

A Qualitative Examination of the Impact of Judges' Decision-Making Processes on Domestic Violence Protection Order (DVPO) Issuances

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Background:

Intimate Partner Violence (IPV)- also called domestic violence

- Behavior within an intimate relationship that causes physical, sexual, or psychological harm is a serious public health issue throughout the world. IPV includes acts of physical aggression, sexual coercion, psychological abuse, and controlling behaviors.
- Approximately one in three women (35.6%) in the US experience rape, physical violence, and or stalking by an intimate partner in their lifetime.
- IPV is associated with injuries, depression, chronic illness, and post-traumatic stress disorder

Domestic Violence Protection Order (DVPO)

- Civil court orders that prohibit contact between a plaintiff and defendant
- Offered in all 50 states, US territories, and the District of Columbia
- Evidence suggests that DVPOs are an effective at secondary prevention approach for IPV
 - Recent study pointed to a dose-response relationship where longer DVPO duration was associated with a decline in IPV risk

DVPO Process

- Multi-step process:
 1. Plaintiff files for a temporary DVPO from a local district courthouse *pro se* (without a lawyer).
 2. Judge/magistrate grants an *ex parte* (defendant not present) order (also known as a “temporary” or “Emergency/10-day” order) if imminent danger of complainant/minor children is determined. This order lasts 10-days and is granted in the majority of cases.
 3. DVPO hearing is conducted within 10 days. Judge can grant the order which typically lasts for 12 months, deny the order, voluntarily dismiss, or involuntary dismiss the order.

DVPO Process and Judges

- Judges have relative autonomy in granting DVPOs based on evidence, testimony, and State Statutes
- Although research suggests that IPV is chronic, the DVPO must be filed for a single incident.
 - Judge may be unaware of chronic abuse unless the plaintiff brings it up during the hearing.
- Many hearings last less than 15 minutes.
- DVPO hearings are often on the same court schedule /docket as other civil cases.
 - Crowded court schedules contribute to the brief amount of time spent on each case as judges do not have time to probe on specific IPV issues.
- Previous evidence suggests that decisions are not based on the severity of the IPV incident
- Remains unclear what judges use to guide their decisions

Methods:

Research Questions

- What factors influence judges' decisions to grant or deny a DVPO?
- How do judges use heuristics to help guide their decisions?
 - Heuristics are defined as simple, efficient rules, learned or via evolutionary processes, that have been proposed to explain how people make decisions, come to judgments, and solve problems typically when facing complex problems or incomplete information. These rules work well under most circumstances, but in certain cases lead to systematic errors or cognitive biases.
- In-depth qualitative interviews were determined to be the most appropriate method to answer the research questions of interest.

Study Recruitment

- Email introducing the study sent to North Carolina District Judges' listserv from a local Chief District judge who was the former president of the district court judges' organization and championed the study.
- Stratified 100 counties in North Carolina into tertiles based on the number of DVPO cases heard annually.
- From this sample randomly selected 54 judges.

Data Collection

- Three research assistants, including the lead author, conducted semi-structured in-depth interviews with 20 district court judges.
- Each interview was conducted over the phone and lasted an average of 30 minutes.
- All judges completed informed consent and agreed to have the interviews recorded so they could be transcribed verbatim.
- Judges were asked about their DVPO case experience, decision-making process, information exchanged with litigants, and their opinions on the DVPO process.

Data Analysis

- Two research assistants transcribed the interviews verbatim
- Transcripts were read several times by the lead author.
- Close readings were followed by coding by hand to identify factors that influence judges using an apriori codebook and adding in additional codes as they emerged.
- Atlas Ti. Was used in the second round of coding to identify heuristics used by judges and additional codes.
- Throughout the coding process, the lead author wrote analytic memos to process the data and explore emerging themes.
- The data were then recoded based on the memos to identify key themes.

Key Findings:

Three overarching themes emerged highlighting the factors used by judges in their decisions and the role heuristics played in decision-making processes.

1. Violence must cross a “threshold” for judges to grant a DVPO.
2. Involvement of children present judges with conflicting decisions.
3. Anticipatory regret plays a central role in decisions.

Crossing a “threshold”

- Judges have an internal “threshold” that incidents must reach in order to necessitate a DVPO
- Physical evidence, bruises or other visible injuries, is often used to determine if the respective incident crossed the threshold to necessitate a DVPO.
- In the absence of physical evidence, judges often rely on heuristics including:
 - Personal assessment of IPV severity
 - Expectations of victim behavior
 - Length of time since the incident

Conflicting role of children

- Children present at the time of the incident of record can elevate judges’ perceptions of IPV severity
- When children are involved, judges often become concerned that the DVPO is being used to adjudicate custody rather than prevent continued IPV

Anticipatory Regret

- Manifested in the interviews in two ways:
 1. Worry that there would be a negative consequences and impact (thrown out of their home, restricted access to children, and potential job loss) on the defendant if the DVPO is ordered without definitive evidence that the IPV has occurred.
 2. Worry about continued or escalating violence if the order is not issued.

Discussion:

- Judges employ heuristics to assess DVPO cases in order to decide if an order should be granted.
- These heuristics may be leading to cognitive bias in decisions due in part to the limited information provided to the judge. Increased understanding of how information is exchanged between the litigant and the judge may provide insights into how to mitigate harmful heuristics.

Recommendations:

- Increase the access to and use of domestic violence advocates to assist with DVPO process.
- Enhance judges’ training on IPV and DVPO courtroom management.
- Research the potential impact of court restructuring including: 1) Combining civil and criminal domestic violence cases; 2) Put DVPO cases on the same courtroom schedule; and 3) Holding specialized domestic violence courts.

For questions or comments related to the study, please contact:

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