>statute.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>65. Police officers in our county sometimes fail to enforce an order</td>
<td>2.5</td>
<td>13.3</td>
</tr>
<tr>
<td>of protection because they lack training about domestic violence.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Question</td>
<td>Mean</td>
<td>Percentage Responses</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>------</td>
<td>----------------------</td>
</tr>
<tr>
<td>66. Police officers in our county sometimes fail to enforce an order of protection because the terms of the order of protection are so vague that it is unclear what behavior is prohibited.</td>
<td>1.9</td>
<td>37.3 40.1 17.5 5.1</td>
</tr>
<tr>
<td>67. Police officers in our county discourage petitioners from enforcing their orders of protection.</td>
<td>1.8</td>
<td>41.6 37.2 15.8 5.4</td>
</tr>
<tr>
<td>68. State's/district's attorney's office in our county does not prosecute violations of orders, except in very limited circumstances.</td>
<td>2.3</td>
<td>29.1 32.1 23.1 15.7</td>
</tr>
<tr>
<td>69. State's/district's attorney's office in our county discourage petitioners from enforcing their orders of protection.</td>
<td>1.6</td>
<td>57.1 29.8 8.3 4.8</td>
</tr>
<tr>
<td>70. Enforcing the order through civil contempt is such a lengthy or complicated process that most petitioners in our county do not attempt this.</td>
<td>2.4</td>
<td>27.0 28.3 25.9 18.8</td>
</tr>
<tr>
<td>71. Judges do not sentence abusers to any (or sufficient) jail time for violations of orders of protection in our county.</td>
<td>2.8</td>
<td>14.1 24.5 32.7 28.8</td>
</tr>
<tr>
<td>72. Women of color are less likely to have their orders of protection enforced by either arrest or prosecution in our county.</td>
<td>1.7</td>
<td>52.7 28.0 11.5 7.8</td>
</tr>
<tr>
<td>73. Women who have the fewest economic resources are less likely to have their orders of protection enforced by either arrest or prosecution in our county.</td>
<td>1.9</td>
<td>45.4 27.8 17.3 9.6</td>
</tr>
<tr>
<td>74. Women who do not speak English are less likely to have their orders of protection enforced by either arrest or prosecution in our county.</td>
<td>2.1</td>
<td>35.9 32.1 19.7 12.4</td>
</tr>
<tr>
<td>75. Other enforcement problem exists in our county (please describe) OR additional comments.</td>
<td>n.a.</td>
<td>n.a. n.a. n.a. n.a.</td>
</tr>
</tbody>
</table>

Section III: Statistics Related to Orders of Protection in Your County

NOTE: "Your" county refers to the county you described in the prior sections.

1. How many petitions for ex parte orders of protection were filed in your county in 1991?
   N=140; R=0-20,000; M=807
   22.3% This information is computer generated.
1. How many of these petitions did your domestic violence program assist with?
N=186; R=0-2700; M=228

2. Of the petitions you assisted with, how many ex parte orders were granted?
N=170; R=1-2700; M=189
Percentage of ex parte petitions granted (Line 3 divided by Line 2).
N=168; R=14.3-100%; M=94.7%

3. Of the petitions you assisted with, how many requested fee waivers?
N=127; R=0-2226; M=145

4. Of the petitions you assisted with, how many were granted fee waivers?
N=124; R=1-2226; M=143
Percentage of fee waiver petitions granted (Line 5 divided by Line 4).
N=120; R=30-100%; M=95.4%

5. Of the petitions you assisted with, how many petitioners who requested ex parte orders requested a second order of protections?
N=143; R=0-2400; M=153

6. Of the petitions you assisted with, how many were granted a second order of protection?
N=142; R=1-2380; M=142
Percentage of second orders of protection granted (Line 7 divided by Line 6).
N=134; R=8.3-100%; M=93.8%

7. What is your county’s name?

8. What is the population of your county?
N=214; R=4000-9,000,000; M=332,740

51.8% Percentage of urban counties (population > 100,000).

Section IV: Domestic Violence Resources in Your County

1. To what extent/how well are the court clerks, judges, state’s/district’s attorneys, police, and attorneys in your county trained or educated about domestic violence? What role have you and your domestic violence program played in this training?

2. What other programs and policies related to domestic violence exist in your community? How well do they work?

   a. Mandatory or pro-arrest for battery. 49.7%
   b. Batterers’ treatment program/counseling program. 60.6%
   c. Coordinated response to domestic violence (coalition of systems, potentially including domestic violence program advocates, state’s attorney, police, courts, hospital, lawyers, sheriff). 44.1%

Who’s involved?

