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## The Denial of Emergency Protection: Factors Associated with Court Decision Making

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# The Denial of Emergency Protection: Factors Associated With Court Decision Making

[AuQ1]

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[AuQ2]

Despite the importance of civil orders of protection as a legal resource for victims of intimate partner violence, research is limited in this area, and most studies focus on the process following a court's initial issuance of an emergency order. The purpose of this study is to address a major gap in the literature by examining cases where victims of intimate partner violence are denied access to temporary orders of protection. The study sample included a review of 2,205 petitions that had been denied by a Kentucky court during the 2003 fiscal year. The study offers important insights into the characteristics of petitioners and respondents to denied orders and outlines individual, contextual, structural, qualitative/perceptual, and procedural factors associated with the denial of temporary or emergency protective orders. Recommendations for statutory changes, judicial education, and future research to remedy barriers to protection are offered.

**Keywords:** protective orders; civil justice; intimate partner violence; legal system

For more than three decades, the justice system has offered civil remedies for victims of intimate partner violence in the form of civil protective or restraining orders. Over and above arrest, the codification of civil remedies was a substantive improvement for victims in that civil orders (a) emphasized the public nature of these crimes, (b) addressed the relative ineffectiveness of the criminal justice system in protecting women from future harm, (c) and offered another option for women reluctant to prosecute their partners (Jordan, 2004).

Currently, all states have enacted laws authorizing the issuance of civil or criminal protective orders (Eigenberg, McGuffee, Berry & Hall, 2003; U.S. Department of Justice, 2002), although specific provisions differ with respect to eligibility, filing procedures, burden of proof, duration, relief available, and enforcement (DeJong & Burgess-Proctor,

2006; Eigenberg, et al., 2003). For most state protective order statutes, “intimate partner violence” is defined as physical injury, sexual assault, or the infliction of fear of being victimized in these ways (DeJong & Burgess-Proctor, 2006; Finn, 1991). Remedies available through protective order statutes typically prohibit further acts of violence, communication with the victim (and in some states, members of the victim’s family), or going near the victim’s residence (Carlson, Harris, & Holden, 1999). Protective orders are first issued on an *ex-parte* basis, meaning that the victim petitions the court without the offender’s presence, and if the court believes the violence exposes the petitioner to imminent harm, a temporary order may be issued by the court (Fischer & Rose, 1995; Jordan, Nietzel, Walker & Logan, 2004). Within a time frame set by the state’s law, a hearing will be held at which the offender has the due process right to present evidence (Eigenberg et al., 2003). If, on presentation of evidence by both parties at the full hearing, the court continues to believe that violence has occurred and that future danger exists, an order of longer duration (typically more than a year) may be entered (Jordan et al., 2004).

A key provision of state statutes is that of eligibility. States typically include spouses, former spouses, persons who live or have lived together, and persons who have a child in common (Gist et al., 2001). A recent review also cited the inclusion of a newer category of “household member” and noted that over the past two decades, states have become more inclusive with respect to eligibility requirements (Eigenberg et al., 2003).

Provisions within state laws affect how many women get orders of protection by limiting eligibility to certain relationships, by stipulating qualifying types of abuse, and other provisions. In fact, some have suggested that it is difficult to interpret data on the number of women who seek protective orders in that “these rates may be affected by several factors, including whether they are eligible to receive protective orders in the jurisdiction in which they live and procedural barriers that may differ by jurisdiction” (Logan, Walker, Jordan & Leukefeld, 2006, p. 180). That influence acknowledged, studies suggest that a minority of women in the general population, criminal justice, and shelter samples access orders of protection in response to intimate partner violence. For example, the National Violence Against Women Survey (NVAWS) found that approximately 20% of victims in the general population received a protective order (Tjaden & Thoennes, 2000). Pennell, Burke, and Mulmat (2002) found that 40% of women in a shelter sample had received a protective order, and in a study of police reports involving intimate partner violence, just over one-fifth (22%) showed access to at least one order of protection (Weisz, Tolman, & Bennett, 1998). Studies show higher rates of protective order use in stalking cases. The NVAWS found that 36.6% of stalking victims obtained a protective order after their last incident of intimate partner stalking victimization (Tjaden & Thoennes, 2000); Brewster (2000) reported that 51% of women filed for a protective order after being stalked by an ex-intimate partner; and in a study using prosecutor stalking case files, Nicaastro, Cousins, and Spitzberg (2000) found that 76% involved protective orders.

