

Slipping Through the Cracks: Kansas Protection Order Procedures Are Not Protecting Victims of Domestic Violence

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I. INTRODUCTION

You have a husband and children. To your family and friends, you both seem so happy, as though you live a picture-perfect life. At least, this is the image presented to anyone outside of your house. Behind closed doors, your husband is on his fourth beer. Furious, he berates you for cooking the wrong dinner. He begins throwing plates of food across the room—and some towards you. He yells so close to your face that you can smell the beer on his breath. He tells you that it is your fault. That you are selfish. He starts hitting you—again. Punching you where nobody will see the marks. He grabs your hair and throws you to the ground—again. You want to beg him to stop, but you know that it will just make things worse. You know you and your children need protection, but you have nowhere to go. Who would believe you? Why would they believe you? You and your kids have a wonderful home. He takes care of you. He is such a nice guy, right?¹

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1. A woman in Seattle had been in a violent relationship for four years. One night, when the abuser was drunk, he “threw candlesticks at her and tackled her to the floor, punching her . . .” In an incident that happened more than a year earlier, the abuser shoved her and slammed her ankle in a door. For months she avoided him, and he would call her at work and leave messages, to the point where she stopped answering the phone. He started harassing her sister and threatening to kidnap her dogs when she stopped answering. She went down to the courthouse and filed a protection order, but law enforcement was unable to obtain service on him. One morning, she arrived at her office and found him inside. *Id.* He shot her six times before killing himself. Jim Brunner & Nick Perry, *Months of Stalking End with 2 Dead at UW*, SEATTLE TIMES (Apr. 3, 2007, 7:18 PM), <https://www.seattletimes.com/seattle-news/months-of-stalking-end-with-2-dead-at-uw/> [<https://perma.cc/7L9B-SMT6>]. In July 2019, a woman was trying to leave her abuser after ten years. He tried to stop her from filing a protection order by blocking her path to the courthouse and showing up at the courthouse after she made it there. Two

Desperate, you resolve to go to the courthouse the next day to file a protection from abuse order.² When you arrive, you learn you must fill out nearly thirty pages of legal documents,³ which you do not understand, and you cannot afford to hire an attorney to do it for you. Nevertheless, you finally complete the paperwork to the best of your ability and turn it in to the clerk at the counter. The clerk informs you it will be at least twenty-four hours before the paperwork is ready and tells you to call back tomorrow afternoon.⁴ For the time being, you have to go home, without protection, hoping he does not hit you again—or worse, that he does not find out what you did today.⁵

Discrepancies between Kansas jurisdictions regarding the protection order process leave victims vulnerable to continued abuse.⁶ In Kansas, a person who has been a victim of domestic violence can request protection from the court by filing a petition at the courthouse.⁷ After reviewing the petition, the judge will then determine whether to issue an *ex parte*⁸ Temporary Protection Order (“temporary order”).⁹ Other states, such as Illinois, New York, Oklahoma, and the District of Columbia, all allow a victim to obtain a temporary order the *same day* the petition is filed.¹⁰

days later, he showed up outside a Family Dollar where she was running errands and shot her and himself in the parking lot. Cheryl McHenry, *Protection Orders: Do They Keep Domestic Violence Victims Safe?*, WHIO (Feb. 6, 2020, 8:14 PM), <https://www.whio.com/news/local/protection-orders-they-keep-domestic-violence-victims-safe/QlFLab1L105kVOliPkIYr/> [<https://perma.cc/RJV5-92QD>]. A woman was beaten and strangled by her ex-husband and died later from the injuries while in the hospital. He had been arrested and charged with aggravated assault because of another domestic violence incident back in November. He was free on bond with an ankle monitor, which he slipped out of and eluded detection by law enforcement. Kieran Nicholson, *Victim in Alleged Westminster Domestic Violence Case Dies at Hospital*, DENVER POST (Feb. 3, 2020, 7:45 PM), <https://www.denverpost.com/2020/02/03/victim-westminster-domestic-violence-dies/> [<https://perma.cc/VM4E-3XV8>].

2. See Jane K. Stoever, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders*, 67 VAND. L. REV. 1015, 1019 (2014). A protection order is a legal injunction issued by a judge to protect people in violent relationships and to prevent continued violence. *Id.*

3. See *Protection from Abuse*, KAN. JUD. COUNCIL, <https://www.kansasjudicialcouncil.org/legal-forms/protection-orders/protection-abuse> [<https://perma.cc/H99P-Z7PV>] (last visited Sept. 20, 2020).

4. See E-mail from Gabrielle Munoz, Civil Court Advocate, YWCA Center for Safety and Empowerment, to author (Nov. 14, 2019, 15:59 CST) (on file with author). Another courthouse in Kansas tells victims who file for protection orders that they will receive an e-mail or text message from the courts when their paperwork is ready and what the judge’s decision is. Telephone Interview with Taylor Jones, Director of Community Services, The Willow Domestic Violence Center (Nov. 19, 2019).

5. This is an example created from experiences heard during the author’s time working at a Kansas domestic violence agency. See also Stoever, *supra* note 2, at 1020.

6. See sources cited *supra* note 4.

7. KAN. STAT. ANN. § 60-3104(a) (LEXIS through acts received as of June 5 of 2020 Legis. Sess.).

8. *Ex parte* means “without prior notice to the other party.” Debra Pogrund Stark & Jessica Choplin, *Seeing the Wrecking Ball in Motion: Ex Parte Protection Orders and the Realities of Domestic Violence*, 32 WIS. J.L. GENDER & SOC’Y 13, 13 (2017).

9. KAN. STAT. ANN. §§ 60-3104(a), (c), 60-3106(b).

10. *Domestic Violence (Family Offense)*, NYCOURTS.GOV, http://www.nycourts.gov/courts/nyc/family/faqs_domesticviolence.shtml#op1 [<https://perma.cc/BK88-RXEF>] (last visited Sept. 20, 2020); *Protective Orders*, LEGAL AID SERVS. OF OKLA. (Oct. 31, 2019), <https://oklaw.org/resource/protective->

Victims in these states are able to leave the courthouse with the temporary order in hand, which is critical protection for victims' safety during a volatile and dangerous time.¹¹ Based on a review of intimate partner and domestic violence cases, the most dangerous time for a victim occurs when the victim begins to separate from the abuser.¹² Kansas's practice of allowing victims to leave the courthouse without protection leaves them vulnerable to escalation in their partners' violence.¹³

Victims utilize protection order services more often than they seek criminal charges, choosing to enter the court system on their own terms through the protection order process.¹⁴ Victims in Kansas can go to the courthouse and obtain specific forms from the clerk of the court to file a verified petition for a Protection from Abuse Order ("protection order").¹⁵ The use of form pleadings¹⁶ in many courts allows victims to have easier

orders?ref=TTdA7 [https://perma.cc/7QE9-AX36]; *Starting a Case to Get an Order of Protection*, ILL. LEGAL AID ONLINE, <https://www.illinoislegalaid.org/legal-information/starting-case-get-order-protection> [https://perma.cc/G7CG-KJXE] (last visited Sept. 20, 2020); *District of Columbia Restraining Orders*, WOMENSLAW.ORG (Nov. 1, 2019), <https://www.womenslaw.org/laws/dc/restraining-orders> [https://perma.cc/QK7M-WFUZ].

11. See sources cited, *supra* note 10.

12. Karen Zamora, *Police on Domestic Violence Calls Getting Crucial Reports Sooner; "It Can Be a Matter of Life or Death," a Judge Said*, STAR TRIB., Jan. 30, 2016, at 1B; Stoever, *supra* note 2, at 1025.

13. See Zamora, *supra* note 12, at 1B; Stoever, *supra* note 2, at 1025.

14. Jane K. Stoever, *Freedom from Violence: Using the Stages of Change Model to Realize the Promise of Civil Protection Orders*, 72 OHIO ST. L.J. 303, 308 (2011); Stoever, *supra* note 2, at 1019. Protection orders are seen as "just a piece of paper" by many. Lyndsay Winkley, *Restraining Orders "Just a Piece of Paper" Without a Plan, Advocates Say*, SAN DIEGO UNION-TRIB. (Dec. 2, 2019, 5:00 AM), <https://www.sandiegouniontribune.com/news/public-safety/story/2019-12-02/restraining-orders-just-a-piece-of-paper-without-a-plan-advocates-say> [https://perma.cc/BQ6D-EDCH]; see *The Restraining Order Is Just a Piece of Paper—It Can Provide a Trigger for an Attack*, WORLD PROT. GRP., INC. (Oct. 23, 2019) [hereinafter *Just a Piece of Paper*], <https://www.worldprotectiongroup.com/the-restraining-order-is-just-a-piece-of-paper-it-can-provide-a-trigger-for-an-attack/> [https://perma.cc/3WEN-5RAX]; T.K. Logan & Robert T. Walker, Abstract, *Civil Protective Order Effectiveness: Justice or Just a Piece of Paper?*, 25 VIOLENCE & VICTIMS 332, 332 (2010), https://www.researchgate.net/publication/44689565_Civil_Protective_Order_Effectiveness_Justice_or_Just_a_Piece_of_Paper [https://perma.cc/K8WF-SLXC]. The utilization of advocacy centers, such as Safehome, The Willow, StepStone, and YWCA Center for Safety and Empowerment are an integral part of the process. Advocates can help victims through the protection order filing process and help create a safety plan to make the "piece of paper" more effective. Winkley, *supra*; *Domestic Violence Hotline*, SAFEHOME [hereinafter *Programs & Services*], www.safehome-ks.org/domestic-violence-hotline/ [https://perma.cc/QXA3-GEK9] (last visited Sept. 21, 2020); *What We Do: Our Services*, WILLOW, <https://www.willowdcenter.org/what-we-do> [https://perma.cc/S892-JL4E] (last visited Sept. 21, 2020); *Supportive Services*, STEPSTONE, <https://www.stepstoneks.org/ss-services/supportive-services> [https://perma.cc/4DN9-MGUY] (last visited Sept. 21, 2020); *Center for Safety and Empowerment*, YWCA NE. KAN., <https://www.ywcaneks.org/what-we-do/cse/> [https://perma.cc/6E3Y-9VG8] (last visited Sept. 21, 2020).

15. KAN. STAT. ANN. § 60-3104(a), (c).

16. Form pleadings are a relatively simple stack of paperwork that requires check-marking the appropriate boxes and filling in blanks of required information. David H. Taylor, Maria V. Stoilkov & Daniel J. Greco, *Ex Parte Domestic Violence Orders of Protection: How Easing Access to Judicial Process Has Eased the Possibility for Abuse of the Process*, 18 KAN. J.L. & PUB. POL'Y 83, 102, 113 (2008). Sometimes the forms include wholly conclusory statements that allow victims (and abusers) an easier avenue for obtaining an order of protection. *Id.* at 102, 113–14.

access to requesting relief.¹⁷ A judge reviews the petition submitted to the court and decides whether to issue a temporary order.¹⁸ Temporary orders provide victims with limited relief by prohibiting contact between the abuser and victim, removing the abuser from a shared residence, removing possessions from a house, and providing temporary custody of the children.¹⁹ The judge then sets a date for a hearing within twenty-one days of filing, as long as all of the statutory requirements have been met.²⁰ Temporary orders signed by the judge are then given to the victim, the sheriff's department, and the abuser.²¹

Many assume that after victims separate from their abusers, the danger has passed.²² However, victims face greater danger during separation because the abuser often feels a loss of power and control over the victim, which the abuser seeks to regain.²³ The escalation in violence due to separation can generally last up to two years after a victim leaves an abuser, which raises the question: why are protection orders in most states available for only one year?²⁴ A total of twenty-two states make up the majority, issuing protection orders for one year: Alaska, Arizona, Connecticut, Delaware, Florida, Georgia, Idaho, Kansas, Maryland, Massachusetts,

17. *Id.* at 90.