   97.4% domestic violence program advocates
   70.1% state’s/district attorney
   87.6% police
   72.5% judge/court
   52.8% hospital
   49.5% lawyer(s)
   71.4% sheriff’s department
   43.9% other

3. Have you attempted any strategies to change the implementation or enforcement system for orders of protection? What have you done? How successful have those attempts been?

5. The figures reported below indicate what percentage of those who said that a coordinated response system was in place in their community checked each individual response.
APPENDIX B: T-TEST ANALYSIS

We conducted a series of t-test analyses to determine whether there were significant differences between counties whose police departments have a mandatory arrest policy and those that do not (Table 1) and between communities that have adopted a coordinated response approach to domestic violence and those that have not (Table 2). We divided our respondents for purposes of these tables by using their answers to Questions 2(a) and 2(c) in Section IV of the survey.

The following tables report the t-test value and accompanying probability value for any variation in the incidence of the problems identified in Section II of the survey that constitutes either a significant difference or a nonsignificant trend. Under scientific conventions, any difference at or below the .05 level is considered a statistically significant difference; results significant at the .10 level are nonsignificant trends.

In reading the tables, Line 1 of Table 1, for example, indicates that the mean rating for how well the procedures for serving protective orders work was 3.1 (on a scale of 1 to 4) in jurisdictions with a mandatory arrest policy, but only 2.9 in counties without such a policy. The t-test value is 2.16, and it is significant at the .05 level—that is, the probability (denoted "p" in the tables) that this particular discrepancy occurred by chance is five out of one hundred, or .05.

<table>
<thead>
<tr>
<th>Survey III: Problem #</th>
<th>Mean Rating</th>
<th>T-Test Statistic</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mandatory Arrest County</td>
<td>No Mandatory Arrest</td>
</tr>
<tr>
<td>4. How well do procedures for serving OPs work?</td>
<td>3.1</td>
<td>2.9</td>
</tr>
<tr>
<td>7. Court clerks don't help/discourage petrs.</td>
<td>1.8</td>
<td>2.0</td>
</tr>
<tr>
<td>8. Complexity/quantity of paperwork prevents filing for OPs.</td>
<td>1.6</td>
<td>1.8</td>
</tr>
<tr>
<td>14. Delay in granting EOPs increases victim risk.</td>
<td>1.4</td>
<td>1.7</td>
</tr>
<tr>
<td>15. Filing for EOPs is impracticable because of judges' unavailability.</td>
<td>1.3</td>
<td>1.6</td>
</tr>
<tr>
<td>16. Judges' unavailability to grant EOPs increases victim risk.</td>
<td>1.8</td>
<td>1.9</td>
</tr>
<tr>
<td>17. Sheriffs don't serve EOPs quickly enough to meet petrs' needs.</td>
<td>1.8</td>
<td>2.0</td>
</tr>
<tr>
<td>18. Petrs don't return to extend EOPs because sheriff unable to serve.</td>
<td>1.7</td>
<td>1.9</td>
</tr>
<tr>
<td>25. Venue rules prevent petrs from obtaining particular remedies.</td>
<td>1.4</td>
<td>1.5</td>
</tr>
<tr>
<td>26. Many DV victims don't realize OPs are an option.</td>
<td>2.1</td>
<td>2.3</td>
</tr>
</tbody>
</table>

