

## ARE ORDERS OF PROTECTION EFFECTIVE?

There are many studies that address the effectiveness of orders of protection (“O.P.s”). In general, they show that:

1. Approximately half of victims do not experience protective order violations.<sup>1</sup>
2. Of those who did experience violations, significant reductions were noted in overall abuse, fear of future harm, distress due to the abuse, and costs.<sup>2</sup>
3. The risk of violation is greatest soon after its initiation, especially during the time span of a temporary order.<sup>3</sup>
4. Lengthier orders produce greater safety outcomes.<sup>4</sup>
5. Vigorous prosecution and significant sanctioning of abusers reduces re-abuse.<sup>5</sup>
6. The most effective response to domestic violence occurs when all parts of the justice system collaborate, coordinate their operations.<sup>6</sup> Judges play a significant role in ensuring that victims are protected.<sup>7</sup>
7. Victims who are supported in their efforts to obtain O.P.s are more likely to take further steps to keep themselves safe (such as report violations).<sup>8</sup> Tailoring relief to that sought by the victim ensures further protection.<sup>9</sup>

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<sup>1</sup> Spitzberg, B., *The Tactical Topography of Stalking Victimization and Management*, *Trauma Violence Abuse* 3:261-88, 2002. Logan, T.K., Walker, R., Hoyt, W., *The Kentucky Civil Protective Order Study: a Rural and Urban Multiple Perspective Study of Protective Order Violation Consequences, Responses, and Costs*, University of Kentucky Dept. of Behavioral Science (Sept. 2009), p. 165.

<sup>2</sup> Kaklis, W., Evaluation the Effectiveness of Protective Orders in the U.S., Penn State University, (Jan. 2022). Carlson, M., et al., *Protective Orders and Domestic Violence: Risk Factors for Re-Abuse*: 14 *J. Fam. Violence* 205, 205, 214-15 (1999); Holt, V., et al., *Do Protection Orders Affect the Likelihood of Future Partner Violence and Injury?* 24 *Am. J. Preventive Med.* 16, 18-21 (2003): O.P.s “appear to be one of the few widely available interventions for victims of intimate partner violence that have demonstrated effectiveness.” McFarlane, J., et al., *Protective Orders and Intimate Partner Violence: An 18-Month Study of 150 Black, Hispanic, and White Women*, 94 *Am. J. Pub. Health* 613, 613-18 (2004). Survivors of domestic violence have rated the filing of a protective order as one of two of their most effective tools for stopping DV – second only to leaving the abuser. Hailskaci, J., *Aftermath of Seeking Domestic Violence Protective Orders: the Victim’s Perspective*. 10 *J. of CONTEMP. CRIM. JUST.* 204 (1994). See also, Rosenberg, J. and Grab, D., *Supporting Survivors: the Economic Benefits of Providing Civil Legal Assistance to Survivors of Domestic Violence*. *Institute for Policy Integrity – New York University School of Law* (July 21, 2015). McFarlane, J., et al., *Intimate Partner Violence against Immigrant Women: Measuring the Effectiveness of Protection Orders*, 16 *Am. J. Fam. L.* 244, 248 (2002). Fischer, K., Rose, M., *When Enough is Enough: Battered Women’s Decision Making Around Court Orders of Protection*, 41 *Crime & Delinq.* 414, 423-25 (1995). Logan, above footnote. Benitez, C. T., McNiel, D.E., Binder, R.L., *Do Protection Orders Protect? The Journal of the American Academy of Psychiatry and the Law*, 38:376-85, 2010. Ptacek, J., *Battered Women in the Courtroom: the Power of Judicial Responses*, 164 (1999). Logan, T.K., Walker, R., *Civil Protection Order Outcomes: Violations and Perceptions of Effectiveness*, 24 *J. Interpersonal Violence* 675, 677-78, 682-83 (2009).