18. KAN. STAT. ANN. § 60-3106(b).

19. Taylor et al., *supra* note 16, at 84; Stoever, *supra* note 14, at 308.

20. KAN. STAT. ANN. § 60-3106(a). "An intimate partner or household member may seek relief under the protection from abuse act by filing a verified petition with any judge of the district court or with the clerk of the court alleging abuse by another intimate partner or household member." § 60-3104(a). "'Intimate partners or household members' means persons who are or have been in a dating relationship, persons who reside together or who have formerly resided together or persons who have had a child in common." § 60-3102(b). "'Dating relationship' means a social relationship of a romantic nature." § 60-3102(c).

"Abuse" means the occurrence of one or more of the following acts between intimate partners or household members:

(1) Intentionally attempting to cause bodily injury, or intentionally or recklessly causing bodily injury.

(2) Intentionally placing, by physical threat, another in fear of imminent bodily injury.

(3) Engaging in any sexual contact or attempted sexual contact with another person without consent or when such person is incapable of giving consent.

(4) Engaging in any of the following acts with a minor under 16 years of age who is not the spouse of the offender:

(A) The act of sexual intercourse; or

(B) any lewd fondling or touching of the person of either the minor or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the minor or the offender, or both.

§ 60-3102(a).

21. § 60-3108.

22. Stoever, *supra* note 2, at 1025; *Just a Piece of Paper*, *supra* note 14.

23. Stoever, *supra* note 2, at 1025. "When a woman leaves her abuser, the abuser goes through a process of emotions and behaviors that is quite predictable." *The Separation Cycle*, CTR. FOR HOPE & SAFETY, <https://hopeandsafety.org/learn-more/the-separation-cycle/> [<https://perma.cc/H9SM-SAZH>] (last visited Sept. 21, 2020). The separation process includes indifference, manipulative "anger," manipulative courting, defaming the survivor, and renewed manipulative "anger." *Id.*

24. Stoever, *supra* note 2, at 1021, 1025.

Missouri, Nebraska, Nevada, New Hampshire, North Carolina, Oregon, South Carolina, Tennessee, West Virginia, Wyoming, and the District of Columbia.²⁵ Victims in these states must return to the courthouse year after year to remain protected, allowing abusers to remain in dangerous proximity to their victims with each annual court date.²⁶

Further, the protection order process fails to protect victims because it provides easy access for an abuser to file a protection order in retaliation to being defied by the victim.²⁷ Form pleadings provide victims with better access to request relief; however, form pleadings also increase an abuser's ability to obtain the same orders to further abuse their victims.²⁸ If an abuser obtains a temporary order, the abuser can exclude the victim from the home and the children, thereby cutting off paths of support.²⁹ Victims can even be in danger of criminal charges.³⁰ Additionally, definitions of abuse are typically broad and vague, and the Kansas statute only requires allegations of some sort of abuse.³¹ These general definitions and requirements allow abusers to obtain a temporary order by making claims of abuse without elaborate detail and to further harm their victim.³²

Victim blaming is also an issue surrounding victims of violence.³³ Often, victims are considered to be uncooperative, and many believe victims take advantage of the ease of filing for protection orders and do not take the allegations of abuse seriously.³⁴ Victim blaming increases reluctance to respond to requests for protection and decreases the likelihood people will seek out judicial intervention.³⁵ Additionally, a judge's behavior may lead a victim to feel as though the judge is dismissive about the victim's situation, which discourages the use of the protection order

25. *Id.* at 1046 n.172. The remaining states vary, ranging from three months—in Arkansas and West Virginia—to up to five years—in California, Ohio, Oklahoma, and South Dakota. *Id.* at 1047 n.174.

26. *Id.* at 1026.

27. Taylor et al., *supra* note 16, at 86. The petition for protection forms are provided by the clerk of the court to anyone who asks, and they can be found online for anyone to print. KAN. STAT. ANN. § 60-3104(c) (LEXIS through acts received as of June 5 of 2020 Legis. Sess.); *Protection from Abuse*, *supra* note 3.

28. Taylor et al., *supra* note 16, at 90. States do require the statements in petitions to be truthful and there are sanctions available if an abuser files a petition containing lies; however, many victims are still deprived of certain liberties during the waiting period. *Id.* at 91. Further, many victims do not know these sanctions are available, let alone how to procedurally obtain the relief available in this situation. *Id.*

29. *Id.* at 87.

30. *See id.* at 100.

31. *Id.* at 89.

32. *Id.*

33. M. Alexandra Verdi, Comment, *Strengthening Protections for Survivors of Domestic Violence: The Case of Washington, D.C.*, 64 BUFF. L. REV. 907, 923–24 (2016); *see* Stoever, *supra* note 14, at 333, 357–58.

34. *See* Verdi, *supra* note 33, at 923–24; Stoever, *supra* note 14, at 333, 357–59.

35. Verdi, *supra* note 33, at 923.

system.³⁶ Although victims are allowed to dismiss their petitions without prejudice, they cannot bring up the same allegations in a new order should their situation escalate.³⁷ This becomes an ongoing issue for victims because statistics show that it can take a woman five to seven attempts to leave a relationship before being successful.³⁸

The protection order statutes used in Kansas are not specific enough to prevent the interjurisdictional discrepancies that currently exist.³⁹ As a result, victims slip through the cracks and lose or are denied the protection and safety that should be readily available to them. To increase uniformity in protection order execution throughout Kansas jurisdictions, the Kansas legislature must amend the Kansas Protection Order Statute, sections 60-3101 to 60-3112 of the Kansas Statutes, to adopt the following procedures, which are currently utilized in the District of Columbia, to ensure that domestic violence victims are protected from their abusers: (1) connect victims to advocates who can assist victims when filling out the paperwork, (2) ensure victims have the opportunity to speak to a judge to convey their need for protection, and (3) issue necessary orders the same day they are requested to prevent future abuse.⁴⁰

36. See *id.* at 922, 924; Stoeber, *supra* note 14, at 358. If a judge goes so far as to mistreat victims, the victims may dismiss their petitions before any final orders can be granted. See Verdi, *supra* note 33, at 922, 924; Stoeber, *supra* note 14, at 358.

37. See Verdi, *supra* note 33, at 924.

38. *Id.* at 924.

39. See KAN. STAT. ANN. §§ 60-3101 to 60-3112 (LEXIS through acts received as of June 5 of 2020 Legis. Sess.); SHAWNEE COUNTY FAMILY LAW GUIDELINES (TOPEKA BAR ASS'N 2013) [hereinafter SNCO FAMILY GUIDELINES], <https://www.shawneecourt.org/DocumentCenter/View/471> [<https://perma.cc/RR8G-BEP4>]; DOUGLAS COUNTY FAMILY LAW GUIDELINES, (DOUGLAS CNTY. BAR ASS'N 2012) [hereinafter DOUGLAS FAMILY GUIDELINES], <https://www.douglascountyks.org/sites/default/files/media/depts/district-court/pdf/family-law-guidelines.pdf> [<https://perma.cc/GZ5E-KYAJ>]; FAMILY LAW GUIDELINES (JOHNSON CNTY. BAR ASS'N 2010) [hereinafter JOHNSON FAMILY GUIDELINES], <https://cdn.ymaws.com/www.jocobar.org/resource/resmgr/imported/FAMILY%20LAW%20GUIDELINES%202010%20-%20complete.pdf> [<https://perma.cc/3F8Y-SQEN>]; *Domestic Relations Court Forms*, THIRD JUD. DIST. SHAWNEE CNTY. KAN., <https://www.shawneecourt.org/index.aspx?NID=260> [<https://perma.cc/6RP8-WVUU>] (last visited Sept. 21, 2020); *Protection from Abuse*, *supra* note 3; *FAQs*, THIRD JUD. DIST. SHAWNEE CNTY. KAN., <https://www.shawneecourt.org/FAQ.aspx> [<https://perma.cc/U56Z-3WYK>] (last visited Sept. 21, 2020); *Protection from Abuse Cases*, DOUGLAS CNTY. KAN., <https://www.douglascountyks.org/depts/clerk-district-court/protection-abuse-cases> [<https://perma.cc/GB6G-G7VJ>] (last visited Sept. 21, 2020); *Protection Orders*, JOHNSON CNTY. DIST. ATT'Y, <https://da.jocogov.org/protection-orders> [<https://perma.cc/HJY6-6A3P>] (last visited Sept. 21, 2020); *Protection from Abuse and Stalking*, SEDGWICK CNTY., <https://www.sedgwickcounty.org/sheriff/law-enforcement-bureau/investigations/protection-from-abuse-and-stalking/> [<https://perma.cc/FB4D-P9LA>] (last visited Sept. 21, 2020).

40. See *District of Columbia Restraining Orders*, *supra* note 10; KAN. STAT. ANN. §§ 60-3101 to 60-3112 note; E-mail from Jenny Wesberry, Director of Operations, DC SAFE (Nov. 13, 2019, 12:14 CST) (on file with author); SAFE, Inc., *A SAFE Client's Guide to Civil Protection Orders in D.C.*, DC SAFE, <https://safety.gwu.edu/sites/g/files/zaxdzs2386/f/downloads/DC%20GuideForCPO.pdf> [<https://perma.cc/9M7Q-QY6D>] (last visited Sept. 24, 2020). The changes proposed would also be relevant to the Protection from Stalking Act, a subsection of Article 31 of the Kansas Statutes Annotated, which includes protections for individuals who are victims of stalking, sexual assault, and human trafficking. KAN. STAT. ANN. §§ 60-31a01 to 60-31a09.

Part I of this Note introduced domestic violence and protection orders while providing a brief overview of the problems victims face when seeking a protection order.⁴¹ Part II discusses the history and dynamics of domestic violence, the procedures implemented and obstacles victims must overcome to obtain a protection order, and the stigma surrounding victims of domestic violence within the court system.⁴² Part III analyzes the procedures and statutes in Kansas, as compared to similar statutes in the District of Columbia.⁴³ Part III also addresses the hardships these procedures have on victims and explains the relief the court could offer victims by connecting victims to advocates for assistance, providing opportunities to speak to a judge, and issuing same-day protection orders.⁴⁴ Part IV summarizes and concludes this Note.

