

DOMESTIC VIOLENCE - CRIMINAL AND CIVIL PROTECTION ORDERS

Professor: Wesley Jennings, Ph.D.

The presentation now focuses on criminal and civil protection orders. Prior to 1976, civil protection orders were only available to spouses after divorce proceedings were initiated. Whereas today, all 50 states, the District of Columbia, and Puerto Rico have some sort of protection order available. Protection orders are one of the most important advances in the legal treatment of domestic violence.

A protection order is a legally binding court order that restrains an individual who has committed an act of violence against a person from further acts or contacts with that person. Protection orders are not uniformly legislated from state to state, however. So what can protection orders do?

Protection orders can one, prohibit the abuser from committing acts of violence. Two, exclude the abuser from the residence shared by petitioner and the abuser. Three, prohibit the abuser from harassing or contacting the petitioner by mail, telephone, or in person. Four, award temporary custody of minor children. Five, establish temporary visitation and restrain the abuser from interfering with custody. Six, prohibit the abuser from removing children from the jurisdiction of the court. And seven, order the abuser to participate in treatment.

There are varied types of protection orders. Civil orders are used so individuals have a responsibility to show due cause for an order. Comparatively, criminal orders or no contact orders are put in place by a judge. Victims' views are not considered and they are put in place during the period between the arrest and case disposition.

Comparatively, an emergency or temporary order is something that is issued after an ex-parte hearing where the victim must show that there is immediate danger of future violence. And these types of orders are short lived, typically between 14 and 30 days. Nevertheless, they are intended to protect victims until a full hearing for a permanent order can be scheduled. As such, full or permanent orders are longer in duration, typically between one and three years.

The National Council of Juvenile and Family Court Judges recommend that protection orders last indefinitely and progressive jurisdictions are actually adopting this approach. There are a series of barriers to obtaining personal protection orders. For instance, filing fees may pose a significant financial obstacle. Petitioning for a protection order can be emotionally taxing, as most states require proof of violence before issuing a personal protection order.

And this is difficult for women who experience nonphysical violence, such as emotional abuse. Also, many women are afraid of retaliation due to direct threats or a general fear that by taking a protection order would anger the abuser and include further violence. So when do victims ask for protection orders? The research agrees that most victims do not request protection orders after the first violent incidents.

Specifically, according to National Violence Against Women Survey, only 16% of rape victims, 17% assault victims, and 37% of stalking victims reported petitioning for protective orders immediately following an abusive incident. And a survey of victims in battered women's shelters found that only 40% had obtained protection orders prior to entering the shelter. In a multi court study in Boston, prior to petitioning the court for an order, female victims had tried to protect themselves in a variety of other ways First.

Perhaps most significantly, 68% had left their abuser at least once and 15% had kicked their abuser out of the home at least once before petitioning courts for their protection order. In addition, 78% reported having called the police at least once before. 30% reported having obtained counseling services and 25% reportedly had called a hotline or has gone to a shelter.

Studies have found between 27% and 50% of victims are living with their abuser at the time of the incident that prompted the protection order request, while between 37% and 46% file for orders after the abuser has left or the victim has left the home. In a Colorado study, half of the petitioners had left their abusers at the time of the incidents that provoked the protection order request.

In the same study, female petitioners suffered an average of 13 abusive behaviors in the year prior to requesting the protection order. These behaviors included being sworn at and also even having been raped. Relatedly, the incident that prompts victims to seek protection orders may not necessarily be the most serious incident they experience at the hand of their abusers. Overall, although petitions focus on the most recent, discrete incident, that incident rarely fully reveals the extent and nature of the abuse suffered by the victim and their risk for future abuse.

So in an effort to obtain more information, judges need to further question victims and or review the respondents' prior criminal and civil history in an effort to make a more accurate assessment of the risk of re-victimization. So how many abusers violate protection orders? The research varies, but violation rates have been found to range from about 60% within 12 months to 49% within two years.

Violation rates are also inversely related to time, meaning that the longer that has gone without a violation, the less likely the individuals are to in fact violate the protection order. Order violation rates may not accurately reflect re-abuse over a specific period of time because many victims do not retain or drop the protection orders. For example, a review of several jurisdictions revealed retention rates over a one year period varied from 16% in Omaha, Nebraska, to 69% percent in the District of Columbia and 80% in East Norfolk, Massachusetts.

Nevertheless, despite the bleak retention rates similar to arresting abusers, the issuance of protection orders alone does not assure victim say. The presentation now focuses on statewide statutory protection orders analyzed by DeJong and Burgess-Proctor in an article entitled title, "Summary of Personal Protection Order Statutes in the United States". The methodology in this study consisted of each state's protection order statute being coded by at least two people in an effort to assess 10 criteria for being "progressive".

As such, the scores range from 0 to 10, 10 being high, or very progressive. The average scale score was 6.62 and no state received a score of less than 4 on the scale. The findings showed that each state uses different language to refer to the protection orders such as civil restraining orders or no contact orders. The southeastern part of the United States tends to have more conservative attitudes about protection orders compared to other regions as well.

With regard to the general findings surrounding the petitioner respondent relationship, all states include spouses, ex-spouses, and couples with a child in common as being eligible for a protection order. 32 states include individuals who are involved in dating relationships. And only three states specify that parties must be in a heterosexual relationship, and these are Delaware, Montana, and South Carolina.

With regard to filing fees, states typically use one of the following options for those filing for protection orders. Either the state can explicitly state that there is no filing fee. Some states require the respondent to pay all fees and court costs, and in a few states, petitioners are expected to pay a fee unless their income falls below a certain amount. Some states protect the privacy of the petitioner's address whereas some do not.