<sup>3</sup> Holt, V.I., Kernic, M.A., et al., *Civil Protection Orders and Risk of Subsequent Police-Reported Violence*, *JAMA*, 288:589-94, 2002. Klein, A.R., *Re-abuse in a Population of Court-restrained Male Batterers, Do Arrests and Restraining Orders Work?* (edited by Buzawa, E.S., Buzawa, C.G., Sage Publications) 1996. Harrell, A., Smith, B.E., *Effects of Restraining Orders on Domestic Violence Victims, Do Arrests and Restraining Orders Work?* (edited by Buzawa, E.S., Buzawa, C.G., Sage Publications) 1996, pp. 214-42; Meloy, J.R., Cowett, P.Y., Parker, S.B., *Domestic Protection Orders and the Prediction of Subsequent Criminality and Violence toward Protectees, Psychotherapy* 34:447-58, 1997. Isaac, N.E., Cochran, D., Brown, M.E., et al., *Men Who Batter: Profile from a Restraining Order Database, Arch Family Med* 3:50-4, 1994.

<sup>4</sup> Sullivan, T., Weiss, N., Carey, C., Woerner, J., & Wyatt, J., *Criminal Orders of Protection for Domestic Violence: Associated Revictimization Mental health, and Well-being Among Victims*, *Journal of Interpersonal Violence* 36, 21-22 (2021). Holt, V., et al., *Do Protection Orders Affect the Likelihood of Future Partner Violence and Injury?*, 24 *Am. J. Preventive Med.* 16, 18-21 (2003). Carlson, M., et al., *Protective Orders and Domestic Violence: Risk Factors for Re-Abuse*: 14 *J. Fam. Violence* 205, 214 (1999).

<sup>5</sup> Cordier, R., Chung, D., Speer, R., *The Effectiveness of Protective Orders in Reducing Recidivism in Domestic Violence: A Systemic Review and Meta-Analysis*, *Trauma Violence, and Abuse*. 22(4), (2021). Klein, A.R., *Re-abuse in a Population of Court-restrained Male Batterers, Do Arrests and Restraining Orders Work?* (edited by Buzawa, E.S., Buzawa, C.G., Sage Publications) 1996.

<sup>6</sup> Sack, E., *Creating a Domestic Violence Court*, (edited by Anderson, L., et al., 2002). Indeed, “A law is only as good as the system that delivers on its promises.” [Epstein, D., *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges and the Court System*. 11 *Yale J. L. & Feminism* 3,4 (1999).]

<sup>7</sup> Carter, J., et al., *Domestic Violence in Civil Court Cases: a National Model for Judicial Education*, 22-24 (edited by Agtuca, J., et al., 1992): “How effectively the judiciary handles domestic violence cases ultimately determines how effectively the justice system is able to break the cycle of violence. It is the judge who sets the tone in the courtroom, and it is the judge who makes the most critical decisions affecting the lives of the victim, the perpetrator and children.” (at p. xvii.)

<sup>8</sup> Waul, M., *Civil Protection Orders: an Opportunity for Intervention with Domestic Violence Victims*, 6 *GEO PUBLIC POL’Y REV.* 51, 57 (2000)

<sup>9</sup> Harrell, A., Smith, B.E., *Effects of Restraining Orders on Domestic Violence Victims, Do Arrests and Restraining Orders Work?* (edited by Buzawa, E.S., Buzawa, C.G., Sage Publications) 1996, pp. 233, 237-40; Logan, T.K., *Protective Orders in Rural and Urban Areas*, 11 *Violence Against Women* 876, 906 (2005).

8. Judges can best protect victims who have children in common with the offenders when they carefully address custody and visitation.<sup>10</sup>

**O.P.s can be effective, however, when certain factors are present, there is a greater risk of violation. These factors are pertinent to:**

#### **A. THE VICTIM**

1. Socio-economic status. Women of very low socioeconomic status experience the least decline in reported violence after an O.P.<sup>11</sup>
2. Presence of children between the victim and the offender. The presence of children increases the odds of reporting re-abuse.<sup>12</sup>
3. Race/ethnicity. Black women are at elevated risks of renewed abuse after legal intervention (i.e., an O.P. or arrest of partner for a DV incident.) in comparison to white and Latinx women.<sup>13</sup> (Note that race is not a factor pertaining to the offender.<sup>14</sup>)
4. Gender. Men who have O.P.s are more likely to experience violations by their intimate partners.<sup>15</sup>

#### **B. THE OFFENDER**

1. History of violent criminal acts. This appears to be the factor that is the best predictor of future problems.<sup>16</sup> Criminal charges, arrest records for domestic violence crimes also are indicative.<sup>17</sup>
2. History of alcohol and drug convictions.<sup>18</sup> Another factor of concern.
3. History of O.P. violations.<sup>19</sup> Of course, this is an issue.

