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## Breaking Barriers to “Breaking the Cycle”

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Clare Fitzpatrick\*

### I. INTRODUCTION: THE EXPERIENCE OF LEAVING

Domestic violence is a pernicious illness upon society. Its effects are felt in rural and urban communities, by the poor and the wealthy, and by every racial and ethnic group.<sup>1</sup> One in every four men and more than one in every three women in the United States will experience domestic violence in their lifetime.<sup>2</sup> Specifically, one in seven men and one in four women experience severe physical violence by an intimate partner.<sup>3</sup> As a result of intimate partner violence, there are approximately 16,800 homicides and \$2.2 million spent on medically treated injuries annually.<sup>4</sup> Statistics gathered by the Centers for Disease Control and Prevention (CDC) show that the national cost of intimate partner violence is greater than \$5.8 billion each year, with \$4.1 billion going directly to medical and health services.<sup>5</sup> The

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<sup>1</sup> *Domestic Violence*, Office of Violence Against Women, U.S. DEP'T OF JUSTICE, <http://www.justice.gov/ovw/domestic-violence> (last visited Nov. 24, 2014).

<sup>2</sup> THE NAT'L CENTER FOR INJ. PREVENTION & CONTROL, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 2 (2010), available at [http://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf).

<sup>3</sup> *Id.* (providing that examples of physical violence include things such as being hit with a fist or something hard, being beaten, or being slammed against something).

<sup>4</sup> *Domestic Violence Facts*, NAT'L COAL. AGAINST DOM. VIOLENCE (2007), <http://www.ncadv.org/files/DomesticViolenceFactSheet%28National%29.pdf>.

<sup>5</sup> *Costs of Intimate Partner Violence Against Women in the United States*, CENTERS FOR DISEASE CONTROL AND PREVENTION, NAT'L CENTER FOR INJ. PREVENTION AND CONTROL 32 (2003), <http://www.cdc.gov/violenceprevention/pdf/ipvbook-a.pdf>.

numbers are already startling and yet, domestic violence is one of the most underreported crimes in the country.<sup>6</sup>

In Washington State alone, there were 775 domestic violence fatalities between 1997 and 2010, including male and female victims, male and female abusers, friends, and children.<sup>7</sup> At least 30 percent of all female victims of homicide in the state are killed by a current or former intimate partner.<sup>8</sup>

When choosing to leave a violent intimate partner relationship, the victim<sup>9</sup> is introduced to an obstacle course of barriers. One survivor recalls:

During those years, I considered leaving several times. But one thing stopped me: my two children. I was very concerned that if I did leave, I wouldn't get full custody. I was afraid of what would happen if he were left alone to look after them. It seemed safer to

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<sup>6</sup> See Lynn Langton & Jennifer L. Truman, *Criminal Victimization 2013*, BUREAU OF JUSTICE STATISTICS (2013), <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5111>; Irene Hanson Frieze & Angela Browne, *Violence in Marriage*, 11 CRIME AND JUST. 163, 170–72 (1989); see generally Roland Chilton, *Victims and Offenders: A New UCR Supplement To Present Incident-Based Data from Participating Agencies*, NAT'L INCIDENT BASED REPORTING SYS. (1998), [http://www.fbi.gov/about-us/cjis/ucr/nibrs/nibrs\\_ucrsup\\_vic\\_98.pdf](http://www.fbi.gov/about-us/cjis/ucr/nibrs/nibrs_ucrsup_vic_98.pdf) (this assertion comes from the discrepancy between police reports and data collected from domestic violence service providers, for instance, between data from the National Crime Victimization Survey and data from the Uniform Crime Reporting Program).

<sup>7</sup> Jake Fawcett, *Up to Us: Lessons Learned and Goals for Change after Thirteen Years of the Washington State Domestic Violence Fatality Review*, WASH. STATE COALITION AGAINST DOM. VIOLENCE 10 (Dec. 2010), available at [http://www.ndvfri.org/reports/washington/Washington\\_Statewide\\_AnnualReport\\_2010.pdf](http://www.ndvfri.org/reports/washington/Washington_Statewide_AnnualReport_2010.pdf) (defining a domestic violence fatality as “a death that arises from an abuser’s efforts to assert power and control over an intimate partner”).

<sup>8</sup> *Domestic Violence*, WASH. STATE DEP'T OF HEALTH 1, <http://www.doh.wa.gov/Portal/s/1/Documents/5500/IV-DV2013.pdf> (last updated May 9, 2013).

<sup>9</sup> In the domestic violence advocacy community, “survivor” is used to describe individuals who have left abuse. In this article I will use “survivor” whenever possible but will use the term “victim” when speaking about the legal relationship of the parties and in order to clarify temporal cues, for example, when the individual is still in the relationship and currently experiencing abuse.

stay. At least, I thought, I could protect them if I was there . . . [Then] I told him I was going to leave. He threw around threats and used the children as pawns. He said he would sue me for full custody, keeping me from seeing the children at all. Because I had gone to therapy, he would prove that I wasn't a fit mother. He said if I left the house I would be forfeiting my right to the property. He said he'd take everything from me.<sup>10</sup>

The decision to leave an abusive relationship triggers a multitude of unknowns. Choosing to leave is essentially jumping into an abyss, changing every single thing the victim has known, with no guarantee that where he or she lands will be better. Many domestic violence advocates believe this is one reason why individuals do not leave abuse: while what the individual is experiencing at home is horrible, it is at least familiar.<sup>11</sup>