Obtaining a temporary order of protection is only the first step in securing civil protection. A number of studies have investigated factors that influence why women who have secured temporary orders do not ultimately obtain permanent orders (Gondolf, McWilliams, Hart, & Stuehling, 1994; Harrell & Smith, 1996; Klein, 1996; Zoellner et al., 2000). Harrell and Smith (1996) interviewed 355 women who filed petitions for temporary protective orders and found that less than half of the women (40%) who had received a

temporary order returned to request that the order be made permanent. The most common reasons cited by the women for not seeking the permanent order included that the partner had stopped bothering her (64%); the man talked her out of it (35%); the respondent went to counseling (25%); she feared retaliation (11%); or the temporary order did not work, giving her no reason to believe the permanent order would change his behavior (10%) (Harrell & Smith, 1996). It is important to note that 41% of the women did not secure the permanent order because the temporary order had never been served (Harrell & Smith, 1996). Other studies suggest that a primary reason women do not seek help is because they fear retaliation (Chaudhuri & Daly, 1992; Ferraro, 1997; Mears, Carlson, Holden & Harris, 2001; Zoellner, et al., 2000), a concern reinforced by studies showing that women who seek protective orders from the court are often threatened by offenders (e.g., Fischer & Rose, 1995).

Gondolf et al. (1994) pulled a random sample of 200 petitions for protective orders in one county and found that about three-quarters (76%) received a final protective order (their analysis was limited to petitions involving abuse of a female intimate partner). When women did not receive the permanent order, most often petitions were withdrawn (44%) or victims did not appear in court to obtain the order (37%). Only 5% of petitioners were denied a permanent order outright. Klein (1996) found that although the vast majority of women who sought the permanent order received it, almost half returned to court before the order's expiration date to request that the order be dropped. Zoellner et al. (2000) studied the factors associated with a victim's persistence in help-seeking and found that a victim's perception of threat and her attachment to the offender correctly predicted completion of the protective order process in 88% of cases. In the majority of instances in which the woman did not seek the permanent order, that outcome related to "action or inaction on the part of the woman as opposed to a court decision that the order requests did not have merit" (Zoellner et al., 2000, p. 1088).

Studies that explore the percentage of women with temporary protective orders who do not obtain final orders offer important insights into whether or not the civil process offers true protection to victims and what barriers exist for a woman completing the protective order process. These studies are limited, however, by the fact that they sample women who have been granted temporary protection by a judge. In other words, they study the stage of the process after issuance of a temporary order and explore factors that impact whether the victim secures the permanent order. That approach excludes women who sought but were denied the court's protection at all. Only two studies have addressed this earlier stage in the process, both using the same urban district attorney's office. First, in a sample of 90 women who applied through the prosecuting attorney's office for a temporary order of protection, Gist et al. (2001) found that 72.2% qualified and 27.8% did not. On demographic and relationship status measures, there were no statistically significant differences between the two groups of women in this study. When abuse severity was compared between the two groups, only 1 of the 19 categories of threat was significantly higher for women qualifying for orders, and only 2 of 27 categories of abuse were significantly higher for qualifying women. As described by the authors, "it is disturbing that 28% of the women requesting a protective order in this study had experienced appreciable threats of abuse, actual physical assault, and stalking, yet they were denied a protective order" (Gist et al., 2001, p. 645). In a study using the same methodology, McFarlane et al. (2004) found that 32% of women did not qualify for a temporary order.

## THE PRESENT STUDY

Despite the importance of civil protective orders for victims of intimate partner violence, the body of research in this area is limited. Most research evaluating the procedure for obtaining orders focuses on the middle of the process (from issuance of temporary orders to obtaining a permanent order) or on whether permanent orders are violated by respondents rather than offering insight on the earliest steps women take in approaching the court for protection. Specifically, insufficient information is known about circumstances in which victims seek court protection and are initially denied that request. The Gist et al. (2001) and McFarlane et al. (2004) studies offer the only empirical look at circumstances where women do not qualify for orders on the front end. Although they are an important contribution, they reveal far too little about the process of denial, for decisions regarding disqualification in these studies are made by caseworkers and prosecutors, not the court, and the specific reason for the disqualification was not recorded. Also, findings of these studies are based on one large urban county where the process involves the prosecutor's office, limiting their generalizability.