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<sup>10</sup> "Petitioners and respondents are often bound together through children they share. However, access to children may need to be limited or halted to protect the safety of a parent and the children, keeping in mind that custody and visitation matters are a common avenue that respondents use to continue harassing victims of domestic violence." A Guide for Effective Issuance and Enforcement of Protection Orders, National Council of Juvenile and Family Court Judges. 2004.

Missouri law provides the judge with great discretion to limit visitation of an abusive parent: "A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger the child's physical health or impair his or her emotional development. The court shall enter an order specifically detailing the visitation rights of the parent without physical custody rights to the child and any other children for whom such parent has custodial or visitation rights. In determining the granting of visitation rights, the court shall consider evidence of domestic violence..." Sect. 452.400.1(1), RSMo. Moreover: "The court shall consider the parent's history of inflicting, or tendency to inflict, physical harm, bodily injury, or assault on other persons and shall grant visitation in a manner that best protects the child and the parent... who is the victim of domestic violence." Sect. 452.400.1(3), RSMo. Missouri case law supports supervised or restricted visitation when it is believed that the children will be endangered, even though they had not been physically abused themselves but had been exposed to the abuse of their custodial parent. *Madison v. Madison*, 27 S.W.3d 853 (Mo. App. E.D. 2000).

<sup>11</sup> Harrell, A., Smith, B.E., *Effects of Restraining Orders on Domestic Violence Victims, Do Arrests and Restraining Orders Work?* (edited by Buzawa, E.S., Buzawa, C.G., Sage Publications) 1996, pp. 214-42; Carlson, M.J., Harris, S.D., Holden, G.W., *Protective Orders and Domestic Violence: Risk Factors for Re-Abuse*, J Fam Violence 14:205-26, 1999; Mears, D.P. Carlson, M.J., Holden, G.W., et al., *Reducing Domestic Violence Revictimization: the Effects of Individual and Contextual Factors and Type of Legal Intervention*, Interpers. Violence 16:1260-83, 2001.

<sup>12</sup> Carlson, above footnote. Klein above footnote.

<sup>13</sup> Carlson, Mears, above footnote.

<sup>14</sup> Meloy, J.R., Cowett, P.Y., Parker, S.B., *Domestic Protection Orders and the Prediction of Subsequent Criminality and Violence toward Protectees*, Psychotherapy 34:447-58, 1997.

<sup>15</sup> Tjaden, P., Thoennes, N., *Stalking in America: Findings from the National Violence against Women Survey*, National Institute of Justice and Centers for Disease Control and Prevention, NCJ 169592, April 1998, pp. 1-19.

<sup>16</sup> Chadhuri, M., Daly, K., *Do Restraining Orders Help? (Battered Women's Experience with Male Violence and Legal Process)*, Domestic Violence: The Changing Criminal Justice Response (edited by Buzawa, E.S., Buzawa, C.G., Auburn House) 1992, pp. 227-52; Klein, A.R., *Re-abuse in a Population of Court-restrained Male Batterers, Do Arrests and Restraining Orders Work?* (edited by Buzawa, E.S., Buzawa, C.G., Sage Publications) 1996, pp. 192-213; Meloy, above footnote; Harrell, above footnote. See Waul, M., *Civil Protection Orders: an Opportunity for Intervention with Domestic Violence Victims*, 6 GEO PUBLIC POL'Y REV. 51, 54 (2000); places significance in prior abuse history. *Civil Protection Orders: Victims' Views on Effectiveness*, Keilitz, S.L., Davis, C., et al., National Institute of Justice (Jan. 1998): when the offender has a history of violent offenses, criminal prosecution may be the only way to curb the violative behavior.

<sup>17</sup> Kingsnorth, R., *Intimate Partner Violence: Predictors of Recidivism in a Sample of Arrestees*, 12 Violence Against Women 917, 930 (2006).

<sup>18</sup> Isaac, N.E., Cochran, D., Brown, M.E., et al., *Men Who Batter: Profile from a Restraining Order Database*, Arch Family Med 3:50-4, 1994.

<sup>19</sup> Kingsnorth, R., *Intimate Partner Violence: Predictors of Recidivism in a Sample of Arrestees*, 12 Violence Against Women 917, 930 (2006).