*p < .05  **p < .01  ***p < .001  *p < .10
<table>
<thead>
<tr>
<th>Survey §II: Problem #</th>
<th>Mean Rating</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mandatory Arrest County</td>
<td>No Mandatory Arrest</td>
<td>T-Test Statistic</td>
<td></td>
</tr>
<tr>
<td>31. How well do procedures for obtaining OPs work?</td>
<td>3.2</td>
<td>3.0</td>
<td>2.59***</td>
<td></td>
</tr>
<tr>
<td>35. Judges deny remedies in EOPs.</td>
<td>2.1</td>
<td>2.3</td>
<td>2.29*</td>
<td></td>
</tr>
<tr>
<td>43. Judges impatient/insensitive to petrs if emotional/confused.</td>
<td>1.7</td>
<td>1.9</td>
<td>2.09*</td>
<td></td>
</tr>
<tr>
<td>51. Judges fail to send message that support petrs’ right to end violence.</td>
<td>1.8</td>
<td>2.1</td>
<td>2.56***</td>
<td></td>
</tr>
<tr>
<td>52. Judges make victim-blaming statements.</td>
<td>1.7</td>
<td>1.9</td>
<td>1.99*</td>
<td></td>
</tr>
<tr>
<td>58. How well do procedures for enforcing OPs work?</td>
<td>2.6</td>
<td>2.3</td>
<td>2.95***</td>
<td></td>
</tr>
<tr>
<td>61. Petrs don’t call police because slow/ineffective response.</td>
<td>2.1</td>
<td>2.4</td>
<td>2.36*</td>
<td></td>
</tr>
<tr>
<td>62. Police don’t enforce if petr “broke” order by having contact with abuser.</td>
<td>2.5</td>
<td>2.8</td>
<td>2.39*</td>
<td></td>
</tr>
<tr>
<td>63. Police don’t enforce OPs unless served.</td>
<td>2.4</td>
<td>2.7</td>
<td>2.08*</td>
<td></td>
</tr>
<tr>
<td>67. Police discourage petrs from enforcing.</td>
<td>1.7</td>
<td>2.0</td>
<td>2.15*</td>
<td></td>
</tr>
<tr>
<td>69. Prosecutor discourages petrs from enforcing.</td>
<td>1.4</td>
<td>1.8</td>
<td>3.44***</td>
<td></td>
</tr>
<tr>
<td>73. Greater enforcement problems for indigent women.</td>
<td>1.8</td>
<td>2.1</td>
<td>2.75***</td>
<td></td>
</tr>
<tr>
<td><strong>Total access problems</strong></td>
<td>1.7</td>
<td>1.8</td>
<td>2.32*</td>
<td></td>
</tr>
<tr>
<td><strong>Total relief problems</strong></td>
<td>1.9</td>
<td>2.0</td>
<td>1.88*</td>
<td></td>
</tr>
<tr>
<td><strong>Total enforcement problems</strong></td>
<td>2.1</td>
<td>2.3</td>
<td>2.66***</td>
<td></td>
</tr>
</tbody>
</table>

*p ≤ .05  **p ≤ .01  ***p ≤ .001  *p ≤ .10
<table>
<thead>
<tr>
<th>Survey — Problem #</th>
<th>Coordinated Response County</th>
<th>No Coordinated Response</th>
<th>T-Test Statistic</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. How well do procedures for serving OPs work?</td>
<td>3.2</td>
<td>2.8</td>
<td>4.52***</td>
</tr>
<tr>
<td>7. Court clerks don’t help/discourage pets.</td>
<td>1.8</td>
<td>2.0</td>
<td>1.70*</td>
</tr>
<tr>
<td>8. Complexity/quantity of paperwork prevents filing for OPs.</td>
<td>1.6</td>
<td>1.8</td>
<td>2.10*</td>
</tr>
<tr>
<td>13. EOP hearings require pets to leave work/kids for unpredictable/lengthy amounts of time.</td>
<td>2.1</td>
<td>2.4</td>
<td>2.41*</td>
</tr>
<tr>
<td>15. Filing for EOPs is impracticable because of judges’ unavailability.</td>
<td>1.3</td>
<td>1.6</td>
<td>3.29***</td>
</tr>
<tr>
<td>16. Judges’ unavailability to grant EOPs increases victim risk.</td>
<td>1.7</td>
<td>1.9</td>
<td>2.18*</td>
</tr>
<tr>
<td>17. Sheriffs don’t serve EOPs quickly enough to meet pets’ needs.</td>
<td>1.7</td>
<td>2.1</td>
<td>4.11***</td>
</tr>
<tr>
<td>18. Pets don’t return to extend EOPs because sheriff unable to serve.</td>
<td>1.7</td>
<td>1.9</td>
<td>2.26*</td>
</tr>
<tr>
<td>19. Intimidating courthouse prevents pets from seeking OPs.</td>
<td>1.7</td>
<td>1.9</td>
<td>2.51**</td>
</tr>
<tr>
<td>20. Intimidating courthouse makes it difficult for pets to explain.</td>
<td>1.7</td>
<td>2.0</td>
<td>2.98**</td>
</tr>
<tr>
<td>21. Public nature of procedures/embarrassment prevents pets from seeking EOPs.</td>
<td>1.9</td>
<td>2.2</td>
<td>3.51***</td>
</tr>
<tr>
<td>24. Venue rules prevent pets from obtaining OPs.</td>
<td>1.4</td>
<td>1.5</td>
<td>1.79*</td>
</tr>
<tr>
<td>25. Venue rules prevent pets from obtaining particular remedies.</td>
<td>1.4</td>
<td>1.6</td>
<td>2.49***</td>
</tr>
<tr>
<td>26. Many DV victims don’t realize OPs are an option.</td>
<td>2.0</td>
<td>2.4</td>
<td>3.96***</td>
</tr>
<tr>
<td>27. Greater access problems for women of color.</td>
<td>1.6</td>
<td>1.8</td>
<td>2.42*</td>
</tr>
</tbody>
</table>