The purpose of this study is to address a major gap in the literature on protective orders by examining cases in which victims of intimate partner violence are denied access to temporary orders of protection. Specifically, the aims of the study are to explore (a) the percentage of petitions for temporary orders denied, (b) the characteristics of petitioners and respondents in these cases, (c) the types of abuse alleged in denied petitions, and (d) the reasons judges deny petitions for temporary protective orders.

## METHOD

### Sampling Procedure

In Kentucky, civil protective orders are obtained by petitioning a court of jurisdiction. If the court believes the allegations in the petition warrant immediate protection (by meeting the statutory definition of abuse or fear of imminent abuse between two members of a qualifying relationship), a temporary order is granted (termed an emergency protective order or EPO). A hearing to consider issuance of a permanent order (termed a domestic violence order or DVO) is then docketed. If no EPO results, the denied petition is maintained by the court's clerk in a file of denied orders.

With the assistance of the Supreme Court, authors accessed all protective order petitions denied by a court during the 2003 fiscal year. Of Kentucky's 120 counties, 94 reported at least one denied order during the index fiscal year, 16 reported no denied orders, and 12 submitted incomplete or incorrect information after three requests and so could not be included. The study sample included 2,205 petitions that had been denied by a Kentucky court during the 2003 fiscal year. Those orders represented 7.3% of the 30,413 petitions filed statewide during that same time frame.

### Measures

Petitions were coded for demographic information and data in the following categories.

***Relationships Between Petitioners and Respondents.*** Of the 2,205 denied petitions, 2,114 documented the relationship between the petitioner and respondent. Relationships were coded as "intimate" (spouse, ex-spouse, members of an unmarried couple with a child in common, members of an unmarried couple who are or have formerly lived

together, girlfriend, ex-girlfriend, boyfriend, or ex-boyfriend) or nonintimate (parent, child, stepchild, child of a cohabiting or other intimate couple, a person related by consanguinity or affinity in the second degree, or other non-intimate). In all, 31 relationships were described as “cousin” and had to be excluded, as no degree of consanguinity or affinity could be determined and state law requires at least second degree.

**Type of Abuse Alleged.** Petitions for EPOs provide space for a petitioner to describe the abuse. Narrative accounts were coded by ten types of physical abuse, four types of sexual abuse, nine types of stalking, and seven types of threat.

**Type of Relief Sought From the Court.** EPO petitions include a section for petitioners to indicate the relief requested, including refrain from further abuse; no contact; refrain from damaging property; vacate residence; temporary custody; temporary child support; summons; and additional relief. The type(s) of relief sought by petitioners was extracted from this section.

**Reasons for a Court’s Denial of Protection.** In Kentucky, petitions are granted or denied by a reviewing judge who, in the event of a denial, provides an open-ended reason for denying the petition. Reasons for denial were coded into nine categories.

## RESULTS

### Demographic Information About Petitioner and Respondent

Petitioners of denied orders tended to be female (66.2%). Petitioners with known employment status tended to be employed (67.9%); 6.8% either drew SSI or were disabled. The mean age was 34.3 years, ranging from 14 to 93 years old and just over half had children (52.8%). Respondents tended to be male (58.5%) and employed (60.3%). Information about the respondent’s race was available in 97.4% of cases and reflected that 91.2% were White, 7.1% were African American, and 1.1% were Hispanic. (Petitions include items for the physical description of respondents only, so similar information could not be collected for petitioners.)