One of the most prominent ways an abusive partner asserts power and control is by making his or her partner feel that they cannot handle leaving, that he or she is incapable of independence.<sup>12</sup> The pattern of abuse that victims report is often termed "the cycle of abuse" in the legal community.<sup>13</sup> This term describes the behavior of the perpetrator that keeps a victim in the relationship—tension building, an incident, a reconciliation, and a period of calm.<sup>14</sup> A cyclical pattern of abuse contributes to the persistence of violence through generations. In the advocacy community, the pattern of abuse

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<sup>10</sup> Melissa Jeltsen, 'Once You Have Established an Intimate Relationship with A Person, It's Human Nature to Bond with Them,' THE HUFFINGTON POST, [http://www.huffingtonpost.com/2014/09/12/why-didnt-you-just-leave-family\\_n\\_5805614.html](http://www.huffingtonpost.com/2014/09/12/why-didnt-you-just-leave-family_n_5805614.html) (last visited Feb. 15, 2015).

<sup>11</sup> See generally *Domestic Violence Facts*, supra note 4; Deborah Tuerkheimer, *Criminal Law: Recognizing and Remediating the Harm of Battering: A Call to Criminalize Domestic Violence*, 94 J. CRIM. L. & CRIMINOLOGY 959 (2004).

<sup>12</sup> See *Power and Control Wheel*, NAT'L CTR. ON DOM. AND SEXUAL VIOLENCE, <http://www.ncdsv.org/images/powercontrolwheelnoshading.pdf> (last visited Nov. 3, 2014).

<sup>13</sup> See generally LENORE E. WALKER, *THE BATTERED WOMAN SYNDROME* (2000).

<sup>14</sup> *Id.* at 95–97.

experienced by survivors is expressed as manipulation of the victim to maintain “power and control.”

“Breaking the Cycle” is a term of art used in the legal community to describe the efforts of legislators, public figures, advocates, non-profits, and communities.<sup>15</sup> While the phrase “cycle of abuse” has negative connotations, such as “victim blaming,”<sup>16</sup> “breaking the cycle” is illustrative of the idea that domestic violence is cyclical. “Breaking the cycle,” when expanded to look at additional factors outside of the individual victim and abuser, is descriptive in that it illustrates the many barriers to safety a victim experiences and the many factors contributing to domestic violence in society.<sup>17</sup> References to “breaking” the pattern of violence in this article will be used to illustrate eliminating obstacles to safety, not to blame victims.

In 1992, the Washington legislature noted,

Domestic violence has long been recognized as being at the core of other major social problems: Child abuse, other crimes of violence against person or property, juvenile delinquency . . . [It] costs millions of dollars each year . . . for health care, absence from work, services to children, and more.<sup>18</sup>

This statement highlights the Washington legislature’s recognition of the importance of addressing domestic violence prevention, its efforts to make

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<sup>15</sup> WASH. REV. CODE § 10.99.020 (2004) Notes, Findings—Intent—2004 c.

<sup>16</sup> Some advocates believe that the term implies that victims contribute to their abusive experience. See *A Comparison of the Cycles of Violence*, CENTER FOR HOPE AND SAFETY, <http://hopeandsafety.org/learn-more/a-comparison-of-the-cycles-of-violence/> (last visited Feb. 14, 2015).

<sup>17</sup> In this article, I will use some imagery of breaking down barriers to safety. I want to emphasize here that this is not about victim blaming, this is about recognizing that there are many contributing factors to the perpetration of violence in society and that among those factors are repetitive behavior on the part of perpetrators of violence and the generational spread of violence.

<sup>18</sup> WASH. REV. CODE § 26.50.030 (2005), Findings—1992 c 111.

the protection order process effective, and its acknowledgment that there is still a long way to go.<sup>19</sup>

In this article, I will examine the immediate protection available to individuals who remove themselves, and possibly their children, from abusive environments. To break down barriers to safety, we as an advocacy community must target our efforts at the obstacles standing in the way of victims. Upon deciding to leave, an individual should not be immediately plagued by worries, but instead, should be enabled to get to a safe place where he or she can begin to rebuild a life. This often proves very complicated because at the time of leaving, victims are introduced to a plethora of additional unknowns, such as navigating homelessness, government services, police, attorneys, courtrooms, and judges.

This article considers whether the current protection order system in Washington State offers the best protection during the first crucial days of leaving and what flaws exist in the system that, when addressed, will enhance the effectiveness of current procedures. I suggest that there are practical ways to enhance the temporary protection available within the initial 14-day period after a victim leaves his or her abuser and will develop this idea in three focus areas: first, enhancing understanding of the available tools; second, streamlining the current protection order system; and third, expanding access to the courts.

Within these three focus areas, I provide specific suggestions intended to address the areas where there is need for improvement and identify opportunities to push the protection order system to be more reflective of the needs of the community. These recommendations include: (1) more efficiently distributing information about protection order kiosks; (2) clarifying the language of protection orders; (3) improving the familiarity and expertise of *ex parte* commissioners on domestic violence; (4)

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<sup>19</sup> *Id.*

expanding the Protection Order Advocacy Program; (5) integrating limited license legal technicians into domestic violence advocacy work; and finally, (6) creating a Friday Night Court where victims can seek ex parte temporary protection orders, in either Pierce or King County, as an experiment for expanding access to the courts.

This article first focuses on the components of breaking down barriers to safety. It then examines the current state of protection orders in Washington and highlights the weaknesses in the system. Finally, it addresses the recommendations laid out above and discusses the way these changes can bolster the system of protection available to victims of domestic violence.