II. BACKGROUND

A. *History of Violence and Establishing Protection Orders*

In early United States legal history, the male dominated, obtaining rights over his wife and her possessions, property, and earnings.⁴⁵ Women were obligated to obey and serve their husbands, while men were allowed to subject their wives to corporal punishment for disobeying or misbehaving as long as no permanent “damage” occurred.⁴⁶ Marriage existed beyond reach of the law and separate from that of civil society.⁴⁷ In the nineteenth and twentieth centuries, husbands were no longer permitted to punish their wives; however, authorities only intervened intermittently in order to

41. See KAN. STAT. ANN. §§ 60-3104(a), (c), 60-3106(b); sources cited, *supra* note 10; Stoever, *supra* note 2, at 1026; Taylor et al., *supra* note 16, at 86; Verdi, *supra* note 33, at 923, 924; Stoever, *supra* note 14, at 333, 357–58.

42. Reva B. Siegel, “*The Rule of Love*”: *Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2118 (1996); Stoever, *supra* note 2, at 1018–19; Kellie K. Player, Recent Development, *Expanding Protective Order Coverage*, 43 ST. MARY’S L.J. 579, 585 (2012); see Verdi, *supra* note 33, at 924.

43. See Protection from Abuse Act, KAN. STAT. ANN. §§ 60-3101 to 60-3112; D.C. CODE §§ 16-1001 to 16-1006 (LEXIS through Sept. 21, 2020).

44. See Verdi, *supra* note 33, at 924; sources cited *supra* note 40.

45. Siegel, *supra* note 42, at 2122.

Until the late nineteenth century, Anglo-American common law structured marriage to give a husband superiority over his wife in most aspects of the relationship. By law, a husband acquired rights to his wife’s person, the value of her paid and unpaid labor, and most property she brought into the marriage.

Id.

46. *Id.*; Stoever, *supra* note 2, at 1018. “Perhaps the most notorious example of a Western law that sanctioned violence against women is the common-law ‘rule of thumb.’ This rule permitted men to beat their wives with a rod or stick ‘no larger than a man’s thumb’ or small enough to ‘pass through a wedding band.’” James Martin Truss, *The Subjection of Women . . . Still: Unfulfilled Promises of Protection for Women Victims of Domestic Violence*, 26 ST. MARY’S L.J. 1149, 1157 (1995).

47. Stoever, *supra* note 2, at 1018.

protect family privacy.⁴⁸ The real challenges and dangers of in-home violence did not come into the light until the late 1970s.⁴⁹

From 1970 to 1993, legislatures throughout the United States began creating special laws and procedures for protection orders to prevent abuse within domestic relationships.⁵⁰ Protection orders allow victims to seek relief by requesting that a court interject in an abusive relationship to obtain protection and prevent future violence.⁵¹ “It was at this time that advocates identified the potential for injunctive relief to radically alter the balance of power between abusers and their victims.”⁵² The advocates intended that such relief would enhance a victim’s autonomy and allow for criminal justice protection, if necessary.⁵³ On September 13, 1994, Congress passed the Violence Against Women Act (“VAWA”), offering necessary protections for women in the United States who are victims of domestic violence.⁵⁴ Congress sought to create a coordinated criminal justice response to crimes related to domestic violence, sexual assault, and stalking in the United States.⁵⁵

When protection orders were first created, they only addressed family violence, meaning only married people could obtain a protection order for

48. Siegel, *supra* note 42, at 2118.

49. *Id.* The feminist movement that began in the 1960s pushed private violence into the public eye and gave it power and momentum to contribute to changing laws to protect battered women. Elizabeth M. Schneider, *The Violence of Privacy*, 23 CONN. L. REV. 973, 979–80 (1991).

50. Stoever, *supra* note 2, at 1018–19. “As the domestic violence movement coalesced in the 1970s, advocates focused on legal reforms aimed to ‘assert battered women’s right to be free from violence.’” David Michael Jaros, *Unfettered Discretion: Criminal Orders of Protection and Their Impact on Parent Defendants*, 85 IND. L.J. 1445, 1451 (2010).

51. Stoever, *supra* note 2, at 1019. The protection order is an injunction for domestic and family violence but also to prevent stalking and other violence or threatening acts and harassment, contact, communication, or physical proximity to the protected individual. *Id.*

52. Jaros, *supra* note 50, at 1451; *accord* Stoever, *supra* note 2, at 1042.

53. Stoever, *supra* note 2, at 1043.

54. *History of the Violence Against Women Act*, LEGAL MOMENTUM, <https://www.legalmomentum.org/history-vawa> [<https://perma.cc/YC68-AM37>] (last visited Sept. 21, 2020); Kaitlin O’Neil, Note, *The 2012 Battle for the Reauthorization of the Violence Against Women Act: Lessons Learned and Questions Left Unanswered*, 35 WOMEN’S RTS. L. REP. 243, 245 (2014). In addition to improving response to these violent crimes, the Violence Against Women Act (“VAWA”) also includes provisions for prevention, funding for victim services agencies, and evidentiary matters. *History of the Violence Against Women Act*, *supra*. States are now also required to give full faith and credit to protection orders issued in other states. Stoever, *supra* note 2, at 1045.

55. Claire M. DeMatteis, *Protecting the Freedom for Women to Be Free from Violence: The Violence Against Women Act Endures*, 22 WIDENER L. REV. 267, 267 (2016); *What Is The Violence Against Women Act?*, NAT’L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/resources/vawa/> [<https://perma.cc/H4XP-S2U6>] (last visited Sept. 21, 2020); *History of the Violence Against Women Act*, *supra* note 54; O’Neil, *supra* note 54, at 245. Since its enactment, the way violence against women is viewed and handled has shifted extensively. *History of the Violence Against Women Act*, *supra* note 54. In 2000 and 2005, VAWA’s reauthorization renewed the original grant programs that were created when enacted; improved protections for immigrants who were victims of domestic violence, victims of dating violence, and victims who would flee across state lines; provided for enforcement of orders across tribal and state lines; and increased access to services for victims in their communities. *Id.*

themselves or their children.⁵⁶ State legislatures later expanded protection order statutes to include individuals from divorced families, unmarried parents, and people previously living in the same household.⁵⁷ Congress added dating violence to the scope of protection in 2001 and expanded it again in 2011 to include third parties to dating violence.⁵⁸ Currently, statutes are more inclusive, covering all forms of relationships and various types of abuse, including abuse of pets.⁵⁹ Protection order statutes are predicted to continue evolving and encompassing more categories of individuals in the future.⁶⁰

State legislatures further expanded protection order statutes to include other forms of injunctive relief besides cessation of physical abuse.⁶¹ Protection orders may now prohibit the abuser from making threats, harassing, contacting, or generally coming near the victim.⁶² Abusers can be ordered to leave a shared residence and attend domestic violence counseling services, substance abuse services, or parenting classes.⁶³ Some jurisdictions go further and include “monetary awards for child support, maintenance, housing payments, property destruction, or medical expenses due to violence” as other possible forms of relief.⁶⁴ Statutes typically include a provision for additional specified relief tailored to a unique need or safety concern of the victim.⁶⁵

B. A Different Kind of Circle of Life

Abusers do not act once or twice in isolated incidents.⁶⁶ Rather, their actions escalate over time, in frequency and severity, to exert their power

56. Player, *supra* note 42, at 585.

57. *Id.*; Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 817 (1993).

58. Player, *supra* note 42, at 585. Protection orders can be issued on behalf of a minor by a parent or guardian and against a minor. *Diehl v. Drummond*, 2 Pa. D. & C.4th 376, 377 (C.P. 1989); Klein & Orloff, *supra* note 57, at 823. Pennsylvania courts stated the enforcement of an order against a minor would occur through the juvenile court because the juvenile court would be better equipped to protect the rights of the minor and issue proper sentencing alternatives. Klein & Orloff, *supra* note 57, at 823; *e.g.*, *Diehl*, 2 Pa. D. & C.4th at 378.

59. Stoever, *supra* note 2, at 1045.

60. Klein & Orloff, *supra* note 57, at 818; *see* Player, *supra* note 42, at 585.

61. Stoever, *supra* note 2, at 1044.

62. *Id.*

63. *Id.*

64. *Id.*; KAN. STAT. ANN. § 60-3107(a)(3), (6) (LEXIS through acts received as of June 5 of 2020 Legis. Sess.); CAL. FAM. CODE § 6341 (LEXIS through Aug. 21 of 2020 Reg. Sess.); MISS. CODE ANN. § 93-21-15 (LEXIS through Aug. 13 of 2020 Reg. Sess.).

65. Stoever, *supra* note 2, at 1044; *see* KAN. STAT. ANN. § 60-3107(a)(10) (A court may grant a protection order “[o]rdering or restraining any other acts deemed necessary to promote the safety of the plaintiff or of any minor children of the parties.”)

66. Stoever, *supra* note 2, at 1020, 1023.

and control over the victim.⁶⁷ Abusers typically start with emotional, psychological, and even economic abuse, tearing down their victims to make them dependent.⁶⁸ The nature of domestic violence—the abuser’s need to assert power and control over their victims and their repetitive and escalating behaviors—is distinguishable from the nature of other violent crimes and causes more severe violence and injuries to victims.⁶⁹ Additionally, in-home violence receives less attention than isolated-incident, “stranger-danger” crimes.⁷⁰

A history of domestic violence is a predictor of future abuse.⁷¹ Compared to victims of stranger violence, victims of domestic violence are more likely to experience higher levels of violence.⁷² Abusers drag their victims through a pattern of behaviors typically referred to as the “Cycle of Violence.”⁷³ Coercive abusers begin by implementing forms of emotional and financial abuse, making their victims dependent on them.⁷⁴ Over time, the abusers become more empowered to exert greater control over their victims by punching, kicking, and threatening the victims with weapons.⁷⁵ The abuse may escalate further with the abusers choking, burning, and even raping victims.⁷⁶ Almost a third of women who are murdered in the United

67. *Id.*

68. Klein & Orloff, *supra* note 57, at 848; see Stoever, *supra* note 2, at 1020.

69. Stoever, *supra* note 2, at 1024. A focus group of women in 1984 were brought together to share their experiences with domestic violence. Stark & Choplin, *supra* note 8, at 24–25. Though all their stories were unique, the abusers exerted patterns of behavior the conductors of the group turned into the “Power and Control Wheel.” *Id.* The Wheel illustrates behaviors and tactics that abusers use. *Id.*

70. Stoever, *supra* note 2, at 1024–25; Carissa Byrne Hessick, *Violence Between Lovers, Strangers, and Friends*, 85 WASH. UNIV. L. REV. 343, 349 (2007). Stranger violence has been more widely viewed as a crime against a community as a whole rather than non-stranger altercations, which are alternatively viewed as a private “dispute” between two people. *Id.* at 353. Rape is one example of stranger versus non-stranger differentiation. *Id.* at 355–56. The standard for marital rape is much higher, sometimes requiring the victim to report within a specific time frame, that the parties be separated or divorced when the rape occurs, or that actual force or violence be used to commit the rape rather than coercion, which is sufficient for stranger classified rape. *Id.* at 356.

71. Stoever, *supra* note 2, at 1024.

72. *Id.* About fifty-two percent of domestic violence victims were injured by being physically assaulted, while only twenty percent of victims of stranger assault were injured. *Id.* (citing Amy Sisley, Lenworth M. Jacobs, Galen Poole, Sylvia Campbell & Thomas Esposito, *Violence in America: A Public Health Crisis—Domestic Violence*, 46 J. TRAUMA 1105, 1105–12 (1999)).