### The Combination of Genders by Petitioners and Respondents

As noted, women represented only 66.2% of petitioners, and, in fact, women filing against men constituted only half of the orders denied at the initial petition stage. This means that nontypical filing statuses (men filing against women and same-sex filing combinations) are overrepresented among initially denied protective orders, each representing about 25% of denied petitions. Specifically, of the four possible combinations, a female filing against a male accounted for 50.2% of all denied petitions. For both cross-gender filing combinations (female filing against male, male filing against female), the majority of cases were filed against an intimate. Males filed against an intimate female 87.5% of the time, whereas females filed against an intimate male 78.1% of the time, a significant difference ( $\chi^2(1) = 20.687, p = .000$ ). For same-gender filings, females were significantly more likely to file against females than males against males ( $\chi^2(1) = 4.408, p = .036$ ).

### Type of Relationship Between Petitioner and Respondent

A total of 2,114 respondents documented relationship type. Of those, 62.5% were intimates and 37.5% were nonintimates. Among intimates, the most common were spouse (41.8%), unmarried with children (18.1%), former spouse (15.4%), and unmarried formerly

cohabiting (10.3%). For nonintimates, the most common were nonrelative (28.5%), child/parent (22.7%), in-laws/ex-in-laws (18.4%), and other relative (13.4%).

### **Harm Indicated in Narrative**

[AuQ3]

There were 396 denied petitioners (18%) who alleged at least one type of physical abuse, most often a slap or hit. Just under half of these petitioners (48.9%) indicated two or more types, with a mean number of physical abuse types experienced being 1.60 ( $s = .905$ ). A total of 22 petitioners (1%) indicated some form of sexual abuse. The mean types of sexual abuse experienced equaled 1.45 ( $s = .671$ ), with 46.4% of these victims experiencing two or more types of sexual abuse. There were 824 denied petitioners (37.4%) who indicated at least one stalking behavior in the petition narrative, a mean of 1.64 ( $s = 1.017$ ). The highest number of stalking behaviors alleged in a narrative was seven, with 16% indicating three or more forms of stalking. Finally, 890 denied petitioners alleged that they were threatened, with 70.4% indicating being threatened in person, 29.3% in a phone call, and 9.2% indirectly through a third party.<sup>1</sup> Also, 3.6% of denied petitioners alleged being threatened with a weapon, and 2% of denied petitioners alleged being threatened with or endangered within a car.

### **Medical Treatment Indicated in Narrative**

The petitioner indicated injuries to self or others serious enough to have sought medical treatment in 29 (1.3%) of denied petitions. Of these, 90.1% corresponded to allegations of physical abuse against the petitioner. In other words, 6.8% of all petitioners alleging physical abuse sought medical treatment. Two petitioners experiencing physical and sexual abuse indicated medical treatment, and one alleging only sexual abuse sought medical treatment. Finally, there was one case of alleged physical abuse against a child for which medical treatment was sought.

### **Filing on Behalf of a Minor Child**

Of the 2,205 denied petitions, 19.4% were filed on behalf of a minor. In these 395 cases, a parent was usually the petitioner (92.6%). Petitioners were filed on behalf of a minor child in 19.7% of cases where the respondent was an intimate partner, but in only 17.0% of cases where the respondent was a nonintimate. There is no significant difference ( $\chi^2(1) = 2.241$ ,  $p = .134$ ) in the proportion of denied cases filed on behalf of a minor with respect to the relationship between petitioner and respondent, suggesting that the nature of the petitioner-respondent relationship was not a determining factor for denying petitions filed on behalf of minor children.

### **Relief Requested From the Court by Petitioners**

The most common type of relief requested in denied orders was seeking to have the respondent refrain from contact (88.7%), acts of abuse (72.4%), or destruction of property (69.3%) (Table 1). More than one-fourth of petitioners sought temporary custody and one-fifth sought to have the respondent removed from a shared residence. In 10.8% of cases, the petitioner sought other relief, most often including protection for others against respondent or protection for petitioner against associates of the respondent (31.2%); special child care or visitation (13.5%); and drug testing, counseling, or mental health care for the respondent (11.8%).

**TABLE 1. Relief Requests Made on EPO Petitions**

		Occurrences	Percent of Valid Cases
Valid	Restrain from contact or communication	1,952	88.7%
	Restrain from further acts of domestic violence	1,593	72.4%
	Restrain from damaging or disposing of property	1,525	69.3%
	Grant temporary custody of children	560	25.5%
	Direct respondent to vacate residence	441	20.0%
	Requested some other type of relief <sup>a</sup>	237	10.8%
	Award temporary child support	184	8.4%
	Requested a summons to be issued	165	7.5%

<sup>a</sup>Excludes 122 cases that reiterated a previously marked form of relief in the blank for “other.”