*p ≤ .05  **p ≤ .01  ***p ≤ .001  *p ≤ .10
<table>
<thead>
<tr>
<th>Survey #1I: Problem #</th>
<th>Coordinated Response</th>
<th>No Coordinated Response</th>
<th>T-Test Statistic</th>
</tr>
</thead>
<tbody>
<tr>
<td>28. Greater access problems for indigent women.</td>
<td>1.9</td>
<td>2.4</td>
<td>4.15***</td>
</tr>
<tr>
<td>31. How well do procedures for obtaining OPs work?</td>
<td>3.3</td>
<td>2.9</td>
<td>4.35***</td>
</tr>
<tr>
<td>34. Judges deny EOPs based on informal rules.</td>
<td>1.7</td>
<td>2.0</td>
<td>2.60**</td>
</tr>
<tr>
<td>35. Judges deny remedies in EOPs.</td>
<td>2.0</td>
<td>2.4</td>
<td>3.66***</td>
</tr>
<tr>
<td>37. Judges deny OPs based on informal rules.</td>
<td>1.5</td>
<td>1.6</td>
<td>1.88*</td>
</tr>
<tr>
<td>43. Judges impatient/insensitive to petrs if emotional/confused.</td>
<td>1.7</td>
<td>1.9</td>
<td>1.77*</td>
</tr>
<tr>
<td>44. Women of color have more difficulty obtaining what they need.</td>
<td>1.3</td>
<td>1.6</td>
<td>2.63***</td>
</tr>
<tr>
<td>45. Indigent women have more difficulty obtaining what they need.</td>
<td>1.7</td>
<td>2.0</td>
<td>3.16***</td>
</tr>
<tr>
<td>47. Judges limit advocates' role in OP hearing.</td>
<td>1.6</td>
<td>1.8</td>
<td>1.77*</td>
</tr>
<tr>
<td>49. Petrs' financial circumstances prevent hiring attorney.</td>
<td>2.6</td>
<td>3.0</td>
<td>3.24***</td>
</tr>
<tr>
<td>50. Attys unwilling to help/hard to work with because of non-financial reasons.</td>
<td>2.2</td>
<td>2.5</td>
<td>2.00*</td>
</tr>
<tr>
<td>51. Judges fail to send message that support petrs' right to end violence.</td>
<td>1.8</td>
<td>2.1</td>
<td>2.35*</td>
</tr>
<tr>
<td>56. Some petrs don't appear for second hearing because believe abuser's promises.</td>
<td>2.7</td>
<td>2.9</td>
<td>2.02*</td>
</tr>
<tr>
<td>58. How well do procedures for enforcing OPs work?</td>
<td>2.7</td>
<td>2.2</td>
<td>5.47***</td>
</tr>
<tr>
<td>60. Police response to reported violations is slow/ineffective.</td>
<td>2.2</td>
<td>2.5</td>
<td>3.11***</td>
</tr>
<tr>
<td>61. Petrs don't call police because slow/ineffective response.</td>
<td>2.0</td>
<td>2.5</td>
<td>4.42***</td>
</tr>
<tr>
<td>62. Police don't enforce if petr &quot;broke&quot; order by having contact with abuser.</td>
<td>2.4</td>
<td>2.9</td>
<td>4.19***</td>
</tr>
</tbody>
</table>