## II. COMPONENTS OF “BREAKING THE CYCLE”

The Washington courts and legislature have identified many forms of abuse, including emotional abuse and physical abuse, as well as obstacles to safety for victims, such as homelessness, economic coercion, and the manipulative use of children in common.<sup>20</sup> This list represents several of the key barriers victims face in successfully leaving an abusive relationship and are recognized as contributing factors to the generational proliferation of violence.<sup>21</sup> The availability of emergency protection orders, and the effectiveness of the orders, impacts each obstacle and as a result, is a significant feature in achieving sustainable safety and distance from abuse.

The emergency protection order system must be easily accessible in order to support victims’ path to healing and to break the cyclical reoccurrence of violence in society. The system must also be flexible enough to avoid contributing to the negative impact of other barriers to safety—such as homelessness, economic coercion, and the use of children as a manipulation

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<sup>20</sup> Margaret Hobart, *Assessing the Impact of Domestic Violence on Children’s Safety*, THE WASH. STATE COAL. AGAINST DOM. VIOLENCE 6 (Jun. 2007), available at [http://wscadv2.org/docs/June\\_07\\_Inside\\_Scoop.pdf](http://wscadv2.org/docs/June_07_Inside_Scoop.pdf).

<sup>21</sup> *Domestic Violence Facts*, *supra* note 4.

tool. A few of the concerns most frequently raised by survivors include where to live, how to support themselves, and how to keep themselves safe after leaving.<sup>22</sup> If children are involved, a survivor must also consider the disruption to his or her child's life and additional safety concerns. While noteworthy work has been done to lessen the impact of homelessness, economic coercion, and concern for the welfare of children on domestic violence survivors, the impact of these obstacles can be further minimized by effective emergency protection orders.

*A. Addressing Homelessness*

In recent years, domestic violence has consistently been cited as one of the top three reasons for family homelessness.<sup>23</sup> In 2013, 16 percent of homeless adults were homeless because of domestic violence nationally.<sup>24</sup> According to the National Coalition for the Homeless (NCH), survivors with children often face particular difficulty in finding stable housing.<sup>25</sup> The NCH has exerted tremendous energy to examine the relationship between domestic violence and homelessness. The organization recognizes that domestic violence is one of the most frequent causes of homelessness and that domestic violence needs to be addressed to put a dent in the homelessness problem across the United States.<sup>26</sup> It addresses homelessness as a barrier by advocating for an "[increased] supply of affordable housing,

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<sup>22</sup> *Barriers to Victims Leaving, Domestic Violence Information: Guidelines for Domestic Violence Protection and Antiharassment Orders*, WASH. COURTS, <http://www.courts.wa.gov/dv/?fa=dv.guide#a9> (last visited Dec. 29, 2014).

<sup>23</sup> THE U.S. CONFERENCE OF MAYORS, HUNGER AND HOMELESSNESS SURVEY: A STATUS REPORT ON HUNGER AND HOMELESSNESS IN AMERICA'S CITIES, A 25-CITY SURVEY 30 (Dec. 2013), <http://www.usmayors.org/pressreleases/uploads/2013/1210-report-HH.pdf>.

<sup>24</sup> *Id.* at 30.

<sup>25</sup> *Domestic Violence and Homelessness Fact Sheet*, NAT'L COAL. FOR THE HOMELESS (July 2009), <http://www.nationalhomeless.org/factsheets/domestic.html>.

<sup>26</sup> *Id.*

ensuring adequate wages and income support, and providing necessary supportive services.<sup>27</sup>

Substantial progress has been made in the resources available to victims of domestic violence who are homeless. For example, the Federal McKinney-Vento Act,<sup>28</sup> adopted by Washington State, provides conditional federal funding to states for programs that serve homeless school-aged children—this includes those children in domestic violence shelters.<sup>29</sup> Among other things, the Act ensures transportation for homeless children to and from school, free of charge.<sup>30</sup> The Act supports survivors who are homeless because of domestic violence by eliminating some of the concern for how his or her child will get to school.

When functioning as it was intended, the Act allows children that are displaced because of domestic violence to continue to attend school.<sup>31</sup> However, if a survivor does not know about the Act, or has been previously turned away by the school after seeking support, he or she is unlikely to benefit from the resource. Lack of access to this resource could impact a child's education and cause further instability in the child's life. Additionally, when a school is not compliant, a survivor may not know how to seek enforcement of the Act. There have been several lawsuits across the country over the last few years in response to states' failures to fully comply with the Act, but with inconsistent success.<sup>32</sup>

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<sup>27</sup> *Domestic Violence and Homelessness NCH Fact Sheet #7*, NAT'L COAL. FOR THE HOMELESS (Aug. 2007), <http://www.nationalhomeless.org/publications/facts/domestic.pdf>.

<sup>28</sup> See generally McKinney-Vento Homeless Education Assistance Act (*hereinafter* "McKinney-Vento Act"), 42 U.S.C. §§ 11301–11435 (2002).

<sup>29</sup> *Washington State Requirements and Guidance for Homeless Education*, OFFICE OF THE SOLICITOR GEN., <http://www.k12.wa.us/homelessed/assistanceact.aspx> (last visited Dec. 29, 2014).

<sup>30</sup> *Id.*

<sup>31</sup> See 42 U.S.C. § 11301(b) (2014).