**TABLE 2. Reasons for EPO Denial Among All Denied Petitions**

		Occurrences	Percent of Valid Cases
Valid	Insufficient acts or threats of violence	1129	51.3%
	Not domestic situation/relationship	459	20.9%
	Other reason for denial	340	15.5%
	Referred to law enforcement for criminal charges	226	10.3%
	Denied with no reason provided	216	9.8%
	Referred to state adult or child protection agency	97	4.4%
	Out of county	64	2.9%
	Petition withdrawn or not pursued by petitioner	36	1.6%
	DVO/EPO already exists	25	1.1%

**Reasons for Denial of Petitions**

Table 2 categorizes reasons for denial by the reviewing judge. “Other” reasons for denial (15.5%) included “does not qualify” or “does not fit statute” with no explanation (22.1%); time lapse between abuse and petition filing, or no date provided (16.2%); custody issue

with action in court already pending (15.0%); court action pending (juvenile/criminal/divorce/property) (12.6%); and incomplete, incorrect, or illegible petition (11.5%).

### Reasons for Denial Among Physical Abuse Victims

As noted, 396 petitioners (18%) documented at least one form of physical abuse. Of these, 121 (30.6%) were denied because of insufficient acts of violence or threats of violence. Petitions denied for this reason did not reflect, on average, significantly fewer acts of violence than the petitions of physical abuse victims denied for reasons not including insufficient violence ( $t = 1.706, p = .089$ ).<sup>2</sup> More than two-thirds of the 121 denied cases alleging physical abuse (70.2%), however, were denied solely because of insufficient acts of violence or threat of violence. Of the 121 petitions experiencing physical abuse but denied for insufficient acts or threats of violence, 29.7% were denied for both insufficient violence and one or more additional concerns, most commonly being (a) referred instead to county attorney or law enforcement for criminal charges, (b) no date provided for alleged violence or time lapse between incident and filing, (c) and the petition regarded an issue already scheduled for a pending court action.

Results show a similar pattern of physical abuse among petitioners regardless of whether or not the violence was deemed insufficient to warrant emergency protection. Of the ten variables tracked, only one (the claim that the respondent choked or attempted to drown the petitioner) was significantly more likely not to be denied for insufficient violence. When petitions alleging physical violence were denied for reasons other than insufficient violence ( $N = 275$ ), they were most frequently denied because they did not fit relationship statutes. It should be noted that of the 275 physical abuse cases not resulting in a protective order, 17 were withdrawn by the petitioner and not explicitly denied by a judge. Improper relationship accounted for 111 of the 256 judicially reviewed denials (43.4%), 16.4% were denied and referred to law enforcement for criminal charges, and 14.5% were denied with no explanation provided. Another 6.6% were denied because a time lapse was indicated between the time of abuse and the filing of the petition. Combining data from the previous paragraphs, a total of 27 cases (6.8% of the 396 total physical abuse cases) were denied because either no date was provided for the alleged abuse or the petitioner did not file for emergency protection until some time after the alleged abuse. Among these cases, the amount of time ranged from 6 days to 1 year, with a mean of 71.6 days and a median of 30 days.

### Reasons for Denial Among Sexual Abuse Victims

The narratives of 22 petitions alleged some form of sexual abuse. These cases represent only approximately 1% of denied petitions, but the narratives allege more serious crimes than most other denied petitions. Of these 22 petitioners, 59.1% alleged being forcibly raped, 22.7% other forced sexual contact, and 18.2% attempted rape. Nine also included specific allegations of physical abuse, most often involved pushing, shoving, grabbing, slapping, or hitting.

The two most frequent reasons for denial in the 22 cases involving alleged sexual abuse were “denied but referred to county attorney or law enforcement for criminal charges” (27.3%) or denied because of insufficient acts of violence or threat of violence (27.3%). Three of the 22 cases involving sexual violence were denied because of an ineligible relationship (13.6%). One case was denied for each of the following: petition filed in an

improper county, protective order already existed, judge recommended a restraining order instead, and the petitioner waited more than 30 days after the alleged incident to file for emergency protection.