*p ≤ .05  **p ≤ .01  ***p ≤ .001  *p ≤ .10
<table>
<thead>
<tr>
<th>Survey Problem #</th>
<th>Coordinated Response</th>
<th>No Coordinated Response</th>
<th>T-Test Statistic</th>
</tr>
</thead>
<tbody>
<tr>
<td>63. Police don't enforce OPs unless served.</td>
<td>2.4</td>
<td>2.7</td>
<td>2.34*</td>
</tr>
<tr>
<td>65. Police don't enforce OPs because lack training re DV.</td>
<td>2.4</td>
<td>2.7</td>
<td>3.04***</td>
</tr>
<tr>
<td>66. Police don't enforce because terms of OP are vague.</td>
<td>1.7</td>
<td>2.0</td>
<td>2.98***</td>
</tr>
<tr>
<td>67. Police discourage petrs from enforcing.</td>
<td>1.7</td>
<td>2.0</td>
<td>2.72***</td>
</tr>
<tr>
<td>68. Only limited prosecution of violations.</td>
<td>2.0</td>
<td>2.5</td>
<td>4.03***</td>
</tr>
<tr>
<td>69. Prosecutor discourages petrs from enforcing.</td>
<td>1.5</td>
<td>1.7</td>
<td>2.57***</td>
</tr>
<tr>
<td>70. Civil contempt is so lengthy/complicated that most petrs don't use.</td>
<td>2.1</td>
<td>2.6</td>
<td>3.72***</td>
</tr>
</tbody>
</table>

*p ≤ .05  **p ≤ .01  ***p ≤ .001  ****p ≤ .10
We conducted a series of hierarchical multiple regression analyses to test whether variations in the features of a county's system for obtaining and enforcing orders of protection can predict the extent to which battered women experience problems with those processes. The salient features of a system were divided into five areas: (1) the procedures for obtaining emergency orders; (2) the procedures for serving emergency orders; (3) the procedures for obtaining plenary orders; (4) judicial behavior and attitudes; and (5) the procedures for enforcing orders. Within each of these five areas, we chose a number of individual variables, which together comprised one set of predictors in the regression model. As outcome criteria, we used the mean rating for all of the problems included in each of the three areas of focus in the survey: access to the courts (Questions II, 6-29), the procedures for obtaining orders of protection (Questions II, 33-56), and the procedures for enforcing them (Questions II, 60-74).

Table 3. Overall, the system variables predict more than one-third of the variance in the mean rating for all access problems (Adj $R^2 = 0.37$). The first set of predictor variables (Step 1) pertains to the procedures for obtaining emergency orders. It accounts for 21.6% of the variance in the mean rating for access problems. (Typically, scientific protocol considers any $R^2$ chg whose probability ("p" in the tables) is no more than .05 significant.) The second set of predictor variables (Step 2) relates to the service of orders and accounts for an additional variance of 6.3% above and beyond the variance attributable to the variables included in Step 1. The predictor variables associated with the plenary order procedures, judicial behavior and attitudes, and the enforcement system account for an additional variance of 4.1%, 3.0% and 6.1%, respectively, beyond the variance attributable to the earlier steps in the analysis.

In addition, the Pearson correlation coefficients ("r" in the tables) report the univariate relationship between each predictor and each outcome variable. The larger the value, the stronger the relationship; the sign indicates whether the relationship is positive or negative. (For our sample size, any r value greater than .10 is significant at the .05 level ($p < .05$).) Thus, for example, the correlations reported in Step 1 in Table 3 indicate that systems that have no simplified forms for protective orders or have forms that are difficult to complete have more access problems, whereas communities where emergency orders are issued in less than an hour have fewer access problems. The beta weights ("Beta" in the tables) indicate the relative weight one would assign to each predictor variable in a regression equation in order to predict the outcome variable.

Table 4. Judicial behavior and attitudes make the most significant contribution in explaining relief problems (11.3%), although each set of predictor variables makes an independent contribution to the variance ranging from 4.0% to 10.4%. Together, the system variables predict 36% of the variance in the mean rating for relief problems.

Table 5. As expected, the features of a county's enforcement system are more strongly correlated with enforcement problems (14.8%) than are the other sets of predictor variables. Again, however, the other sets of predictor variables make an independent contribution in explaining the variance in the mean rating for enforcement problems.