4. Use of a weapon.<sup>20</sup>
5. Gender. Males are more likely to offend.<sup>21</sup>
6. Age. Younger offenders are more likely to offend.<sup>22</sup>
7. Employment status. When an offender has less than a full-time job, there is greater likelihood of violations.<sup>23</sup>
8. Contact with public mental health providers.<sup>24</sup> An active psychosis makes a significant contribution to violence-risk prediction.<sup>25</sup>
9. Level of resistance during court proceedings and at the time of the issuance of the O.P. A combative offender in court and after an *ex parte* order has been served can be grounds for concern.<sup>26</sup>

### C. THE RELATIONSHIP

1. Cohabitation at the time of the original incident. Such living arrangements make violations less likely.<sup>27</sup>
2. Length of time that a female victim has been in the relationship. Women in relationships of 5-plus years are less likely to report re-abuse than women who are in relationships of less than a year.<sup>28</sup>
3. The “persistence of the pattern” of abuse leading up to the O.P. The severity of the abuse leading to the O.P. is not a factor, but the “persistence in the pattern” is indicative of a greater likelihood of violation.<sup>29</sup> (Note that while the severity of the abuse is not a factor pertaining to violations, it is a factor pertaining to the severity of future violations.<sup>30</sup>)
4. History of stalking as to this particular relationship. This is another significant predictor of future violations. A very high reoffending rate.<sup>31</sup>

### D. TIMING

1. If no stalking for the previous six months before the issuance of the O.P. – less likelihood of noncompliance.<sup>32</sup>
2. Much of the noncompliance occurs immediately after the *ex parte* O.P. has been issued<sup>33</sup> and within the first three months after the issuance of the O.P.<sup>34</sup>

<sup>20</sup> Rand Corporation. The Effects of Extreme Risk Protective Orders, January, 2023. Kingsnorth, R., *Intimate Partner Violence: Predictors of Recidivism in a Sample of Arrestees*, 12 Violence Against Women 917, 930 (2006).

<sup>21</sup> Meloy, above footnote.

<sup>22</sup> Klein, above footnote.

<sup>23</sup> Chadhuri, above footnote.

<sup>24</sup> Meloy, above footnote.

<sup>25</sup> Monahan, J., Mental Disorder and Violent Behavior: Perceptions and Evidence, *American Psychologist*, 47(4), 511-21.

<sup>26</sup> Harrell, above footnote; Meloy, above footnote; Klein, above footnote.

<sup>27</sup> Harrell, above footnote.

<sup>28</sup> Carlson, above footnote.

<sup>29</sup> Harrell, above footnote.

<sup>30</sup> Harrell, above footnote.

<sup>31</sup> Logan, T.K., Shannon, L., Cole, J., *Stalking Victimization in the Context of Intimate Partner Violence*, Violence Victims 22:669-83, 2007; Tjaden, above footnote. “Partner violence and stalking are more than relationship problems or romance gone wrong; rather, these behaviors should be viewed as an extension of criminal behavior and as a part of a campaign of terror over victims.” Logan, Footnote 1, p. 162.

<sup>32</sup> Logan, Footnote 1, p. 165. Logan, T.K. & Walker, R., *Civil Protection Order Outcomes: Violations and Perceptions of Effectiveness*, 24 *J. Interpersonal Violence* 675, 685 (2009).

<sup>33</sup> Harrell, above footnote; Meloy, above footnote; Klein, above footnote. Studies were also done pertaining to criminal pretrial release programs. Acts of noncompliance during pre-disposition periods forecasted noncompliance after sentencing. Kindness, A., Kim, H., et al., *Court Compliance as a Predictor of Post-adjudication Recidivism for Domestic Violence Offenders*, 24 J. Interpers. Violence, 1222 (2009).