Of the six sexual abuse cases denied because of insufficient acts or threat of violence, four alleged forcible rape, three of which also included physical abuse by the respondent. Of the three forcible rape and sexual abuse cases denied solely for insufficient acts or threat of violence, one was also denied because the petitioner and respondent were involved in a pending child custody case, and another was also denied because the petitioner waited 3 weeks to file for protection in a different county than the one in which the incident occurred.

### Reasons for Denial Among Threat Victims

There were 944 (42.8%) denied petitions that alleged threat to harm the petitioner or the petitioner's loved ones. Threats included threat to harm or abuse petitioner (56.6%), to kill petitioner or have petitioner killed (28.1%), to kidnap or take away children (18.4%), to damage or destroy property (11.4%), and to abuse or kill family, friend, or new significant other (10.8%).

The most common reason for denial among threatened petitioners was due to insufficient acts or threat of violence (44.7%). Other prominent reasons included (a) not domestic relationship (25.6%), (b) referred for criminal charges (12.0%), and (c) no reason provided (10.1%).

### Reasons for Denial Among Stalking Victims

Indications of stalking in petitioners' narratives were determined based on both the petitioner's claim of being stalked and the occurrence of certain stalking behaviors. Identified stalking behaviors included (a) following or spying on petitioner; (b) sending unsolicited correspondence; (c) standing or parking outside petitioner's home, school, or workplace for the purpose of surveillance; (d) showing up at places where petitioner was; (e) leaving unwanted items for petitioner to find; (f) trying to communicate with petitioner against his/her will; (g) damaging, destroying, or stealing petitioner's property; (h) making unsolicited phone calls; and (i) trespassing or breaking into petitioner's home. Of the 2,205 denied petitions, 37.4% indicated at least one of these activities; however, most statutory definitions of stalking require at least two such activities to be considered stalking, such that 14.2% cases fit the legal definition of stalking. Another 32 cases indicated they were stalked without explicitly identifying two of the behaviors listed here. Ultimately, 345 denied petitions (15.6%) indicated stalking explicitly or fit the legal definition by virtue of having experienced two or more stalking-related behaviors.

More than half the time when a petition with alleged stalking was denied, it was denied because of insufficient violence or threat of violence (54.5% of cases). Other frequent reasons for denial included (a) not domestic situation/relationship (26.1%), (b) denied and referred for criminal charges (18.0%), and (c) no reason provided for denial (7.8%).

## DISCUSSION

Unlike previous studies that have examined the protective order process after the issuance of an order for temporary protection (the middle of the process), the present study

examines cases where a court reviews a petition for emergency protection and denies issuance of a temporary order (the beginning of the process).

The first question legitimately posed about denied protective orders is whether, on its face, the practice of a judge denying a petition for emergency protection without a hearing is a fair practice. In typical civil cases, if a plaintiff petitions a court for emergency injunctive relief and the court denies that request, a date for a hearing is set, and the petitioner is afforded the opportunity to offer more detail regarding the harm they are suffering and the remedy needed from the court. For states without a requirement for issuance of a summons or a hearing if a petition is not granted, a question can be raised as to whether petitioners are receiving the same due process as is afforded the respondent in the instance where an order is entered and the respondent is given the opportunity to appear for a full hearing. This is particularly true when a petition is denied for qualitative reasons (e.g., the judge believes the abuse narrated in the petition is insufficient to warrant a protective order) that might be elucidated during the verbal exchange and questioning that takes place during a hearing.

Analysis of the statewide sample of denied orders in this study finds that approximately 7.3% of all petitions for civil protection are denied outright, a small overall percentage. Findings suggest that individual, contextual, structural, qualitative/perceptual, and procedural factors are associated with the denial of temporary orders.