In general, the regression analysis suggests that the overall protection order system, beginning with the emergency order procedure and ending with the sentencing of those who violate an order, functions as a cohesive whole. A problem in one part of the system acts as a weak link in the chain, adversely affecting other aspects of the system as well. This finding is consistent with the results of the t-test analysis of coordinated response approaches and mandatory arrest policies and coordinated response approaches (Appendix B, Tables 1 and 2).
### TABLE 3, ACCESS PROBLEMS

<table>
<thead>
<tr>
<th>Predictor Variable</th>
<th>Outcome Variable: Mean Access Problem Rating</th>
<th>r</th>
<th>Beta*</th>
<th>R²chg</th>
</tr>
</thead>
<tbody>
<tr>
<td>Survey §1 Question #</td>
<td>Step 1. Emergency Order Procedure</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5(a)/5(b)</td>
<td>Court provides written guidelines re procedure/requirements for OPs.</td>
<td>-.11</td>
<td>-.10</td>
<td></td>
</tr>
<tr>
<td>3(c)/3(d)</td>
<td>No simplified forms available/ simplified forms are difficult.</td>
<td>.30</td>
<td>.27</td>
<td></td>
</tr>
<tr>
<td>10(c)</td>
<td>Judges are available 24 hours a day.</td>
<td>-.02</td>
<td>-.02</td>
<td></td>
</tr>
<tr>
<td>11(a)</td>
<td>EOPs are granted without hearing.</td>
<td>.05</td>
<td>-.06</td>
<td></td>
</tr>
<tr>
<td>12(a)</td>
<td>EOPs are granted in less than 1 hour.</td>
<td>-.36</td>
<td>-.34</td>
<td></td>
</tr>
<tr>
<td>*</td>
<td>**</td>
<td>**</td>
<td>**</td>
<td></td>
</tr>
<tr>
<td>Step 2. Service of Orders</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13(b)</td>
<td>Sheriffs serve EOP as soon as possible.</td>
<td>-.35</td>
<td>-.26</td>
<td></td>
</tr>
<tr>
<td>13(j)</td>
<td>Sheriffs warn abuser that violating EOP leads to arrest.</td>
<td>-.21</td>
<td>-.02</td>
<td></td>
</tr>
<tr>
<td>*</td>
<td>**</td>
<td>**</td>
<td>**</td>
<td></td>
</tr>
<tr>
<td>Step 3. Plenary Order Procedure</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18(b)</td>
<td>Judge routinely denies certain remedies.</td>
<td>.15</td>
<td>.15</td>
<td></td>
</tr>
<tr>
<td>15(c)</td>
<td>Hearings are required even if resp does not appear.</td>
<td>.08</td>
<td>.11</td>
<td></td>
</tr>
<tr>
<td>15(h)</td>
<td>OP hearings are taped/recorded.</td>
<td>.06</td>
<td>-.01</td>
<td></td>
</tr>
<tr>
<td>1(g)/1(h)</td>
<td>Attorneys help petsr with paperwork/hearings.</td>
<td>.17</td>
<td>.09</td>
<td></td>
</tr>
<tr>
<td>*</td>
<td>**</td>
<td>**</td>
<td>**</td>
<td></td>
</tr>
<tr>
<td>Step 4. Judicial Behavior and Attitudes</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>19(a)</td>
<td>Judges are frustrated when petr vacates order.</td>
<td>.14</td>
<td>.10</td>
<td></td>
</tr>
</tbody>
</table>

*Standardized coefficients reported for the step in which they are entered into the model.

*p < .05  **p < .01  ***p < .0001
## Predictor Variable

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Description</th>
<th>r</th>
<th>Beta&lt;sup&gt;a&lt;/sup&gt;</th>
<th>R²chg</th>
</tr>
</thead>
<tbody>
<tr>
<td>19(b)</td>
<td>Judges ask questions to determine voluntariness of request to vacate.</td>
<td>-.10</td>
<td>-.03</td>
<td></td>
</tr>
<tr>
<td>17(a)</td>
<td>Judges lecture resp about inappropriateness of violence.</td>
<td>-.20</td>
<td>-.14</td>
<td></td>
</tr>
<tr>
<td>17(e)</td>
<td>Judges tell petr to report violations to police.</td>
<td>-.17</td>
<td>.02</td>
<td></td>
</tr>
</tbody>
</table>

### Step 5. Enforcement System

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Description</th>
<th>r</th>
<th>Beta&lt;sup&gt;a&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>23(h)</td>
<td>Police department has mandatory arrest policy.</td>
<td>-.11</td>
<td>-.02</td>
</tr>
<tr>
<td>24(b)</td>
<td>Violations are routinely prosecuted.</td>
<td>-.05</td>
<td>.02</td>
</tr>
<tr>
<td>23(g)</td>
<td>Police have authority to arrest but elect not to do so.</td>
<td>.19</td>
<td>-.03</td>
</tr>
<tr>
<td>23(e)</td>
<td>Police make no effort to find/arrest absent abuser.</td>
<td>.33</td>
<td>.25</td>
</tr>
<tr>
<td>25(e)</td>
<td>Violators have been sentenced to jail.</td>
<td>-.19</td>
<td>-.07</td>
</tr>
</tbody>
</table>