<sup>32</sup> See McKinney-Vento Compliance and Other Lessons from Litigation, NAT'L ASS'N EDUC. HOMELESS CHILD. YOUTH (2012) available at <http://www.naehcy.org/conference/>

Therefore, access to legal resources impacts homelessness and domestic violence in at least two ways. First, an individual's remedy for a school's failure to comply with the McKinney-Vento Act is legal recourse.<sup>33</sup> A survivor who does not know his or her rights is unlikely to take advantage of the Act and is even less likely to successfully assert his or her rights without access to community and legal advocacy.

Second, access to legal advocacy when leaving abuse enables a survivor to make better-informed choices about safe housing. Often, victims arrive to domestic violence shelters without protection orders and then need to quickly decide whether protection orders will enhance their safety or will increase the likelihood of retaliation from their abusers.<sup>34</sup> When children are involved, a victim also needs to quickly determine whether a protection order is necessary to protect the child (or children), whether the child can safely continue attending her or his regular school, and whether a protection order will cover the child. Homelessness is a significant obstacle in the way of many survivors safely transitioning away from abuse, and it also further involves survivors with the legal system.

#### *B. Preventing Economic Coercion*

If a victim is able to retain his or her employment after leaving an abusive relationship, he or she may be faced with the added challenge that the abusive partner knows the victim's place of work. In order to receive the

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2012-conf-handouts (last visited Feb. 15, 2015).

<sup>33</sup> This article will only focus on the problems surrounding access to the court and legal assistance for civil protection orders; however, survivors frequently have additional legal needs. While it is outside the scope of this article, I would urge legal advocacy clinics that provide landlord-tenant, foreclosure, and other legal advisement services to consider bringing services to the places where domestic violence victims live, such as emergency shelters. See e.g. *About Us*, THE WASH. LEGAL CLINIC FOR THE HOMELESS, <http://www.legalclinic.org/about/> (last visited Feb. 14, 2015) (the legal clinic conducts intakes at locations around Washington, DC, where the homeless population is most likely to be).

<sup>34</sup> Fawcett, *supra* note 7, at 36.

full benefit of steady employment, therefore, a victim may need added protection. An emergency protection order, in the right circumstances, can allow a victim to stay financially stable during a turbulent time.

The Revised Code of Washington (RCW) 46.76, *Domestic Violence Leave*, provides “reasonable leave” for victims of domestic violence from their employment to address legal and other basic safety concerns.<sup>35</sup> The statute demonstrates the Washington legislature’s intent to support the stability of victims and their families, and to enable victims to leave abusive relationships. The legislative findings section of the statute states, “[i]t is in the public interest to reduce domestic violence . . . by enabling victims to maintain the financial independence necessary to leave abusive situations, achieve safety, and minimize physical and emotional injuries.”<sup>36</sup> The findings go on to suggest that economic stability is key to ending abuse.<sup>37</sup>

However, while the Domestic Violence Leave provision may work as a deterrent to employers who might otherwise be less forgiving of their employees who need to miss work, it also puts the burden on the victim to bring suit if the law is violated. At a time of general stress and overwhelming concerns, it is a lot to ask of a victim to bring another legal matter before the court to assert his or her right to employment. There are some organizations in Washington, such as Legal Momentum, that help victims to advocate for this right and to pursue legal enforcement if necessary.<sup>38</sup> However, accessing this resource requires more time and research on the part of the victim. Additionally, while the employer may allow the victim to miss work, the victim still loses out on the wages he or she could have earned during that time at work.

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<sup>35</sup> WASH. REV. CODE § 49.76.010(4) (2008).

<sup>36</sup> *Id.*

<sup>37</sup> WASH. REV. CODE § 49.76.010(2) (2008).

<sup>38</sup> *Goals*, LEGAL MOMENTUM, <https://www.legalmomentum.org/> (last visited Dec. 29, 2014).

Demonstrating the national scope of the issue, the Department of Justice (DOJ) responded to President Barack Obama's "Establishing Policies for Addressing Domestic Violence in the Federal Workforce" memorandum in 2013 by releasing a federal policy to address domestic violence in the workplace.<sup>39</sup> The memorandum requires all federal agencies to develop an agency-specific policy.<sup>40</sup> The acting director of the DOJ is quoted saying, "[t]he impact of domestic violence and sexual violence is far reaching . . . it is clear that we have a part to play in creating a work environment that is safe for all of us."<sup>41</sup> This initiative on the federal level is an indicator of the climate of the country and the depth to which safety and employment are recognized as key issues. Economic stability is important to escaping abuse, but there are added complications that continue to involve survivors with the legal system.

### *C. Removing "Children in Common" as a Tool for Manipulation*

For victims of domestic violence who have children, the decision to leave is further complicated by shared parenting.<sup>42</sup> "Using children" is identified as a barrier that keeps victims of domestic violence in unsafe relationships.<sup>43</sup> There has been a significant amount of effort devoted to understanding the impact on children of witnessing violence. Whether it be because of the economic stability offered by the abusive partner, the support of another parent, threats of being separated from a child, or fear that a court is unlikely to grant the victim custody, victims are frequently coerced by

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<sup>39</sup> Press Release, Dep't of Justice, Department of Justice Announces New Policy to Address Domestic Violence, Sexual Assault and Stalking in the Workplace, (Nov. 20, 2013), <http://www.justice.gov/opa/pr/2013/November/13-dag-1240.html>.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Fawcett, *supra* note 7, at 33.

<sup>43</sup> Matthew R. Durose, et al., *Family Violence Statistics*, BUREAU OF JUST. STATISTICS (Jun. 12, 2005), <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=828>.

abusive partners to stay in the relationship. Additionally, victims may stay because they believe it offers better opportunities for their children.