73. Stark & Choplin, *supra* note 8, at 25; Klein & Orloff, *supra* note 57, at 848.

74. Stark & Choplin, *supra* note 8, at 20. Financial abuse comes in many forms, including: restriction of spending, taking money from personal accounts, taking over personal accounts and locking the victim out, sabotaging employment or education by preventing the victim from attending, exclusion from financial decisions, or purposefully causing debt. *Financial Abuse: The Invisible Weapon of Domestic Violence*, ALLSTATE FOUND., <https://allstatefoundation.org/what-we-do/end-domestic-violence/issue/> [<https://perma.cc/9VTM-3B46>] (last visited Sept. 22, 2020).

75. Stoever, *supra* note 2, at 1019–20; Klein & Orloff, *supra* note 57, at 848.

76. Stoever, *supra* note 2, at 1019–20; Klein & Orloff, *supra* note 57, at 848.

States are killed by husbands, boyfriends, or lovers, illustrating the prevalence of the Cycle of Violence in this country.⁷⁷

C. *So, Why Not Leave the Abuser?*

Leaving an abuser increases a victim's risks of danger.⁷⁸ On average, it takes a woman five to seven attempts to leave before the relationship officially ends.⁷⁹ Abusers use violence during separation to punish the victim and prevent the victim from leaving.⁸⁰ For example, a sample of men who had killed their wives talked about feelings of loss of control over their victims and fear of abandonment.⁸¹ The loss that abusers feel when a victim tries to leave makes them feel desperate, increasing their lethality and heightening the level of danger for the victim.⁸²

Protection orders aim to counter abuse, to safeguard against continued threats and acts of violence in domestic situations, and to create a remedy for victims through immediate relief and peace of mind.⁸³ By the time victims apply for protection orders, they have likely already experienced high levels of extreme violence.⁸⁴ Additionally, victims struggle with the decision of getting the courts involved at all, fearing the loss of their children for failing to protect them, discrimination for housing or employment options, potential loss of welfare benefits, and the stress and strain of going through the court system.⁸⁵

A manifestation that the victim may change or leave their relationship increases an abuser's need for control.⁸⁶ As a result, abusers often promise

77. See Siegel, *supra* note 42, at 2119 (stating thirty-one percent of women who are murdered are killed by husbands, boyfriends, or lovers). "In 1992 approximately 28% of female victims of homicide were known to have been killed by their husband, ex-husband, or boyfriend . . ." *Id.* at 2172. The U.N. Office on Drugs and Crime (UNODC) released statistics of a global study revealing that 87,000 women were murdered the previous year and more than half of those women were killed by an intimate partner or family member. Alanna Vagianos, *Domestic Violence Is the Most Common Killer of Women Around the World*, HUFFINGTON POST (Nov. 27, 2018), https://www.huffpost.com/entry/domestic-violence-most-common-killer-of-women-united-nations_n_5bfbf61ee4b0eb6d931142ac [<https://perma.cc/J65L-WPRW>].

78. Stoever, *supra* note 2, at 1025.

79. Stoever, *supra* note 14, at 333; Stark & Choplin, *supra* note 8, at 26.

80. Stoever, *supra* note 2, at 1025.

81. *Id.* at 1024.

82. *Id.*

83. Stoever, *supra* note 14, at 306–07.

84. Stoever, *supra* note 2, at 1019–20; Stoever, *supra* note 14, at 333–34; Stark & Choplin, *supra* note 8, at 24. One incident for a victim that suffered for years at the hands of her husband included being chased through the house, being hit and strangled, forced into the bathroom, knocked into the bathtub where she hit her head on a safety bar, forced under the running faucet while her husband covered her mouth and sat on her chest, kicked her knees, threw her into the wall, flushed her car keys down the toilet, and locked her in the bathroom until he calmed down. *State v. Luebbert*, No. 118,965, 2020 WL 111290, at *1–2 (Kan. Ct. App. Jan. 10, 2020).

85. Stoever, *supra* note 2, at 1068.

86. Stark & Choplin, *supra* note 8, at 23, 26; Klein & Orloff, *supra* note 57, at 815–16.

to change or to act better, or they use other forms of coercion to convince the victim to return to the relationship.⁸⁷ Despite such promises, studies have shown that violence increases by about seventy-five percent during a victim's attempts to leave.⁸⁸ The increase in violence may cause victims to dismiss their petitions to decrease the risk of danger.⁸⁹ Victims often rationalize dismissing a protection order as an effort to keep their abusers in their sights and to prevent their abusers from carrying out threats.⁹⁰

On the other hand, if the process of leaving continues and violence escalates, victims may become more determined to obtain a protection order.⁹¹ The violence that followed the filing of their first order does not typically deescalate, thus motivating some victims to file again to get a final protection order as the abuse continues.⁹² Victims perceive protection orders as an effective and crucial part of their safety.⁹³ Protection orders are one of many strategies women use to end violence.⁹⁴ Studies have shown that protection orders help victims feel safer and more empowered.⁹⁵ Victims believe that protection orders offer a way to document the abuse and to show the abuser that the violence is wrong.⁹⁶

D. Abusers' Abuse of the Protection Order Process

Some abusers utilize protection orders in retaliation of their victim's defiance.⁹⁷ If an abuser obtains an order of protection, the order may exclude the victim from the home, the children, and means of support.⁹⁸

87. Stark & Choplin, *supra* note 8, at 26.

88. Stoever, *supra* note 2, at 1025; see Klein & Orloff, *supra* note 57, at 816.

89. Stoever, *supra* note 14, at 334–35.

90. *Id.* at 335.

91. *Id.* at 341.

92. *See id.*

93. Stoever, *supra* note 2, at 1019, 1066. "Experts say the court document can empower victims to leave or further protect themselves from their abusers and establishes court-supported boundaries." Winkley, *supra* note 14.

94. Jane C. Murphy, *Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women*, 11 AM. U.J. GENDER SOC. POL'Y & L. 499, 506–07 (2003) (Thirty-nine strategies were identified and women indicated whether they had used any of the strategies). Because protection orders are a civil remedy and not a criminal proceeding, women are more willing to utilize protection orders, believing that the abuser will be less likely to retaliate. Matthew J. Carlson, Susan D. Harris & George W. Holden, *Protective Orders and Domestic Violence: Risk Factors for Re-Abuse*, 14 J. FAM. VIOLENCE 205, 206 (1999).

95. Stoever, *supra* note 2, at 1019, 1064–65. Protection orders substantially decrease or even eliminate abuse. *Id.* at 1019, 1064. According to social scientists, protection orders are one of the few available remedies for victims that have any effect at all. *Id.* at 1019, 1065. Women who reported to police and obtained a protection order experienced an eighty percent decrease in abuse. *Id.* at 1019, 1065; see also Klein & Orloff, *supra* note 57, at 813.

96. Stoever, *supra* note 2, at 1019, 1066–67. "Getting the ex parte order alone helped them achieve some of their goals—getting the abuser to stay away, stopping the violence, or making a reconciliation possible." Murphy, *supra* note 94, at 513.

97. Taylor et al., *supra* note 16, at 86.

98. *Id.* at 87; see Stark & Choplin, *supra* note 8, at 27.

Victims become dependent on their abusers who provide a home, money, or way of life for the victim, making leaving more difficult.⁹⁹ When an abuser gets a protection order against the victim, the victim can be in danger of facing criminal charges.¹⁰⁰ Further, if children are in the home and a report has been made that the children have been abused or have witnessed abuse, a Child Protective Services investigation might ensue.¹⁰¹ Abusers threaten to involve these government entities to get the victim to “bend to [the abuser’s] will” and to stay in the relationship.¹⁰²

Many factors contribute to an abuser’s ability to use protection orders as a way to continue to abuse their victims.¹⁰³ The definition of abuse is generally broad and can be easily manipulated by an abuser alleging conduct—for example, physical contact made in self-defense can be considered abuse.¹⁰⁴ Additionally, abusers may lie in their petitions to exclude their victims from their homes or from seeing their children.¹⁰⁵ Adding to the problem, judges face pressure to make quick decisions based on the limited, and sometimes misleading, information provided in protection order forms.¹⁰⁶ Judges do not want to hear that someone has been injured or killed due to their denial of a protection order.¹⁰⁷ Some jurisdictions encourage and pressure judges to liberally construe the allegations in favor of the petitioner, which further enables abusers to obtain protection orders.¹⁰⁸ Therefore, courts typically grant requests for protection, even if in reality the petitioner is the abuser.¹⁰⁹

Although form pleadings provide greater access to the protection order system for victims, they also provide greater access for abusers to continue hurting their victims.¹¹⁰ In Illinois, the form for protection orders does not require supporting facts but, instead, utilizes a prewritten conclusory statement:

I did not give the Respondent notice that I am seeking protection because I fear that giving notice would result in further abuse or because the abuse is likely to recur before I return to court. Good cause exists for granting

99. Stark & Choplin, *supra* note 8, at 26.

100. See Taylor et al., *supra* note 16, at 100. Violations of a protection order can lead to criminal prosecution, even if it is an action as small as child exchanges where inadvertent communication can occur. See Mary Corporon, *Protective Orders in Domestic Cases: The Need to Alter the Process*, UTAH BAR J. VOIR DIRE ISSUE, Summer 1998, at 16, 17.

101. Stoever, *supra* note 2, at 1019, 1068.

102. Stark & Choplin, *supra* note 8, at 27.

103. Taylor et al., *supra* note 16, at 89.

104. *Id.* at 89–90.

105. *Id.* at 91.

106. *Id.* at 92.

107. *Id.*

108. *Id.*

109. *Id.* at 92.

110. *Id.* at 90.

the remedy or remedies requested without prior service of process or notice.¹¹¹

The petitioner is merely required to mark the box next to the paragraph.¹¹² Such conclusory statements allow judges to accept the conclusions marked on the page and grant an order without much thought or consideration about the situation.¹¹³

The petition submitted for judicial review is a verified petition stamped and authorized by the clerk of the court.¹¹⁴ And while statutory sanctions are available for those who make false statements in the verified petition, many victims are not aware that remedies exist when abusers make false statements.¹¹⁵ Even if victims are aware, they might not know how to seek these remedies procedurally.¹¹⁶ Further, assuming the victim knows how to seek such remedies, the necessary proceedings occur after a significant amount of time has passed, during which the victim may still be improperly excluded from the home or separated from the family.¹¹⁷

E. Protection Order Hearings and Judicial Bias

Protection orders in most states are only available for one year.¹¹⁸ In other parts of the law, injunctive relief is typically of unlimited or permanent

111. *Verified Petition for Order of Protection*, CIR. CT. OF ILL. 19TH JUD. CIR. LAKE CNTY. 1, <https://www.lakecountycircuitclerk.org/docs/default-source/orders-of-protection/petition-for-order-of-protection.pdf?sfvrsn=2> [<https://perma.cc/XHS9-5V9T>] (last visited Sept. 22, 2020); Taylor et al., *supra* note 16, at 90–91.

112. Taylor et al., *supra* note 16, at 114.

113. *Id.* at 91.

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. Stoever, *supra* note 2, at 1021.

The statutory time period for protection orders is as brief as three months in Arkansas and West Virginia, or six months in Michigan, Missouri, New Mexico, South Carolina, and Utah. Most commonly, the initial order is effective for up to one year; twenty-two states take this approach. Other states have chosen to make initial orders available for other limited periods of specified duration; nine state statutes allow orders to be issued for eighteen months to two years, and eight states permit orders for three to five years.