Multiple R (Adj. R²) = .64 (.37)

## TABLE 4. RELIEF PROBLEMS

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Description</th>
<th>r</th>
<th>Beta&lt;sup&gt;a&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Survey §1 Question #</td>
<td>Step 1. Emergency Order Procedure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5(a)/5(b)</td>
<td>Court provides written guidelines re procedure/requirements for OPs.</td>
<td>-.11</td>
<td>-.09</td>
</tr>
<tr>
<td>3(c)/3(d)</td>
<td>No simplified forms available/simplified forms are difficult.</td>
<td>.22</td>
<td>.19</td>
</tr>
<tr>
<td>10(c)</td>
<td>Judges are available 24 hours a day.</td>
<td>-.01</td>
<td>-.01</td>
</tr>
<tr>
<td>11(a)</td>
<td>EOPs are granted without hearing.</td>
<td>.07</td>
<td>.00</td>
</tr>
</tbody>
</table>

<sup>a</sup>Standardized coefficients reported for the step in which they are entered into the model.

<sup>p < .05</sup> <sup>p < .01</sup> <sup>p < .0001</sup>
<table>
<thead>
<tr>
<th>Predictor Variable</th>
<th>( r )</th>
<th>Beta*</th>
<th>( R^2 \text{chg} )</th>
</tr>
</thead>
<tbody>
<tr>
<td>12(a) EOPs are granted in less than 1 hour.</td>
<td>-.24</td>
<td>-.21</td>
<td>.104***</td>
</tr>
<tr>
<td>13(b) Sheriffs serve EOP as soon as possible.</td>
<td>-.26</td>
<td>-.18</td>
<td></td>
</tr>
<tr>
<td>13(j) Sheriffs warn abuser that violating EOP leads to arrest.</td>
<td>-.19</td>
<td>-.06</td>
<td>.040***</td>
</tr>
<tr>
<td>18(b) Judge routinely denies certain remedies.</td>
<td>.22</td>
<td>.23</td>
<td></td>
</tr>
<tr>
<td>15(c) Hearings are required even if resp does not appear.</td>
<td>.13</td>
<td>.15</td>
<td></td>
</tr>
<tr>
<td>15(h) OP hearings are taped/recorded.</td>
<td>.07</td>
<td>.00</td>
<td></td>
</tr>
<tr>
<td>1(g)/1(h) Attorneys help petrs with paperwork/hearings.</td>
<td>.16</td>
<td>.09</td>
<td>.082***</td>
</tr>
<tr>
<td>19(a) Judges are frustrated when petr vacates order.</td>
<td>.29</td>
<td>.24</td>
<td></td>
</tr>
<tr>
<td>19(b) Judges ask questions to determine voluntariness of request to vacate.</td>
<td>-.16</td>
<td>-.09</td>
<td></td>
</tr>
<tr>
<td>17(a) Judges lecture resp about inappropriateness of violence.</td>
<td>-.27</td>
<td>-.19</td>
<td></td>
</tr>
<tr>
<td>17(c) Judges tell petr to report violations to police.</td>
<td>-.20</td>
<td>-.01</td>
<td>.113***</td>
</tr>
<tr>
<td>23(h) Police department has mandatory arrest policy.</td>
<td>-.07</td>
<td>.03</td>
<td></td>
</tr>
<tr>
<td>24(b) Violations are routinely prosecuted.</td>
<td>.00</td>
<td>.13</td>
<td></td>
</tr>
</tbody>
</table>

*Standardized coefficients reported for the step in which they are entered into the model.