Upon leaving, the survivor needs to determine whether a child is at risk and will need to be included in the protection order, whether shared visitation will open the survivor up to further manipulation by the abusive parent, and whether the child's life will be negatively impacted by severing contact with the abusive parent. Organizations like the CDC, which have conducted extensive research on Adverse Childhood Experiences (ACEs) and how they impact the perpetuation of domestic violence in society, can categorically show that remaining around violence has a negative impact on a child.<sup>44</sup>

Children in common is another means by which a victim is forced to become involved in the legal system, and frequently, another situation where the survivor has fewer resources than the perpetrator. Survivors are better protected from further manipulation and control when they get the correct protection for their specific circumstances at the time they leave, even if that means they do not pursue a legal order. To make this decision, victims need legal advocacy.

#### *D. Effective Emergency Protection Orders*

A temporary protection order is not the best thing for every case; however, it is an important resource for victims seeking to leave abuse. The availability of information about protective orders impacts all barriers to leaving abuse. Lack of access to the courts and lack of legal fluency can impede a survivor's successful safety planning, which includes combating homelessness, sustaining a stable work life, and preserving his or her child's

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<sup>44</sup> *Adverse Childhood Experiences (ACE) Study: Major Findings*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/ace/findings.htm> (Last updated Jan. 18, 2013).

stable environment.<sup>45</sup> Protection orders may be required by some shelters or may make it more feasible to stay with friends or family. The order may allow a survivor to continue earning income while they find a safe place to live, and the order may also protect a survivor from manipulation through his or her children at the time of leaving, while also protecting children from abuse.

However, Washington's 2008 Fatality Review Report, conducted by the Washington State Coalition Against Domestic Violence (WSCADV), shows that in some cases, when the victim was not adequately informed of his or her options, temporary protection orders actually "seemed to increase the victim's danger."<sup>46</sup> In the 2010 Fatality Review Report, two cases were used to demonstrate how a protection order could be the wrong resource for some victims.<sup>47</sup> In both cases, the victim was murdered between the time the temporary order was served and the hearing date for the full order.<sup>48</sup> The report reveals that both abusers' violence escalated within days of service of the order.<sup>49</sup> Significantly, the report found that the issue in these cases was not the temporary protection order; instead, it was the lack of advocacy to help each victim make the right choice for his or her situation and to develop a safety plan around his or her decision to leave.<sup>50</sup>

The intention behind domestic violence statutes, psychological and sociological research, and community advocacy is to stop the perpetuation of violence. By creating broader and better-informed access to the courts,

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<sup>45</sup> See WASH. REV. CODE § 26.50.030 (2005), Findings—1992 c 111.

<sup>46</sup> JAKE FAWCETT ET AL., WASH. STATE COAL. AGAINST DOM. VIOLENCE, NOW THAT WE KNOW: FINDINGS AND RECOMMENDATIONS FROM THE WASHINGTON STATE DOMESTIC VIOLENCE FATALITY REVIEW 71 (Dec. 2008), <http://fatalityreview.files.wordpress.com/2013/11/2008-dvfr-report.pdf>.

<sup>47</sup> Fawcett, *supra* note 7, at 37.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

the protection offered to victims is expanded and the likelihood that a person will safely leave his or her abusive relationship increases.

Specifically, Washington courts identify ineffective duration of protection and deficient protection of children as two of the main reasons a victim remains in an abusive relationship.<sup>51</sup> In order to remove these barriers to safety, there have been many changes and adaptations to statutes addressing domestic violence; however, there is still more work to do.

### III. THE CURRENT PROTECTION ORDER SYSTEM

The following section introduces the different protective orders in Washington State, the importance of protective orders, and the direct and collateral issues that arise from the weaknesses in the current system. In particular, this section addresses the impact of deficiencies in the system on children in households touched by domestic violence.

#### *A. Emergency Protection Orders in Washington State*

There are four types of domestic violence orders in Washington State, (not including orders that specifically address other crimes)—the antiharassment order, the civil protection order, the restraining order, and the criminal no-contact order.<sup>52</sup> Within these protection orders, there are differing requirements—both for the person seeking the order and in regard to the court in which it can be filed—and there are differing durations of the orders. Professionals in the field are not in accord about which order offers the greatest protection, but it is clear that there is still something to be desired of each. In this article I will only focus on civil protection orders and restraining orders.

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<sup>51</sup> *Domestic Violence Information: Guidelines for Domestic Violence Protection and Antiharassment Orders*, WASH. COURTS, <http://www.courts.wa.gov/dv/?fa=dv.guide#a9> (last visited Dec. 29, 2014).

<sup>52</sup> *Id.*

A petitioner can file in ex parte court for a temporary order of protection, lasting 14 days. This order provides legal protection until the time when a hearing can take place, with both parties present, for the full civil protection order or restraining order.<sup>53</sup> The temporary civil protection order can be filed by any individual who is experiencing domestic violence by a family or household member.<sup>54</sup> To request a temporary civil protection order, the petitioner may or may not be married to the respondent; may or may not be in an intimate partner relationship with the respondent; and, may or may not have children with the respondent.<sup>55</sup> The temporary restraining order, however, can only be plead in conjunction with filing for dissolution of marriage, and it offers temporary protection for an individual during the time that he or she files dissolution paperwork.<sup>56</sup> The evidentiary standard for temporary protection orders is unspecified, which relaxes hearsay requirements in the proceeding.<sup>57</sup> The temporary civil protection order is the primary focus of this article because it is the most frequently requested by victims in ex parte court.<sup>58</sup>

The current state of protection orders in Washington is in many ways advanced as compared to other states; however, some evidence of progress is not a justification for becoming complacent.<sup>59</sup> There are still several areas

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<sup>53</sup> WASH. REV. CODE § 26.50.070 (2010).