Id. at 1046–47 (citing ARK. CODE ANN. § 9-15-205(b) (West 2013); W. VA. CODE ANN. § 48-27-505 (West 2013); MICH. COMP. LAWS ANN. § 600.2950(13) (West 2013); MO. ANN. STAT. § 455.040(1) (West 2013); N.M. STAT. ANN. § 40-13-6(C) (West 2013); S.C. CODE ANN. § 20-4-70(A) (2013); UTAH CODE ANN. § 78B-7-106 (West 2013); ALASKA STAT. ANN. § 18.66.100 (West 2013); ARIZ. REV. STAT. ANN. § 13-3602(K) (2013); CONN. GEN. STAT. ANN. § 46b-15(d) (West 2014); DEL. CODE ANN. tit. 10, § 1045(b) (West 2014); D.C. CODE § 16-1005(d) (2013); FLA. STAT. ANN. §§ 741.30, 784.046 (West 2013); GA. CODE ANN. § 19-13-4(c) (2013); IDAHO CODE ANN. § 39-6306(5) (West 2013); IOWA CODE ANN. § 236.5(2) (West 2013); KAN. STAT. ANN. § 60-3107(e) (West 2013); MD. CODE ANN., FAM. LAW § 4-506(j)(1) (West 2013); MASS. GEN. LAWS ANN. ch. 209A, § 3(c) (West 2014); NEB. REV. STAT. ANN. § 42-924(3) (West 2013); NEV. REV. STAT. ANN. § 33.080(3) (West 2013); N.H. REV. STAT. ANN. § 173-B:5(VI) (2013); N.C. GEN. STAT. ANN. § 50B-3(b) (West 2013); OR. REV. STAT. ANN. § 107.716(6) (West 2013); TENN. CODE ANN. § 36-3-605(b) (West 2013); WYO. STAT. ANN. § 35-21-106(b) (West 2013); 750 ILL. COMP. STAT. ANN. 60/220(b), (e) (West 2013); IND. CODE ANN.

duration, but protection orders are issued for brief periods of time.¹¹⁹ In domestic violence situations, most jurisdictions require some form of continued abuse or threats of abuse during the course of the first order before issuing a second order for a subsequent period of time.¹²⁰ Abuse can and does continue for lengthy periods of time, sometimes with large gaps between incidents.¹²¹ Victims must weigh the risks of returning to court, considering whether to reengage with abusers and bracing themselves for any blowback.¹²²

Protection order hearings are more dangerous than other types of court proceedings because they expose victims to their abusers in close quarters.¹²³ The purpose of the protection order process is to help protect against domestic violence and stop abusers from exerting power and control over victims.¹²⁴ However, the process provides abusers with the exact date and time victims will be in a particular place, which contradicts the purpose of protection orders.¹²⁵ The parties—both the victim and abuser—must arrive at their hearing date at the same time, regardless of whether their case will be heard first on the docket or last.¹²⁶ During court hearings, victims are subject to “dark, overcrowded, and poorly monitored hallways,” “the absence of a safe waiting area for litigants,” “unsecured bathrooms,” and the “failure to make daycare available to litigants.”¹²⁷

While protection orders may seek to stop domestic violence, the short lifespan of protection orders allows domestic violence to continue.¹²⁸ Requiring victims to request an extension of their protection order increases their risk for psychological and physical abuse from their abuser.¹²⁹

§ 34-26-5-9(e) (West 2012); LA. REV. STAT. ANN. § 46:2136(F)(1) (2013); ME. REV. STAT. ANN. tit. 19-A, § 4007(2) (2013); MINN. STAT. ANN. § 518B.01 (West 2013); N.Y. FAM. CT. ACT § 842 (McKinney 2013); TEX. FAM. CODE ANN. § 85.025(A)(1)–(2) (West 2013); VA. CODE ANN. § 16.1-279.1(B) (West 2013); CAL. FAM. CODE § 6345(a), (c) (West 2013); KY. REV. STAT. ANN. § 403.750(2) (West 2013); OHIO REV. CODE ANN. § 3113.31(3)(a) (West 2013); OKLA. STAT. ANN. tit. 22, § 60.11(3) (West 2013); R.I. GEN. LAWS ANN. § 8-8.1-3(i) (West 2013); S.D. CODIFIED LAWS § 25-10-1(3) (2013); WIS. STAT. ANN. § 813.125(3)(c) (West 2012)).

119. Stoever, *supra* note 2, at 1045.

120. *Id.* at 1021.

121. *Id.* at 1026; Stark & Choplin, *supra* note 8, at 23.

122. Stoever, *supra* note 2, at 1027.

123. *Id.*

124. *See* Stoever, *supra* note 14, at 341.

125. Stoever, *supra* note 2, at 1027.

126. *Id.* at 1019, 1029.

127. *Id.* at 1019, 1028.

128. *Id.* at 1019, 1022.

129. *Id.* at 1019, 1026–27. “Law enforcement failure or inability to serve the petition and ex parte order on the respondent to give him the notice required by the statute delayed or made impossible the issuance of a protective order in a large number (50%) of cases.” Murphy, *supra* note 94, at 510. “Severe financial strain on a woman seeking protection under a protective order may induce a premature or unwarranted dissolution of the order to ease her burden of separate maintenance.” Truss, *supra* note 46, at 1184.

Attorneys have been required to intervene in altercations within the halls of a courthouse when abusers attempt to physically and verbally attack the victim while waiting for court.¹³⁰ Even so, victims must return to the courthouse year after year to ensure their continued protection, giving abusers the opportunity to remain in dangerous proximity to their victims.¹³¹

Additionally, victims are sometimes penalized for trying to utilize the system that was established to assist them.¹³² Judges who do not understand the dynamics of domestic violence often are less likely to issue protection orders needed to help keep victims safe.¹³³ If victims do not immediately attempt to seek protection, their hesitation might be seen as “evidence” that they are not in immediate danger.¹³⁴ Further, even though the average victim makes five to seven attempts before successfully leaving, repeated use of the court’s assistance may adversely affect the judicial view of victims.¹³⁵

Judges who lack proper training in the dynamics of domestic violence can be strongly biased based on stereotypes of how victims act.¹³⁶ For example, stereotypes lead some to believe only the uneducated and poor suffer from domestic violence.¹³⁷ Another stereotype creates the expectation that real victims should break down in the court room, sobbing over horrific stories and fear of their abusers.¹³⁸ Some judges have even perceived a victim’s efforts to fight back against the abuser—instead of cowering and accepting the abuse—as evidence that the victim is not really a victim.¹³⁹ Judges who have developed such biases are less likely to grant a protection order.¹⁴⁰

130. Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3, 33–34 (1999).

131. Stoever, *supra* note 2, at 1026.

132. Stoever, *supra* note 14, at 341.

133. Stark & Choplin, *supra* note 8, at 14.

134. *Id.* at 16; Stoever, *supra* note 14, at 333. A person’s decision not to immediately file a protection order stems from one of many possibilities that they consider, including: loss of support, change, children, family or society created pressures, cultural or religious expectations, lack of other resources, fear of the unknown versus what they know staying will mean, and a desire to stay in the relationship, just without the abuse. *Id.* at 333–40.

135. Stoever, *supra* note 14, at 333; Stark & Choplin, *supra* note 8, at 26. “Petitioners not only carry the burden of proving domestic violence in a world that would rather not recognize its existence, but they also confront the general expectation that an abused person will immediately and permanently leave the relationship.” Stoever, *supra* note 14, at 337.

136. Stark & Choplin, *supra* note 8, at 31. “Lack of knowledge about this basic aspect of domestic violence causes many judges and clerks to become frustrated with petitioners whom they perceive as ‘refusing’ to leave the abusive relationship.” Epstein, *supra* note 130, at 39.

137. Stark & Choplin, *supra* note 8, at 31.

138. *Id.*

139. *Id.* at 32.

140. *Id.*

Properly trained judges understand that victims do not fit in a box.¹⁴¹ Victims can be anyone, no matter the class or education level.¹⁴² Victims may also appear impassive and not show any emotion during court proceedings.¹⁴³ On the other hand, victims may show high levels of anger and defiance, not wanting to show fear to their abuser.¹⁴⁴ Many victims may also choose to fight back against their abusers, instead of allowing further harm to occur.¹⁴⁵ Victims have their own stories and their own ways of coping with and leaving their situation.¹⁴⁶ Judges who are trained in the dynamics of domestic violence can better understand why victims might delay requesting a protection order.¹⁴⁷ Such judges determine when to grant orders of protection more effectively and recognize the imminent harm based on the escalation of the violence over time.¹⁴⁸

Some judges have resisted acknowledging that protection orders are a valid and essential remedy.¹⁴⁹ Judges may use their own discretion when determining whether to grant a protection order.¹⁵⁰ In some states, judges also have complete discretion in deciding the length of order to issue or to deviate from the prescribed period for longer, or even shorter, periods of time.¹⁵¹ Further, judges often refuse to extend orders absent any violation of the order or proof of continued abuse, based on the presumption that the order is no longer necessary because the abuse has ceased during the time of the order.¹⁵² Even if statutory provisions provide for long term or permanent orders of protection, judges may issue orders for limited time periods, underestimating the safety risks still at large.¹⁵³

141. *Id.* at 31. “[J]udges often do not understand either the psychological dynamics of relationships involving domestic violence or the obstacles facing battered women who seek legal protection.” Epstein, *supra* note 130, at 44.

142. Stark & Choplin, *supra* note 8, at 31.

143. *Id.*

144. *Id.*

145. *See id.* at 32.

146. *See id.*

147. *Id.* at 17; Klein & Orloff, *supra* note 57, at 811. “To remedy this deficit, judges need to receive the education necessary to adequately perform their jobs.” Epstein, *supra* note 130, at 44.

148. *See* Stark & Choplin, *supra* note 8, at 23.

149. *See* Stoever, *supra* note 2, at 1084.

150. *See id.* at 1044.

151. *Id.* at 1047–48.

152. *Id.* at 1052. In Tennessee, a protection order can be extended for an additional year if the protection order has been violated. *Id.* Similarly, West Virginia protection orders can be extended as long as necessary if there has been a violation of the original ninety-day order. *Id.* Minnesota’s initial two-year order can be extended for up to fifty years if the abuser has violated the original order two or more times or if the victims have filed two or more protection orders against the same abuser. *Id.*

153. *See id.* at 1084–85. Sharing children with the abuser becomes another obstacle when filing a protection order because judges have routinely limited the protection, telling victims to file a custody case instead. *Id.* at 1085. This places undue hardship on the victim who might not want to participate in a custody case for many reasons. *Id.*

F. Attorneys and Advocates

Studies show that petitioners are the least likely to be represented by counsel in protection order cases.¹⁵⁴ Of those who attempt to obtain counsel, only about fifty percent of legal aid applicants receive assistance while going through the protection order process.¹⁵⁵ Moreover, individuals who enter the court system as pro se litigants face a number of hurdles and challenges.¹⁵⁶ Without legal counsel, victims become subject to unwanted interventions and to the structural inequality of the system.¹⁵⁷

Pro se litigants are at a distinct disadvantage when entering the court system, often struggling to understand and follow the procedural rules of the court, becoming increasingly frustrated with an apparently impossible legal system, or feeling overwhelmed by the economic and emotional tolls a court proceeding can have.¹⁵⁸ In a sample of 142 women seeking civil protection orders, “only thirty-six had legal representation for the protective order court hearing.”¹⁵⁹ Still, pro se litigants are held to the same standards as litigants represented by counsel.¹⁶⁰

The availability of advocates can alleviate some of the confusion for victims who cannot obtain counsel on their own.¹⁶¹ Advocates complement the services and procedures in place within the court system, providing assistance to ensure victims can obtain protection orders.¹⁶² Advocates help victims fill out the court forms, talk victims through the process and

154. See generally Jane K. Stoeber, *Access to Safety and Justice: Service of Process in Domestic Violence Cases*, 94 WASH. L. REV. 333, 387 (2019).