### Individual Factors

Although the vast majority of extant studies limit their focus to the experience of female petitioners, at least one study of *ex-parte* orders issued by a court including both genders found that 84% of petitioners were women (see Basile, 2005). Among denied orders in this study, however, women represented only 66.2% of petitioners; and, in fact, women filing against men constituted only half of the orders denied at the initial petition stage. This means that nontypical filing statuses (men filing against women and same-sex filing combinations) are overrepresented among initially denied protective orders, each representing about 25% of denied petitions. Overrepresentation of these categories raises questions regarding adequate protections for male victims of intimate partner violence and for victimized partners of same-gendered relationships. Notably, however, same-sex filing combinations most often did not represent intimate partners; rather they were filed by nonintimates and were most often denied because the relationship did not fit statutory guidelines.

Study findings offer some rationale for the gender differences in denied orders. For example, men filing against women were most frequently denied because they did not indicate sufficient violence or threat of violence (61.4% of cases involving male petitioner and female respondent). In fact, among denied cases, 81.8% of petitions filed by men against women alleged no physical harm, whereas only 16.5% of women filing against women alleged no physical harm. In many instances these cases represent cross-petitions; in fact two-thirds of cases denied by judges because they were cross-petitions were filed by men against women. Also, petitions filed by men against women were significantly more likely to be denied because they were related to a pending child-custody case ( $\chi^2(1) = 15.868, p = .000$ ).

[AuQ4]

### Contextual Factors

The extant literature indicates that the presence of children plays an influential role as women access civil protection from the court. For example, one study found that when women perceived a threat to the children if they pursued a protective order, they were

deterred from seeking court help (Zoellner et al., 2000). In a study exploring factors associated with violations of protective orders, the odds of reabuse for women who had biological children with the offender was nearly four times higher than for couples without children (Carlson et al., 1999). The current study also reveals troubling findings associated with risk to children. Although filing on behalf of minor children is a qualifying status according to statute, almost one in five denied petitions was filed on behalf of children. One possible indication of why so many petitions filed on behalf of minors were denied lies in the relationship between the filing and other pending court actions. Considering only the 1,160 cases in which the petitioner was known to have children, 34.4% of cases with no custody action pending were filed on behalf of a minor child. Among petitions indicating a pending custody hearing, 46.7% were filed on behalf of a minor, a significant difference ( $\chi^2(1) = 5.667, p = .017$ ). When the same comparison is made for pending divorce/dissolution hearings, there are no significant differences ( $\chi^2(1) = .055, p = .814$ ). Taken together, these data indicate an important association between custody cases and emergency protective order petitions filed on behalf of minor children and suggest that many are rejected by the court because the parties already have a pending court date for essentially the same issue or because they are being viewed as attempts to influence custody cases. Denial of emergency protection solely because of the presence of other court involvement may be a contextual barrier to protection and should be examined to ensure that children involved in custody disputes are not unfairly denied protection when, in fact, they may be exposed to significant risk.

A second contextual factor relates to the type of abuse alleged in denied petitions. Among denied petitions in the study, 1% alleged sexual abuse, 18% alleged physical abuse, 37.4% alleged stalking, and 42.8% alleged threats. This trend suggests that courts are likely to perceive protection as necessary in cases of sexual abuse, but somewhat less so in those cases of abuse that may be more difficult to quantify or operationalize for the court (e.g., stalking, threat). Abuse types also appear to be treated differently in terms of why the petition is denied. Specifically, the most common reason for denial of petitions involving physical abuse, stalking, and threat was the court's judgment that the allegations represented "insufficient acts of abuse or threat of abuse," whereas for sexual abuse allegations, judges referred the petitioner to criminal court. Additional research is needed to understand differential treatment of abuse types more fully, particularly as it relates to the courts' understanding of risk associated with stalking victimization and whether sexual abuse victims are inadvertently extended less protection by courts who believe the case should be handled criminally. Questions also need to be raised regarding whether protective order statutes that do not explicitly include "stalking" in the definition of abuse introduce a barrier to stalking victims receiving needed protections. In addition to giving cause for judicial education, these findings also reinforce the need for access to advocates who can assist women in fully articulating their experience of abuse in petitions submitted to the judge. Advocates (non-attorney) must be cautious not to practice law, but they can play an extraordinarily important role in ensuring that judges understand the full range and severity of abuse experienced.