<sup>54</sup> *Id.*

<sup>55</sup> WASH. REV. CODE § 26.50.010(2) (2008).

<sup>56</sup> WASH. REV. CODE § 26.09.050 (2008).

<sup>57</sup> See *Gourley v. Gourley*, 145 P.3d 1185, 1186 (Wash. 2006); see also, ABA COMM'N ON DOM. VIOLENCE, STANDARDS OF PROOF FOR CIVIL PROTECTION ORDERS (CPOS) BY STATE (Jun. 2009), available at [http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/Standards\\_of\\_Proof\\_by\\_State.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/Standards_of_Proof_by_State.authcheckdam.pdf).

<sup>58</sup> Protection Orders, KING CNTY. SUPER. CT. CLERK'S OFFICE, <http://www.kingcounty.gov/courts/Clerk/ProtectionOrders.aspx> (last visited Dec. 29, 2014).

<sup>59</sup> In 1976, the YWCA of Pierce County established Washington State's first domestic violence shelter. It was one of the first shelters of its kind at the time and is now one of several shelters in Washington that provides services and shelter to male as well as female victims of domestic violence, which is still uncommon across the country. Emergency Shelter, YWCA PIERCE CNTY., <http://www.ywcapiercecounty.org/emergency>

in which slight improvements can increase victims' understanding of the resources available, improve the quality of protection, and widen access to the courts. As a result of these enhancements, temporary protection orders will more fully protect the entire family and more effectively contribute to breaking the cycle of violence in society.

*B. The Importance of an Emergency Protection Order*

Emergency protection orders, which last for 14 days after they are granted by the court, are important because they give victims time to get to a safe place and file any other important court paperwork.<sup>60</sup> Moreover, the risk of violence at the time of leaving an abusive relationship is often higher than during any other period of the relationship.<sup>61</sup> Many domestic violence homicides take place at the time the victim first separates from his or her abuser.<sup>62</sup> Because the chances of extreme violence are greater during the initial period of separation and a victim is often trying to establish himself or herself somewhere safe—whether in a shelter or with friends or family—having appropriate and accessible protection is essential.

*C. The Problems with the Emergency Protection Order System*

There are several issues with the current protection order system including, effectiveness of orders and legal advocacy available to

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-shelter (last visited Feb. 15, 2015). *See generally*, Randal B. Fritzler & Leonore M.J. Simon, *The Development of a Specialized Domestic Violence Court in Vancouver, Washington Utilizing Innovative Judicial Paradigms*, 69 UMKC L. REV. 139 (2000).

<sup>60</sup> WASH. REV. CODE § 26.50.070(4) (2010).

<sup>61</sup> FAWCETT ET AL., *supra* note 46, at 71.

<sup>62</sup> *See* Victoria L. Holt et al., *Civil Protection Orders and Risk of Subsequent Police-Reported Violence*, 288 J. OF THE AM. MED. ASS'N 589, 589–94 (2002); STEPHEN B. HERRELL & MEREDITH HOFFORD, NAT'L COUNCIL OF JUVENILE AND FAM. CT. J., *FAMILY VIOLENCE: IMPROVING COURT PRACTICE*, (1990), available at <http://www.ncjfcj.org/sites/default/files/improvingcourtpractice.pdf> (last visited Feb. 15, 2015).

petitioners. The shortcomings in the protection order system have both direct and collateral impacts on breaking barriers to safety.

### 1. Direct Issues with the Protection Order System

The Washington State Legislature and Washington legal practitioners have asserted that the language of protection orders can be refined for clarity.<sup>63</sup> Additionally, there are inconsistencies in the way courts enforce available protection orders and in the availability of advocates to help victims complete the proper paperwork.<sup>64</sup>

Many legal professionals are divided on the effectiveness of the civil protection order. Some find that the civil protection order is more flexible and easier to acquire than other orders and therefore, believe it to be the most effective.<sup>65</sup> In contrast, others find that this order offers a false sense of security because it only stipulates broad protections and is frequently misunderstood by victims. Additionally, some practitioners feel that the police and courts do not respect the civil protection order as much as other orders, while other practitioners believe that it is the best protection available because it covers such a wide range of people who may be seeking safety.<sup>66</sup>

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<sup>63</sup> WASH. REV. CODE § 26.50.030 (1985), Findings—1992 c 111; Act effective June 11, 1992, ch. 111, sec. 1, 1992 Wash. Laws 442, 442–43 (relating to domestic violence protection orders); *see also* Form WPF DV 3.015, WA COURTS (last visited Feb. 15, 2015) available at <http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=16> (the instructions for the protection order do not provide information about law enforcement needing probable cause of a violation to arrest respondent).

<sup>64</sup> FAWCETT ET AL., *supra* note 46, at 71–73.

<sup>65</sup> *See generally* Domestic Violence Manual for Judges 2006: Civil Protection Orders, WASH. ADMIN. OFFICE OF THE COURTS (2006), <http://www.courts.wa.gov/content/manuals/domViol/chapter8.pdf>.

<sup>66</sup> *See generally* 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 (1993).

Regarding the restraining order, some practitioners believe that it is the most effective and respected order, whereas many others believe that it carries the least overall protection for victims because of the vagueness of the language in the order.<sup>67</sup> It is no wonder, therefore, that victims struggle to navigate filing a protection order when legal professionals cannot find consensus amongst themselves.