Some statutes have language that clearly states that a petitioner's address may be kept confidential by the court whereas some statutes do not make explicit statements about the confidentiality of the petitioner's address yet do not necessarily specifically require this information to be included in a protection order. Most states specify that violation of a protection order carry misdemeanor criminal charges. And only two states consider the first violation of a protection order a felony offense.

And nine states consider the second violation of the protection order a felony offense. Some states include an option for treatment as part of the penalty for violating a protection order. Also, some states restrict the possession of firearms for respondents who are under a protection order. Some states have statutory language that prohibits possession. And in other states, the judge issuing the protection order has the option of restricting firearm possession.

In conclusion, the statutory framework governing protection orders differs dramatically by state. Although protection orders are easier to obtain today than they were in the past, there's little evidence that protection orders prevent future violence. But a major limitation in this study was that case law was not reviewed. In essence, they only reviewed statutes specifically, not case law.

The presentation now focuses on do criminal no-contact orders effectively protect victims? Based on results of a project funded by the National Institute of Justice. So how do no-contact orders work? Defendants in bond court within 24 hours of being arrested for domestic violence. No contact orders prohibit the defendant from making any form of contact with the victim. The no contact orders are ordered by the judge as a condition of release.

As such, victims have no say in the process. For example, all domestic violence cases in Lexington County are processed in the Criminal Domestic Violence Court. So the research questions in this study were does proactive enforcement of no contact orders effectively protect victims? The research design used was a prospective randomized design where all domestic violence cases in Lexington County, South Carolina, were assigned to either a treatment or control group.

Official and unofficial data gathered from criminal records and victim interviews were used to answer the research questions. The intervention was implemented by a specialized domestic violence officer. The intervention was contact made with victims by the specialized officer to provide detailed information about the no contact orders, what constitutes a violation, and what to do if a violation occurs.

Follow-up was made via telephone or in person in an effort to monitor no contact order compliance and provide additional no contact order information. Was the randomization successful? Yes. Equivalence was achieved on 45 pre treatment variables for both the treated and control groups. So since the groups were equal, comparisons were made between apples and apples rather than comparisons between apples and oranges.

In other words, cases in the treatment group looked like cases in the control group. This is the whole purpose of randomization. In an effort to have equivalence between your treated group and your control group so you can isolate the "treatment effect". The administrative data showed that there were 466 cases. Specifically, 237 cases in the treatment group, 229 in the control group. 83% involved male offender, female victim cases.

White offenders were the offenders in 71% of the cases, followed by black offenders, 23%, and other. With regard to the offender education, on average, the offenders had about 12 years of education. 78% of the offenders had at least one prior arrest, 8% reported some military service in the past, and 75% reported at least one child at the time of the arrest. This figure reports the link to follow up period, simply the average number of days that the offenders were followed.

This is the difference between the record search state and the date of the arrest. As to be seen, the treated group had 553 days compared to 541 days in the control group. But although the treated cases were followed 12 days longer compared to the control cases, this difference was not statistically significant. With regard to the recidivism for the post gateway arrest, any arrests of any kind, the treated group had a lower prevalence of re-arrest at 38.3% compared to control group at 40.6%.

Although the treated group had a slightly lower re-arrest rate compared to control group, this difference in recidivism was not statistically significant. This figure demonstrates the recidivism for domestic violence offenses specifically. The treated group had a 9.7% re-arrest rate for domestic violence offenses compared to the control group who had a 14% re-arrest rate for domestic violence offenses.

Nevertheless, although the treated group had a slightly lower re-arrest rate compared to control group, this recidivism difference was not statistically significant either. This table demonstrates the interview response rates. Overall, there was a 35% response rate for time one victim interviews and a 25% response rate for time two victim interviews. The following is an overview of the victim characteristics from the interviews.

The average age of the victims was 34 years of age. 70% of the victims were white compared to 18% of the victims who were black. 76% percent of the victims had obtained at least a high school diploma. 24% of the victims were married. 14% were cohabitating at the time of the first interview. 31% were divorced or separated at the time of the first interview. 24% had never married at the time of the first interview.

Comparatively, in 44% of the cases, the offender was the husband at the time of the gateway arrest and in 36% of the cases, the offender was a boyfriend at the time of the gateway arrest. This figure shows the length of time between the gateway arrest and time one interview as being approximately equal between the two groups. Specifically, there are 54.5 days and 49.2 days for the treatment and control group, respectively, passed between the gateway arrest and the time one interview.

Or on average, roughly seven or eight weeks passed between the gateway arrest and time one interview for each group. The outcome measures from the victim surveys showed victimization: psychological, physical, sexual, injury, and stalking at time one and time two. And contacts with offender and the Sheriff's department at time one and time two was the second outcome measured.

The results demonstrated no significant differences being found in the experience of any psychological, physical, or sexual abuse among victims in the treated or control groups at time one or at time two. The only significant difference found was for stalking. Specifically, victims in the treatment group reported significantly higher levels of stalking compared to victims in the control group. So the conclusions in essence demonstrate that no contact order enforcement does not appear to have an impact on subsequent violence according to official data and victim reports, with the exception being stalking.

Treatment group victims were contacted by the deputy at significantly higher rates compared to the control group victims, which was a good thing. But contact between victims and offenders in the treatment and control groups appeared to be about the same despite the no contact order. It is important to mention, though, that it is perhaps problematic that not everyone in the treated group got the treatment. The results might have been different if treatment delivery was more complete. However, achieving increased treatment delivery could be time consuming and expensive.