### Structural Factors

The second-most common reason for protective order denial was that the petitioner and respondent did not meet the statutorily required relationship of an intimate or family member. Of these, only 4.8% of all denied petitions were intimate partners, but this is an

important if not large percentage. These cases include current and former dating partners who do not currently live together or have a child in common and as a result face the structural barrier of statutory language. This study suggests that states that do not cover dating couples in protective order statutes should consider amending the law to do so in that these petitioners experience violence like their married/ex/child in common counterparts, but are denied help by not having taken the step of legally formalizing their relationship or choosing to have a child. It would also be difficult to argue that extending protection to non-cohabiting dating partners be an additional burden to the court when only 105 of more than 30,000 protective order cases fall in this category.

### **Qualitative/Perceptual Factors**

Some standards a petitioner must meet to qualify for a temporary protection are clear-cut (married or nonmarried), but judges must also make qualitative decisions regarding whether the statutory elements are met. For denied orders, the most important of those judgments appears to be whether the alleged abuse is sufficient to meet a statutory definition of abuse or fear of imminent abuse, and in fact a judge's view that abuse alleged by a petitioner did not meet that standard was the primary reason for denial of petitions for physical abuse, stalking, and threats. Although variances among deciding judges are to be expected, this study suggests reason for concern in that petitions denied for insufficient acts of violence or threat of violence did not reflect, on average, significantly fewer acts of violence than the petitions of physical abuse victims denied for reasons not including insufficient violence. Of the petitions alleging sexual abuse that were denied solely for "insufficient abuse," four involved a forcible rape of the petitioner. Additional research is needed to explore the factors involved in judicial decision making, but it is clear that judicial education is called for.

A second qualitative/perceptual factor that may serve as a barrier to securing civil protection is the judicial practice of referring petitioners to criminal court in lieu of issuing a civil order. Just over 10% of all denied petitions indicated referral to the criminal justice system as the sole reason for not issuing the protective order, and, in fact, this was the single-most common response to sexual abuse allegations. For other types of abuse, referral to criminal court was the reason given by the judge for denial in 18% (stalking), 15.3% (physical abuse), and 12% (threat) of cases. Additional research should attend to whether referral to criminal court represents an attitude among some judges that these cases are not appropriately handled civilly (even though no statutory language precludes both legal remedies being available to victims).

### **Procedural Factors**

In 15.5% of cases denied, judges identified "other" reasons for denial, several of which outline procedural factors that prevented petitioners from securing protection. Among those were that the time lapse indicated between abuse and petition filing was too great or that no date was provided (16.2%); and that the petition was incomplete, incorrect, or illegible (11.5%). These denied petitions may represent valid requests for help but were lost in process as a result of procedural barriers. These are also petitioners who may have been in a position to secure protection if an advocate or court clerk had been available to ensure that the petition was correctly completed. This study would suggest value in exploration of procedural obstacles across jurisdictions.

## CONCLUSION

This study is an analysis of 1 year of protective order data from one state. Generalizability is limited by the fact that all state protective order statutes are different, although the fact that Kentucky's law does not appear to be significantly different from the typical conditions of most state laws may mitigate that weakness. A second limitation is the study's reliance on secondary data analysis. Nonetheless, findings offer a rare look at the initial stage of the emergency protective order process, specifically focusing on petitions for emergency protection that are denied by the court. They provide important insights into the characteristics of petitioners and respondents in these cases and the types of relationships most frequently denied. In its analysis of the types of abuse alleged and reasons cited by judges for denial, the study lends itself to identification of statutory, practice, and educational changes needed to improve the civil justice system.

For researchers, advocates, practitioners, policymakers, and legal professionals, understanding the details of cases in which the court denies petitions for civil protection can provide necessary insights that would improve the court's ability to extend protection to all petitioners who legitimately seek civil intervention.

## NOTES

1. These percentages total more than 100% because 72 petitioners indicated two manners of threat, and 4 indicated all three.

2. The 121 petitioners reporting any physical abuse and who were denied because of insufficient acts of threat of violence experienced a mean of 1.48 forms of physical violence ( $s = .848$ ). The 275 petitions alleging physical abuse and denied for another reason averaged 1.65 ( $s = .926$ ) forms of physical violence.

[AuQ1]

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