Some of the discord may also spring from differing definitions of “domestic violence.” Domestic violence, as defined by the RCW’s provisions for civil protection orders, includes physical harm or bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, and stalking against any person, by a family or household member.<sup>68</sup> In contrast, the DOJ defines domestic violence as a “pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner.”<sup>69</sup> While it is seemingly positive that Washington’s definition offers broader protection, some practitioners believe that the expansive definition of the abuser actually weakens respect for civil protection orders in law enforcement and legal communities.<sup>70</sup> This theory posits that when the protection is less about the power and control of intimate partner relationships, the quality of services victims are able to receive is diminished.

The need for reform in domestic violence protection orders and domestic violence prevention is also recognized nationally. The DOJ, in an effort to improve the way domestic violence is addressed in the courts countrywide, selected three courts to act as “mentor” courts in 2013.<sup>71</sup> The courts are in

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<sup>67</sup> *Id.*

<sup>68</sup> WASH. REV. CODE § 26.50.010(1)–(2) (2008)

<sup>69</sup> *Domestic Violence*, *supra* note 1.

<sup>70</sup> *See generally* Klein & Orloff, *supra* note 66.

<sup>71</sup> Press Release, Dep’t of Just., Justice Department Selects Three Domestic Violence Courts to Serve as Resources to Specialized Courts Nationwide (Mar. 28, 2013), <http://www.justice.gov/opa/pr/2013/March/13-ovw-356.html>.

Brooklyn, New York; Ada County, Idaho; and Dallas, Texas. They will “serve as role models and disseminate proven strategies.”<sup>72</sup> They will share their experiences and help to implement “best practices, improve procedures, replicate relevant programming, and build the overall capacity of state court systems to respond effectively[.]”<sup>73</sup> There is no specific indication that these courts will focus on the way temporary orders of protection are handled. However, by encouraging “best practices,” the courts’ efforts will possibly include new and improved ways of handling all domestic violence protection orders and related filings with care and attention.

## 2. Externalities

In addition to obstacles directly related to the protection order process, the current system also creates collateral obstacles, particularly for children of survivors.

### a) *A Child’s Stable Environment*

Outside of the impact of temporary protection orders on survivors, the orders also have a ripple effect on the stable environment of children in families experiencing domestic violence. The DOJ describes the impact of domestic violence on children, stating that “[f]requent exposure to violence in the home not only predisposes children to numerous social and physical problems, but also teaches them that violence is a normal way of life—therefore, increasing their risk of becoming society’s next generation of victims and abusers.”<sup>74</sup>

There is a substantial amount of information available that addresses the impact of traumatic experiences on children through research on ACEs.<sup>75</sup>

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<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Domestic Violence*, *supra* note 1.

<sup>75</sup> *Adverse Childhood Experiences (ACE) Study*, *supra* note 44.

The CDC leads the largest investigation “to assess associations between childhood maltreatment and later-life health and well-being.”<sup>76</sup> Research thus far indicates that there is a link between early childhood experiences and illness or poor quality of life later on.<sup>77</sup> There is also significant research and writing about how ACEs overlap with what a child experiences in a household where there is domestic violence, and how these experiences can negatively impact a child’s future in various ways, including lack of motivation, poor quality of living, likelihood of being abused themselves, and likelihood of becoming an abuser.

*b) A Child’s Educational Experiences*

Additionally, emergency protection order failures can have a correlational relationship to a child’s unstable academic experience. The McKinney-Vento Act is a positive step to ensure that children can continue their education when staying in a shelter, but the Act only addresses one part of keeping children safe from the generational spread of violence.

Education supports a child’s ability to cope and thrive through difficult situations, as evidenced by research on truancy and the criminal justice system.<sup>78</sup> The WSCADV calls this a “protective factor,” which means an aspect of, or resource within, a family and its surrounding community that strengthens an adult’s or child’s resistance and resilience to domestic violence.<sup>79</sup> One of the objectives of this article is to demonstrate how extending access to the courts and deepening the protection available to victims are important to address the indirect injuries caused by domestic violence. Specifically, appropriate and effective protection orders help to

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<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 8.

<sup>79</sup> *Id.* at 7.

create a stable educational experience for children, giving children tools to cope with what they have been exposed to at home.

While there has been a response to truancy in statutory actions that penalize absences from school,<sup>80</sup> there is less research and writing specifically addressing how homelessness and domestic violence impact a child's stability in school. Researchers have heavily scrutinized both the negative impact that witnessing violence has on children and the impact that education can have on keeping children out of the criminal justice system. However, the two have not been studied in conjunction with one another.

Consistently, developing the skills for stability and resilience has been the answer to breaking the generational spread of violence; therefore, creating a more consistent educational experience for children is significant.<sup>81</sup> By addressing how economic coercion and the impact of limited access to protection through the courts has a collateral impact on the wellbeing of children and possibly on a child's own future involvement in domestic violence, advocates can create a more complete response to the problem of domestic violence.

Washington State has long recognized the importance of education with legislation. The "Becca Bill" is a Washington law that requires children aged eight to 17 to attend a public school, to attend a private school, or to receive home schooling and puts in place mandatory enforcement if there are chronic absences.<sup>82</sup> The requirements are as follows: after one unexcused absence, the school is required to notify the parent of the absence in writing or by phone; after two, the school must initiate a parent

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<sup>80</sup> See WASH. REV. CODE § 28A.225.010 (1998); Truancy (Becca Bill) and Compulsory Attendance, OFFICE OF SUPERINTENDENT OF PUBL. INSTRUCTION, <http://www.k12.wa.us/GATE/Truancy/> (Dec. 29, 2014) (explaining that the Becca Bill recognizes the importance of attendance for academic success and requires children from eight to 18 to attend school).