155. Elizabeth L. MacDowell, *Vulnerability, Access to Justice, and the Fragmented State*, 23 MICH. J. RACE & L. 51, 63–64 (2017–2018). “The lack of attorneys for poor people is exacerbated by federal funding restrictions for legal aid, which prohibit services for incarcerated people and others at the nexus of punitive regulatory systems like immigration, family, and criminal law.” *Id.* at 64.

156. Benjamin H. Barton & Stephanos Bibas, *Triaging Appointed-Counsel Funding and Pro Se Access to Justice*, 160 U. PA. L. REV. 967, 968 (2012).

157. MacDowell, *supra* note 155, at 95, 98. An example of an unwanted intervention is mediation, where the mediators are encouraged make the parties talk to each other, or “vent” their feelings to the other, subjecting a victim to further abuse. Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 YALE L.J. 1545, 1575 (1991). “Because power imbalances define the relationship between victim and abuser, mediation of cases involving domestic violence issues may perpetrate a second-order abuse on the victim by ignoring the abuser’s coercive power.” Truss, *supra* note 46, at 1186.

158. Stoeber, *supra* note 154, at 388. A pro se litigant is any party to a lawsuit or court case “who represents oneself in a court proceeding without the assistance of a lawyer.” *Litigant*, BLACK’S LAW DICTIONARY (11th ed. 2019); *Pro Se*, BLACK’S LAW DICTIONARY (11th ed. 2019).

159. Murphy, *supra* note 94, at 511, 520.

160. Stoeber, *supra* note 154, at 389.

161. See Klein & Orloff, *supra* note 57, at 845.

An increase in victim advocacy services reduces some survivors’ dependency on the criminal justice system and helps them find the strength to escape the cycle of abuse on their own. And for those who need government intervention, a lay advocate can amplify a victim’s voice so that a prosecutor can better shape his case to meet the victim’s needs.

Epstein, *supra* note 130, at 5.

162. See Klein & Orloff, *supra* note 57, at 846.

procedures of the court, and provide emotional support during a stressful time.¹⁶³

III. ANALYSIS

A. Obtaining Protection Through Statutes

The Federal Rules of Civil Procedure allow victims to apply for temporary orders without notice to the opposing party to obtain protection from wrongful action.¹⁶⁴ The petitioner must show that immediate and irreparable injury will occur if an injunction is not ordered.¹⁶⁵ Courts across the nation have rejected claims that temporary orders violate due process procedures based on a general judicial acceptance that the need for immediate protection and relief for families outweighs an abuser's interest in prior notice.¹⁶⁶

In Oklahoma, objections to the state's Protection from Abuse Act were rejected, noting that the order was only effective for a short period of time and that the state has a legitimate interest in protecting victims.¹⁶⁷ The Minnesota Supreme Court also held that the Minnesota Domestic Abuse Act did not violate due process rights because of the need for immediate intervention and prevention of further violence.¹⁶⁸ A Pennsylvania common pleas court rejected a challenge that the respondent to a protection order should have been notified prior to presenting the protection order, stating that such notice would have defeated the purpose of the state's Abuse Act, which provides immediate protection for victims.¹⁶⁹ Courts in Connecticut, Illinois, Michigan, Missouri, and Washington have also upheld their respective statutes, rejecting complaints of due process violations and stating that setting a hearing within a short time and giving the opportunity to be heard was adequate (1) to protect the victim, (2) to prevent further and immediate danger, and (3) to avoid violating the respondent's due process rights.¹⁷⁰

Questions also arise regarding what other procedures could be dispensed of to grant emergency protection and what is the threshold for issuing such protection.¹⁷¹ Most, if not all, statutes outline the requirement

163. *Id.*

164. FED. R. CIV. P. 65(b)(1)(A), (B); Stark & Choplin, *supra* note 8, at 13.

165. Stark & Choplin, *supra* note 8, at 15.

166. Taylor et al., *supra* note 16, at 97; Klein & Orloff, *supra* note 57, at 905.

167. Taylor et al., *supra* note 16, at 98.

168. *Id.*

169. *Id.* at 98–99.

170. *Id.* at 99–100.

171. *Id.* at 101.

for a judicial officer in order to be considered proper procedure.¹⁷² But the use of form pleadings and conclusory statements outlined within protection order forms allows for scrutiny of the facts to fall away.¹⁷³ An opportunity to speak to a judge face-to-face provides the judge with greater insight into the situation and allows the judge to inquire about specific details that may not be included in the petition, which more effectively prevents abusers from using the system against victims.¹⁷⁴ Most jurisdictions only require the person seeking protection to allege abuse or any immediate danger by the respondent.¹⁷⁵

Judges should go beyond the forms presented to them when a petition is filed.¹⁷⁶ For protection order procedures to be effective in the way they were intended, judges need to scrutinize the facts presented to evaluate whether there is a risk of actual harm to the petitioner, whether the harm alleged justifies relief, and the extent of the relief required.¹⁷⁷ Because domestic violence escalates over time,¹⁷⁸ evidence showing escalation is relevant to a court's decision of whether to issue a temporary order.¹⁷⁹ Information regarding a history of domestic abuse should also be elicited by courts to help guide their decisions.¹⁸⁰

Judicial inquiry into each petition could reveal abuse of the system that further harms victims.¹⁸¹ Allowing victims to appear in front of a judge during the filing process gives judges an opportunity to extract the pertinent information that a pro se individual may not know to include in their written petition.¹⁸² Effective remedies for violence cannot be made in isolation of each other, but should be taken under the umbrella of all the circumstances the victim has experienced; thus, a conversation between the judge and the victim is necessary.¹⁸³

B. Relief Currently Available to Victims

Protection orders are state-created remedies, and each state differs in the requirements victims must fulfill before courts can issue a protection

172. *Id.* at 98–101. A small number of jurisdictions have statutory provisions that allow for specially authorized personnel (other than judges) to issue an order of protection. *Id.* at 102. This may be suspect, but the person is typically required to at least hold a law license. *Id.*

173. *Id.* at 102.

174. *See id.* at 101, 114.

175. *Id.* at 107.

176. *Id.* at 116.

177. *Id.* at 99, 116.

178. Klein & Orloff, *supra* note 57, at 900.

179. *Id.*

180. *Id.*

181. *See* Taylor et al., *supra* note 16, at 116.

182. *See id.* at 99, 116.

183. Klein & Orloff, *supra* note 57, at 903–04.

order.¹⁸⁴ The major differences between states are (1) the types of abuse that qualify for the protection order, (2) how certain the victim is that abuse will occur or continue in the future, (3) whether the abuse is “imminent” or the protection is “necessary,” and (4) how to determine the actual “imminence” of the harm.¹⁸⁵

The requirement of service is the only statutory provision that is the same across all jurisdictions.¹⁸⁶ A court does not have to notify the respondent prior to granting a *temporary* protection order; however, a court must serve the respondent with notice of the protection order hearing, where a *final* protection order may be issued.¹⁸⁷ The District of Columbia, Kansas, and eighteen other jurisdictions require personal service on the respondent.¹⁸⁸ Service of process over civil protection order respondents is important because it provides notice of either the court hearing for protection order issuance or the existence of a protection order issued *ex parte*, and service is a prerequisite to enforcement of civil protection orders in all states.¹⁸⁹

Civil protection order remedies are usually imposed through family code provisions specific to each jurisdiction rather than through broader state procedural codes.¹⁹⁰ Each jurisdiction has its own set of family law guidelines that discuss procedures for family courts, including protection orders.¹⁹¹ In most guidelines, the procedure to obtain a protection order provides an overview of the procedures the court will follow.¹⁹² Specifically, each set of guidelines explains where to file the protection order paperwork; however, this is where the similarities between Kansas’s and the District of Columbia’s guidelines end.¹⁹³ Further, individual intrastate jurisdictions within Kansas differ from one another.¹⁹⁴ The differences between the guidelines create a disparity between jurisdictions within

184. Stoever, *supra* note 2, at 338; Stark & Choplin, *supra* note 8, at 18.

185. Stark & Choplin, *supra* note 8, at 18–20.

186. Klein & Orloff, *supra* note 57, at 879.

187. Taylor et al., *supra* note 16, at 97; Klein & Orloff, *supra* note 57, at 877.

188. D.C. CODE § 16-1004(d) (LEXIS through Sept. 21, 2020); KAN. STAT. ANN. § 60-3104(d) (LEXIS through acts received as of June 5 of 2020 Legis. Sess.); Klein & Orloff, *supra* note 57, at 877.

189. Klein & Orloff, *supra* note 57, at 879.

190. Stoever, *supra* note 154, at 338. These types of heightened procedural rules effectively decrease the effectiveness of protection orders, making protection less accessible to many victims. *Id.* at 338.

191. See SNCO FAMILY GUIDELINES, *supra* note 39; JOHNSON FAMILY GUIDELINES, *supra* note 39; DOUGLAS FAMILY GUIDELINES, *supra* note 39; HANDBOOK FOR PEOPLE WHO REPRESENT THEMSELVES IN DIVORCE, CUSTODY, AND CHILD SUPPORT CASES (D.C. SUPER. FAM. CT. 2014) [hereinafter D.C. Family Court], <https://www.dccourts.gov/sites/default/files/matters-docs/DR-Handbook-for-Self-Represented-Parties.pdf> [<https://perma.cc/G72C-AENS>].

192. See SNCO FAMILY GUIDELINES, *supra* note 39; DOUGLAS FAMILY GUIDELINES, *supra* note 39; D.C. HANDBOOK, *supra* note 191.