\( p \leq .05 \quad p \leq .01 \quad p \leq .0001 \)
### TABLE 5. ENFORCEMENT PROBLEMS

<table>
<thead>
<tr>
<th>Predictor Variable</th>
<th>r</th>
<th>Beta</th>
<th>R^2chg</th>
</tr>
</thead>
<tbody>
<tr>
<td>23(g) Police have authority to arrest but elect not to do so.</td>
<td>.22</td>
<td>.07</td>
<td></td>
</tr>
<tr>
<td>23(e) Police make no effort to find/arrest absent abuser.</td>
<td>.31</td>
<td>.21</td>
<td></td>
</tr>
<tr>
<td>25(e) Violators have been sentenced to jail.</td>
<td>-.15</td>
<td>-.06</td>
<td>.058***</td>
</tr>
<tr>
<td>Multiple R (Adj. R^2) =</td>
<td></td>
<td></td>
<td>.63(36)</td>
</tr>
</tbody>
</table>

**Survey 2**

<table>
<thead>
<tr>
<th>Step 1. Emergency Order Procedure</th>
<th>Predictor Variable</th>
<th>r</th>
<th>Beta</th>
<th>R^2chg</th>
</tr>
</thead>
<tbody>
<tr>
<td>5(a)/5(b) Court provides written guidelines re procedure/requirements for OPs.</td>
<td>-.05</td>
<td>-.05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3(c)/3(d) No simplified forms available/ simplified forms are difficult.</td>
<td>.19</td>
<td>.16</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10(c) Judges are available 24 hours a day.</td>
<td>.05</td>
<td>.04</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11(a) EOPs are granted without hearing.</td>
<td>.08</td>
<td>.03</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12(a) EOPs are granted in less than 1 hour</td>
<td>-.20</td>
<td>-.18</td>
<td>.072***</td>
<td></td>
</tr>
</tbody>
</table>

**Step 2. Service of Orders**

| 13(b) Sheriffs serve EOP as soon as possible. | -.32 | -.25 |        |
| 13(j) Sheriffs warn abuser that violating EOP leads to arrest. | -.24 | -.14 |        |

**Step 3. Plenary Order Procedure**

| 18(b) Judge routinely denies certain remedies. | .19 | .19 |        |

---

*Standardized coefficients reported for the step in which they are entered into the model.

*p < .05 **p < .01 ***p < .001
<table>
<thead>
<tr>
<th>Predictor Variable</th>
<th>( r )</th>
<th>Beta*</th>
<th>( R^2 \text{chg} )</th>
</tr>
</thead>
<tbody>
<tr>
<td>15(e) Hearings are required even if resp does not appear.</td>
<td>.12</td>
<td>.13</td>
<td></td>
</tr>
<tr>
<td>15(h) OP hearings are taped/recorded.</td>
<td>.07</td>
<td>.00</td>
<td></td>
</tr>
<tr>
<td>1(g)/1(h) Attorneys help petrs with paperwork/hearings.</td>
<td>.17</td>
<td>.09</td>
<td></td>
</tr>
<tr>
<td>15(e)</td>
<td>.059**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>19(a) Judges are frustrated when petr vacates order.</td>
<td>.20</td>
<td>.18</td>
<td></td>
</tr>
<tr>
<td>19(b) Judges ask questions to determine voluntariness of request to vacate.</td>
<td>-.13</td>
<td>-.07</td>
<td></td>
</tr>
<tr>
<td>17(a) Judges lecture resp about inappropriateness of violence.</td>
<td>-.15</td>
<td>-.04</td>
<td></td>
</tr>
<tr>
<td>17(e) Judges tell petr to report violations to police.</td>
<td>-.21</td>
<td>-.05</td>
<td></td>
</tr>
<tr>
<td>19(a)</td>
<td>.045**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>23(b) Police department has mandatory arrest policy.</td>
<td>-.18</td>
<td>-.02</td>
<td></td>
</tr>
<tr>
<td>24(b) Violations are routinely prosecuted.</td>
<td>-.17</td>
<td>-.03</td>
<td></td>
</tr>
<tr>
<td>23(g) Police have authority to arrest but elect not to do so.</td>
<td>.35</td>
<td>.12</td>
<td></td>
</tr>
<tr>
<td>23(e) Police make no effort to find/arrest absent abuser.</td>
<td>.44</td>
<td>.31</td>
<td></td>
</tr>
<tr>
<td>25(e) Violators have been sentenced to jail.</td>
<td>-.21</td>
<td>-.14</td>
<td></td>
</tr>
<tr>
<td>25(e)</td>
<td>.148***</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Multiple R (Adj. ( R^2 )) =</td>
<td></td>
<td>.64(.37)</td>
<td></td>
</tr>
</tbody>
</table>

Notes. *Standardized coefficients reported for the step in which they are entered into the model.

\( p \leq .05 \) \( p \leq .01 \) \( p \leq .001 \) \( p \leq .0001 \)