<sup>34</sup> Holt, V.I., Kernic, M.A., et al., *Civil Protection Orders and Risk of Subsequent Police-Reported Violence*, JAMA, 288:589-94, 2002: “Permanent, but not temporary, protection orders are associated with a significant decrease in risk of police-reported violence against women by their male intimate partners.” Klein, A.R., *Re-abuse in a Population of Court-restrained Male Battersers, Do Arrests and Restraining Orders Work?* (edited by Buzawa, E.S., Buzawa, C.G., Sage Publications) 1996. Harrell, A., Smith, B.E., *Effects of Restraining Orders on Domestic Violence Victims, Do Arrests and Restraining Orders Work?* (edited by Buzawa, E.S., Buzawa, C.G., Sage Publications) 1996, pp. 214-42; Meloy, J.R., Cowett, P.Y., Parker, S.B., *Domestic Protection Orders and the Prediction of Subsequent Criminality and Violence toward Protectees*, Psychotherapy 34:447-58, 1997. Isaac, N.E., Cochran, D., Brown, M.E., et

3. There is a lower likelihood of re-abuse as more time passes since the incident leading to the protective order.<sup>35</sup>

## **E. THE ROLE OF THE LEGAL SYSTEM**

1. Arrest at the time of the incident. Criminal charges made.<sup>36</sup> Supporting victims will cause them to be more likely to seek future help when violations occur.
2. Helpfulness on the part of law enforcement.<sup>37</sup>

The University of Kentucky's Department of Behavioral Sciences conducted an incredibly thoughtful and extensive Civil Protection Order Study. Its 2009 report<sup>38</sup> made some pertinent recommendations:

### **I. INCREASE ACCESS TO PROTECTIVE ORDERS BY IDENTIFYING AND REDUCING BARRIERS.**

- Victims must be provided with more information about the process and more help with obtaining civil protective orders.
- Personnel in court offices who act as gatekeepers must be trained properly, to avoid discouraging/denying victims from attaining the help they deserve and need.
- Access to the offices must be assured for all, and in particular, disabled and injured victims, those with language barriers.

### **II. ADDRESS GAPS IN VICTIM SAFETY AND OFFENDER ACCOUNTABILITY.**

- Victims must fully understand the scope of *ex parte* order violations – and how to report them. Consequences for such violations must be provided. (Prompt and aggressive enforcement is critical.)
- Advocacy services at this early setting must be provided.
- Training of law enforcement and court personnel on the dynamics of IPV is crucial: victim-blaming for failure to report violations must be avoided at all costs. All reports of violations must be addressed. No bias against victims who drop previous orders should be tolerated.
- Justice system and victim service personnel need to fully appreciate the effectiveness of O.P.s. They work! (For the most part...)

### **III. RESPOND TO PARTNER STALKING MORE EFFECTIVELY.**

- The justice system and victim service representatives need to fully appreciate the danger associated with stalking and the toll it takes on victims. More heightened risk factors for harm need to be appreciated.

### **IV. ACKNOWLEDGE THE SIGNIFICANT HARM AND TOLL PARTNER VIOLENCE AND STALKING IMPOSE ON VICTIMS.**

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*al., Men Who Batter: Profile from a Restraining Order Database*, *Arch Family Med* 3:50-4, 1994. Holt, V., *et al.*, *Do Protection Orders Affect the Likelihood of Future Partner Violence and Injury?*, 24 *Am. J. Preventive Med.* 16, 18-21 (2003).

<sup>35</sup> Klein, A.R., *Re-abuse in a Population of Court-restrained Male Batterers, Do Arrests and Restraining Orders Work?* (edited by Buzawa, E.S., Buzawa, C.G., Sage Publications) 1996.

<sup>36</sup> Harrell, above footnote; Carlson, above footnote.

<sup>37</sup> Harrell, above footnote.

<sup>38</sup> Logan, T.K., Walker, R., Hoyt, W., *The Kentucky Civil Protective Order Study: a Rural and Urban Multiple Perspective Study of Protective Order Violation Consequences, Responses, and Costs.*, University of Kentucky Dept. of Behavioral Science (Sept. 2009), pp. 154-65.

**V. TARGET TRAINING OF JUSTICE SYSTEM AND VICTIM PERSONNEL TO INCREASE UNDERSTANDING OF PARTNER VIOLENCE, PROTECTIVE ORDER EFFECTIVENESS, PERPETRATOR CHARACTERISTICS, AND PARTNER STALKING WITHIN JURISDICTIONAL AND COMMUNITY CONTEXTS.**

- Misperceptions about the effectiveness of protective orders should be addressed.
- Training on the characteristics of IPV perpetrators is essential.
- Reminders that IPV does not come from “relationship issues” and “financial strain.” Victims rarely seek OPs for “revenge” or “gaining the upper hand.”

MDB (9/7/23)