193. See sources cited *supra* note 192.

194. See sources cited *supra* note 192.

Kansas regarding whether a victim can obtain a protection order in any given jurisdiction.¹⁹⁵

1. Kansas Protection Order Procedures Are Not Consistent

In Kansas, an individual can go to a courthouse and obtain specified protection order forms, or a petition, from the clerk of the court to file for a protection order.¹⁹⁶ A judge then reviews the petition submitted to the court and decides whether to issue a temporary order of protection.¹⁹⁷ Next, the judge sets a date for a hearing to determine whether a final protection order will be issued within twenty-one days of filing, as long as all of the statutory requirements have been met.¹⁹⁸ The court then issues the orders to the petitioner, the sheriff's department, and the respondent.¹⁹⁹ Personal service is required upon the respondent.²⁰⁰

The Kansas Protection from Abuse Act states that “[a]n intimate partner or household member may seek relief under the protection from abuse act by filing a verified petition . . . alleging abuse by another intimate partner or household member.”²⁰¹ Abuse is defined within the statute as “the occurrence of one or more . . . acts between intimate partners or household members.”²⁰² The acts outlined in the statute include “[i]ntentionally attempting to cause bodily injury, or intentionally or recklessly causing bodily injury; [i]ntentionally placing, by physical threat, another in fear of imminent bodily injury; [e]ngaging in any sexual contact or attempted sexual contact with another person without consent or when such person is incapable of giving consent.”²⁰³ These provisions, though they appear specific, include a wide variety of acts that could be defined as “attempting to cause bodily injury” or threatening and placing a person in fear, lowering the bar judges use to gauge whether to issue a temporary

195. See SNCO FAMILY GUIDELINES, *supra* note 39; Protection from Abuse and Stalking, *supra* note 39; JOHNSON FAMILY GUIDELINES, *supra* note 39; DOUGLAS FAMILY GUIDELINES, *supra* note 39.

196. KAN. STAT. ANN. § 60-3104(a), (c) (LEXIS through acts received as of June 5 of 2020 Legis. Sess.).

197. § 60-3106(b).

198. § 60-3106(a).

199. § 60-3108. The petitioner is the person filing the request with the court, which would typically be the victim in domestic violence cases. See *Petitioner*, BLACK'S LAW DICTIONARY (11th ed. 2019). The respondent would be the person the protection order is issued against, meaning the abuser. See *Respondent*, BLACK'S LAW DICTIONARY (11th ed. 2019).

200. KAN. STAT. ANN. § 60-3104(d).

201. § 60-3104(a).

202. § 60-3102(a).

203. § 60-3102(a)(1)–(3); see also Taylor et al., *supra* note 16, at 109–12.

order.²⁰⁴ Courts generally uphold these broad statutes because each situation is different and varying standards are used to determine whether each situation poses immediate and present danger.²⁰⁵

In the first section, the Kansas Protection from Abuse Act explains who can seek relief through the protection order process, how the forms are supplied, what service is required on the respondent, and the need to keep personal information confidential.²⁰⁶ The Kansas statute contains five other sections outlining emergency relief, hearings and temporary orders, procedures, extensions, and violations.²⁰⁷

Specifically, the Kansas statute allows an intimate partner or household member to file for protection through the Protection from Abuse Act.²⁰⁸ The petitioner can seek relief for themselves or on behalf of a minor in their custody if the minor has been harmed by another person in the home.²⁰⁹ Confidential information, such as a victim's address or telephone number, can also be protected, so the abuser cannot obtain it.²¹⁰ Copies of the petition and any other documents included at the time of filing are issued to the victim and the abuser after the judge signs an order of protection.²¹¹

After a victim files a verified petition at a Kansas courthouse, a judge may issue, with a finding of good cause, a temporary protection order to protect the victim between the day of filing and the protection order hearing.²¹² The temporary order is issued if the judge finds that the victim is in immediate and present danger.²¹³ After the first court date, the temporary protection order can be extended, as necessary, if the case is continued for attempted service on the abuser or for time to prepare for a trial.²¹⁴

After a petition has been filed and a judge has found that it contains the statutory requirements, a hearing for a full one-year protection order is

204. KAN. STAT. ANN. § 60-3102(a)(1)–(2); Taylor et al., *supra* note 16, at 108.

205. Taylor et al., *supra* note 16, at 99, 109.

206. KAN. STAT. ANN. § 60-3104. “If the court finds that the plaintiff’s address or telephone number, or both, needs to remain confidential for the protection of the plaintiff, plaintiff’s minor children or minor children residing with the plaintiff, such information shall not be disclosed to the public[.]” § 60-3104(e).

207. See §§ 60-3101 to 60-3112.

208. § 60-3104(a). Individuals in Kansas also have the option to file for an emergency protection order when the courts are closed. § 60-3105(a)–(b). The emergency order has a higher standard to meet before being issued—it requires an immediate and present danger to the victim from the abuser. *Id.* Emergency orders are only issued to protect the victim until 5:00 p.m. the next business day of the courthouse, where they can and should file the standard form of protection order with the court. *Id.*

209. § 60-3104(b).

210. § 60-3104(e).

211. § 60-3108.

212. § 60-3106(b).

213. *Id.*

214. § 60-3106(c).

set no more than twenty-one days from the day of filing.²¹⁵ At this hearing, the petitioner must demonstrate that the allegations made of the abuser are true by a preponderance of the evidence.²¹⁶ A hearing regarding the protection order also gives the abuser the opportunity to cross-examine the victim and present evidence against the victim.²¹⁷ The abuser can always agree to a protection order being issued against them, which the court will approve without the parties going through a trial.²¹⁸

The Shawnee County Family Guidelines state that a verified petition, sworn under penalty of perjury, must be filed with the Clerk of the District Court.²¹⁹ Once filed with the Clerk of the District Court, petitions requesting temporary orders should be delivered immediately to a judge.²²⁰ Further, the guidelines state that not every situation is an emergency, and petitioners cannot simply take their petitions to the judge's chambers and expect the judge to assume it is an emergency.²²¹ The whole section regarding protection orders within the Shawnee County Family Guidelines ends with a brief explanation about appearing at the set court hearing and whether final orders will be issued depending on the parties appearing in court.²²²

The Douglas County Family Guidelines are slightly different than the Shawnee County Family Guidelines.²²³ Both sets of guidelines outline (1) the need for a verified petition, (2) the difference between being represented by a lawyer versus not being represented, and (3) the requirement of the petition being turned into the Clerk of the District Court.²²⁴ The Douglas County Guidelines do not discuss the immediacy of petitions going to a judge, but rather, only that the petitions must go through the Clerk's office before going to the judge.²²⁵ Once signed, they must immediately be filed with the Clerk and sent to the Sheriff's office.²²⁶

The Shawnee County District Court website links to the Kansas Judicial Council website, which contains the protection order paperwork and a general instruction packet.²²⁷ On the Shawnee County website, within

215. § 60-3106(a).

216. *Id.*

217. *Id.*

218. § 60-3107(a).

219. SNCO FAMILY GUIDELINES, *supra* note 39, § 12.2.

220. *Id.*

221. *Id.*

222. *Id.*

223. Compare DOUGLAS FAMILY GUIDELINES, *supra* note 39, with SNCO FAMILY GUIDELINES, *supra* note 39.

224. DOUGLAS FAMILY GUIDELINES, *supra* note 39, § 10.02; SNCO FAMILY GUIDELINES, *supra* note 39, § 12.2.

225. DOUGLAS FAMILY GUIDELINES, *supra* note 39, § 10.02.

226. *Id.*

227. *Domestic Relations Court Forms*, *supra* note 39; *Protection from Abuse*, *supra* note 3.

its Frequently Asked Questions, there is also a link for a “restraining order,” which is the same as a protection order.²²⁸ The Douglas County District Court website also contains links to information about the protection order process.²²⁹ The links to the forms are the same as those in Shawnee County, using the forms from the Kansas Judicial Council.²³⁰

The Johnson County District Court website does not provide any helpful information regarding filing protection orders unless the parties are already in the middle of divorce proceedings.²³¹ The Johnson County District Attorney website gives a general overview about assistance in filing for a protection order, even specifying that individuals should allot two hours to complete the process, but does not detail where to file the paperwork or how quickly the judge is supposed to receive it.²³² Similarly, Sedgwick County protection order information is found on the sheriff’s page and only indicates that a person wanting to file a protection order must go to the courthouse to speak to a family court representative in order to fill out the paperwork.²³³

The advocates at the YWCA Center for Safety and Empowerment shared that the protection order procedures in Shawnee County create barriers for their clients.²³⁴ The biggest barrier they see is that victims are not guaranteed a court date.²³⁵ People attempting to obtain a protection order are required to fill out the paperwork and hand it in to the Clerk of the District Court without any knowledge of whether what they wrote is enough for the judge to issue protection.²³⁶ Even worse, it takes somewhere between twenty-four and seventy-two hours before victims know whether a judge has granted immediate protection or a court date.²³⁷

The advocates who work at The Willow²³⁸ in Douglas County also help victims file for protection orders, but the procedures there are also different.²³⁹ Victims might obtain protection the same day, but they are

228. *FAQs*, *supra* note 39.

229. *Protection from Abuse Cases*, *supra* note 39. The links on the website provide information regarding who is eligible to file for a protection order and what forms are required. *Id.*

230. *Id.*; *Protection from Abuse*, *supra* note 3.

231. *See Local Court Rules*, JOHNSON CNTY. DIST. CT., <https://courts.jocogov.org/local-court-rules.aspx> [<https://perma.cc/YGE9-M96G>] (last visited Sept. 24, 2020).

232. *Protection Orders*, *supra* note 39.

233. *Protection from Abuse and Stalking*, *supra* note 39.

234. *See* Munoz, *supra* note 4.

235. *Id.*

236. *See* SNCO FAMILY GUIDELINES, *supra* note 39, § 12.2; KAN. STAT. ANN. § 60-3106(b) (LEXIS through acts received as of June 5 of 2020 Legis. Sess.); Munoz, *supra* note 4.

237. Munoz, *supra* note 4.

238. The Willow is an agency that assists victims of domestic violence and human trafficking in Douglas, Franklin, and Jefferson counties, in Kansas. *Our Story*, WILLOW, <https://www.willowdvcent.org/who-we-are> [<https://perma.cc/NJ7V-VL4Y>] (last visited Sept. 24, 2020).

239. *See* sources cited *supra* note 4.

notified of the court's decision by text message or e-mail.²⁴⁰ This creates a serious safety risk for the victims because they are not protected when they turn in the paperwork, and being notified in this way could alert the abuser to the order before a victim can get to safety.²⁴¹ An abuser discovering a victim has filed for a protection order, regardless of whether it was actually granted or not, can result in serious—and even deadly—consequences.²⁴²

The discrepancy between jurisdictions, as well as the procedures themselves, are not protecting victims of domestic violence.²⁴³ The Kansas statute does not specifically lay out procedures that should be followed, instead allowing each intrastate jurisdiction to try its own version.²⁴⁴ This leaves victims vulnerable to continued abuse, serious or permanent injury, or even the threat of being killed.²⁴⁵ Therefore, the Kansas statute should be modified to directly outline the procedures each jurisdiction in Kansas should follow, which would create uniformity of protection for victims of domestic violence across the state.²⁴⁶

2. The District of Columbia Better Protects Victims and Prevents Against Continued Abuse

Though the statutes are relatively similar in Kansas and in the District of Columbia, the procedures implemented during the filing process are extremely different.²⁴⁷ A person in the District of Columbia can file a petition for protection by submitting a petition with the Clerk of the District Court, like in Kansas.²⁴⁸ Once filed, if a judge finds that the safety and welfare of the petitioner is in danger, the judge will issue a temporary order of protection.²⁴⁹ Temporary orders remain in place until the abuser receives proper service and a hearing can be held for issuing a final protection order.²⁵⁰ But the District of Columbia goes further in its efforts to protect victims by connecting unrepresented victims with advocates, allowing victims to speak to a judge to better convey their need for protection, and

240. Jones, *supra* note 4.

241. *See id.*; Stoever, *supra* note 2, at 1025; Stark & Choplin, *supra* note 8, at 24–25.

242. *See* Jones, *supra* note 4; Siegel, *supra* note 42, at 2119, 2172; Stoever, *supra* note 2, at 1019, 1024.

243. *See* sources cited *supra* note 39.

244. *See* KAN. STAT. ANN. §§ 60-3101 to 60-3112 (LEXIS through acts received as of June 5 of 2020 Legis. Sess.); sources cited *supra* note 4.

245. *See* sources cited *supra* note 4; Stoever, *supra* note 2, at 1019, 1025; Stoever, *supra* note 14, at 335; Stark & Choplin, *supra* note 8, at 23, 26; Klein & Orloff, *supra* note 57, at 815–16.

246. *See* sources cited *supra* note 39; sources cited *supra* note 4; *Protection from Abuse*, *supra* note 3.

247. *See* sources cited *supra* note 4; *District of Columbia Restraining Orders*, *supra* note 10.

248. *Compare* D.C. CODE § 16-1003(a) (LEXIS through Sept. 21, 2020) with KAN. STAT. ANN. § 60-3106(a).

249. D.C. CODE § 16-1004(b)(1).

250. § 16-1004(b)(2)–(3).

issuing any necessary protection orders before victims leave the courthouse, thereby preventing a period without protection.²⁵¹

The District of Columbia Code outlines extensively who may file a protection order and on behalf of whom.²⁵² However, the District of Columbia's temporary order is not to exceed fourteen days after being issued, except if the final day lands on a weekend or observed holiday, in which case the order will extend to the next business day.²⁵³ The District of Columbia statute further explains in detail the provisions in the temporary orders issued and what will happen if the abuser fails to appear at the set court date.²⁵⁴ The District of Columbia Code then outlines stipulations about the court hearing based on who the petitioner is and what will happen after a hearing if the judge decides that a final order is necessary.²⁵⁵

The District of Columbia Family Law Guidelines are quite minimal, stating that if someone is a victim of domestic violence, they can get a protection order.²⁵⁶ The guidelines briefly state that a victim needs to visit a Domestic Violence Intake Center to fill out the protection order paperwork and includes a link to the district court's website for more information.²⁵⁷ The District of Columbia District Court website includes a detailed

251. See *District of Columbia Restraining Orders*, *supra* note 10; KAN. STAT. ANN. §§ 60-3101 to 60-3112 note; SAFE, Inc., *supra* note 40.

252. D.C. CODE § 16-1003.

A petitioner, or a person authorized by this section to act on petitioner's behalf, may file a petition for civil protection in the Domestic Violence Unit against a respondent who has allegedly committed or threatened to commit one or more criminal offenses against the petitioner; provided, that: (1) If the petitioner is a minor, the petitioner's parent, guardian, custodian, or other appropriate adult may file a petition for civil protection on the petitioner's behalf; (2) A minor who is 16 years of age or older may file a petition for civil protection on his or her own behalf; (3) A minor who is at least 12 but less than 16 years of age and a victim of intimate partner violence may file a petition for civil protection and participate in a hearing to seek a temporary protection order without a parent, guardian, custodian, or other appropriate adult acting on his or her behalf, but, under these circumstances, the court may appoint an attorney for the minor in accordance with section 16-1005(a-1)(3), if necessary, and if doing so will not unduly delay the issuance or denial of a temporary protection order; (4) A minor who is at least 12 but less than 16 years of age and a victim of interpersonal or intrafamily violence may petition for civil protection only if his or her parent, guardian, or custodian files the petition on his or her behalf; (5) A minor who is less than 12 years of age may petition for civil protection only if his or her parent, guardian, or custodian files the petition on his or her behalf; and (6) A custodial parent, guardian, or custodian of a minor may not file a petition for civil protection against the minor.

Id.

253. § 16-1004(b)(2).

254. § 16-1004(b)(3), (c)(1)–(2).

255. § 16-1005(a)–(c).

256. See D.C. HANDBOOK, *supra* note 191.

This handbook provides basic information about divorce, custody, and child support cases in the Domestic Relations Branch of the Family Court of the District of Columbia. It explains some of your basic rights and responsibilities if you represent yourself in such a case. However, this handbook does not and cannot answer all the questions you may have.

Id.

257. *Id.*

description of what to expect when filing for protection order relief.²⁵⁸ The website states that the process can take a few hours and that it includes “requesting the petition, filling out the paperwork, getting the case scheduled, and appearing before the judge” before leaving the courthouse *with an order in hand*.²⁵⁹

The District of Columbia has a domestic violence advocacy center that assists victims of violence in filing protection orders.²⁶⁰ The District of Columbia instructs victims who are seeking a protection order to go to one of the intake centers to fill out the paperwork—DC Safe is one such place.²⁶¹ Clients get to leave the day they file with a temporary protection order in hand and do not have to question whether they will be safe that night.²⁶² The process takes a few hours; however, the District of Columbia District Court website provides victims with notice of the length of time the process takes.²⁶³ This method also enables the victim to make only one trip to the courthouse until the hearing.²⁶⁴

The advocates at DC Safe created a packet that outlines the protection order process in the District of Columbia in detail for victims who do not have attorneys.²⁶⁵ This packet conveniently states all the procedures that are practiced in the District of Columbia to help keep victims of domestic violence safe.²⁶⁶ Consolidating all of the necessary information in a single place lessens the mental burden of filing a protection order and provides other jurisdictions with a model of what can be done to decrease violence and enhance protection.²⁶⁷ Victims are able to get assistance in filling out their paperwork without finding an attorney, they are able to speak to a judge face-to-face to better express their need for protection, and they are able to leave the courthouse with protection in hand, eliminating any dead periods when they would otherwise have to wait and hope that they are not hurt again.²⁶⁸ By enacting these procedures through state legislation,

258. *See Get a Protection Order*, D.C. CTS., <https://www.dccourts.gov/services/domestic-violence-matters/get-a-protection-order> [<https://perma.cc/TYD9-8RDA>] (last visited Sept. 24, 2020).

259. *Id.*

260. *See* SAFE, Inc., *supra* note 40.

261. *Get a Protection Order*, *supra* note 258; *Our Programs*, DC SAFE, <https://www.dcsafe.org/our-programs> [<https://perma.cc/TJ5M-2QTF>] (last visited Sept. 24, 2020).

262. *See* SAFE, Inc., *supra* note 40.

263. *Get a Protection Order*, *supra* note 258.

264. *See id.*; SAFE, Inc., *supra* note 40.

265. *See* SAFE, Inc., *supra* note 40.

266. *Id.*

267. *See id.*; Stoeber, *supra* note 2, at 1027; Epstein, *supra* note 130, at 5.

268. SAFE, Inc., *supra* note 40.

How to Get a CPO.

1. Go to the Domestic Violence Intake Center (DVIC) to file your petition, which is a written request for the judge to enter a protection order.
2. At the DVIC, check in at the front desk and complete the paperwork.

Kansas can effectively give victims the protection they need and create the uniformity and coverage that the District of Columbia has provided to their victims.²⁶⁹

IV. CONCLUSION

The current statutes and guidelines in Kansas fail to support a victim's actual experience when seeking a protection order.²⁷⁰ Various domestic violence agencies attempt to guide victims through the protection order process, helping with paperwork, explaining the court process, and walking them through from the beginning to the issuance of a final order.²⁷¹ However, the procedures among jurisdictions in Kansas vary so much that the differences create a fissure in which victims get lost when trying to obtain protection.²⁷²

Victims in Kansas would be much safer and less likely to slip through the cracks if the procedures to file a protection order in Kansas were like those in the District of Columbia.²⁷³ Considering the large number of jurisdictions in Kansas, it would be best if the Kansas protection order statute specifically and expressly outlined these procedures so each Kansas court could administer their procedures in a uniform manner.²⁷⁴ Victims of domestic violence would be better served and protected if (1) they were connected to an advocate who could help them fill out the petition before submission to the court, (2) they were given a chance to speak to a judge to better represent why their situation necessitates immediate protection due to imminent danger, and (3) they were able to have a protection order in

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3. Meet with an advocate who will explain the court process, discuss safety concerns, and assist with drafting the petition.
 4. Go to the clerk's office and you will sign the petition under oath. You will also get all of your paperwork about the court date. You will not receive anything in the mail.
 5. If you want a TPO [temporary protection order], you will see a Judge that same day. The Judge can give you an order that day!
 6. Serve the Respondent and prepare your evidence.
 7. Come back to court on your scheduled court date.

Id.

269. See sources cited *supra* note 39; D.C. CODE § 16-1003 (LEXIS through Sept. 21, 2020); D.C. HANDBOOK, *supra* note 191; SAFE, Inc., *supra* note 40; *Get a Protection Order*, *supra* note 258.

270. See sources cited *supra* note 269.

271. See *Programs & Services*, *supra* note 14; *Supportive Services*, *supra* note 14; *Center for Safety and Empowerment*, *supra* note 14; *Our Programs*, *supra* note 261.

272. See sources cited *supra* note 39; *Programs & Services*, *supra* note 14; *Supportive Services*, *supra* note 14; *Center for Safety and Empowerment*, *supra* note 14.

273. See sources cited *supra* note 269.

274. See KAN. STAT. ANN. §§ 60-3101 to 60-3112 (LEXIS through acts received as of June 5 of 2020 Legis. Sess.); SAFE, Inc., *supra* note 40.

hand prior to leaving the courthouse, eliminating a waiting period where they are not protected.²⁷⁵

Victims are afraid. Leaving such a large time lapse between when they have finally built up the courage to file a protection order and when they receive the order does not keep them safe.²⁷⁶ Giving victims the opportunity to speak to a judge when they submit their protection order paperwork gives victims a better chance to explain their situation in a way they might not be able to in writing and allows the judge to ask questions to clarify any problems he or she foresees.²⁷⁷

Victims will also be more likely to follow through with their orders the first time if they are able to obtain protection quickly and feel that the judicial system is responding.²⁷⁸ Victims who are notified days after they filed their order are more likely to change their minds by the time their orders are signed by the judge, opting to surrender to the abuse rather than waiting for relief that may or may not eventually be given.²⁷⁹ With a more interactive filing process, victims would be better served, feel more empowered, and therefore, be better able to break the cycle of violence.²⁸⁰

275. See sources cited *supra* note 4; SAFE, Inc., *supra* note 40.

276. See sources cited *supra* note 4; Stoever, *supra* note 2, at 1025.

277. See *Get a Protection Order*, *supra* note 258; SAFE, Inc., *supra* note 40.

278. See Stoever, *supra* note 14, at 335; Stark & Choplin, *supra* note 8, at 14, 31; Stoever, *supra* note 2, at 1084; Verdi, *supra* note 33, at 922, 924.

279. See sources cited *supra* note 4; Stoever, *supra* note 14, at 335; Verdi, *supra* note 33, at 922, 924; KAN. STAT. ANN. §§ 60-3104(a), (c), 60-3106(b).

280. See KAN. STAT. ANN. § 60-3104(a). See also Verdi, *supra* note 33, at 922, 924; Stoever, *supra* note 14, at 358; Stark & Choplin, *supra* note 8, at 25-26; Klein & Orloff, *supra* note 57, at 848.