<sup>81</sup> Hobart, *supra* note 20, at 3.

<sup>82</sup> WASH. REV. CODE § 28A.225.010 (1998).

conference to improve the student's attendance; after five in one month, the parent and school must enter a contract to improve the student's attendance or the case can be referred to the Community Truancy Board; and, after seven in one month or ten in one year, the school district may file truancy petitions with the juvenile court.<sup>83</sup> The legislative findings for the Bill acknowledge that parental involvement is key to academic success and thus demonstrate Washington State's intent to mandate a parent's role in facilitating his or her child's education.<sup>84</sup>

Studies show that education makes a difference in many ways. For example, it not only operates as a protective factor, giving children emotional and analytical tools, it also provides adult and peer role models outside the home and additional adult support through teachers or guidance counselors. High school dropouts are between five and 10 times more likely to go to prison than high school graduates.<sup>85</sup> Additionally, districts that provide educational services to students while they are suspended from school have a 10 percent higher graduation rate on average than districts that do not provide these educational services.<sup>86</sup> This means that students who behaved badly in some manner and are suspended but are still offered some academic support more often thrive, while those that have no contact with school during their suspension many times do not get back on track.

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<sup>83</sup> *Guide to Preventing Truancy and Understanding the "Becca Bill,"* WASH. STATE OFFICE OF THE SUPERINTENDENT OF PUBL. INSTRUCTION, <http://www.k12.wa.us/GATE/Truancy/pubdocs/Becca/BeccaBillinfoforparents.pdf> (last visited Feb. 15, 2015).

<sup>84</sup> WASH. REV. CODE § 28A.225.220 (1993), Findings—Intent; Act of Apr. 11, 1990, ch. 9, sec. 101, 1990 Wash. Laws 1st Ex. Sess. 1791, 1791 (relating student enrollment options).

<sup>85</sup> Cf. James Forman Jr., *Racial Critiques of Mass Incarceration: Beyond the New Jim Crow*, 87 N.Y.U.L. REV. 21, 54–55 (2012).

<sup>86</sup> WASH. APPLESEED & TEAMCHILD, RECLAIMING STUDENTS EXECUTIVE SUMMARY: THE EDUCATIONAL AND ECONOMIC COSTS OF EXCLUSIONARY DISCIPLINE IN WASHINGTON STATE (2012), available at [http://www.sbe.wa.gov/documents/AAW/Dec13/AppleseedReport\\_WA\\_Suspensions.pdf](http://www.sbe.wa.gov/documents/AAW/Dec13/AppleseedReport_WA_Suspensions.pdf) (last visited Feb. 15, 2015).

While the benefits of programs that support a child's education are clear from examining the research on ACEs, truancy, and juvenile delinquency, there is also a danger that these programs can be manipulated when a survivor is not well informed. One survivor explained her decision to reunite with her abusive husband:

I didn't know how long it would be until my kids and I were out on the street . . . I caved. I dropped the restraining order and I took him back . . . Financial insecurity is one of the top reasons why women return to their abusers, especially if they have children. I didn't want to end up homeless. I didn't want my kids to suffer. Logistically, it made sense to me to take him back.<sup>87</sup>

This survivor's experience is illustrative of the kind of difficult choices domestic violence survivors face. In her case, the next incident of violence was against her son and after this, she left her husband for good with her child.<sup>88</sup> The Becca Bill, which is meant to serve as a protective measure, can be wielded as a weapon against a victim who lacks information about resources to get his or her child to school or information about the purpose of the law. The law can be used as both emotional and economic coercion against a survivor. An abuser can use his financial advantage to convince his spouse that staying is the best choice for her child.

Without access to information about legislation and resources, victims may be less likely to leave because they are more likely to be manipulated by their partners "for the safety of the child." Furthermore, after victims leave, they may be distracted from their child's attendance because they become homeless, because they are at a shelter far away from the school, or because they do not understand how a protection order works and are afraid to let their child go to school. Possibly, a victim may feel that the only way

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<sup>87</sup> Melissa Jeltsen, 'I Couldn't Afford the Life We Had Established by Myself. I Was Drowning,' THE HUFFINGTON POST, [http://www.huffingtonpost.com/2014/09/12/why-didnt-you-just-leave-money\\_n\\_5804624.html](http://www.huffingtonpost.com/2014/09/12/why-didnt-you-just-leave-money_n_5804624.html) (last visited Feb. 15, 2015).

<sup>88</sup> *Id.*

to keep his or her child safe is to keep the child close, where the family is staying, until the victim successfully files a protection order with the court. All of these occurrences disrupt a child's academics and may begin the tallying of absences under the Becca Bill.

A steady academic experience, along with the resources available through school, is indispensable to children. Therefore, legislative bodies and advocates should seek to preserve academic stability for children. Education creates the opportunity to connect with a life that is different from one's own at that time. It develops the ability to goal set and to model after other adults outside of the family unit.<sup>89</sup>

A child's ability to form these connections and develop the skills that education can offer is hindered when his or her academic career is disrupted. This disruption can come from many sources, such as a parent keeping his or her child close for the child's safety and not taking the child to school; a parent being manipulated by the abusive parent about the school system and remaining in the abuse; a parent not being able to access the court at the time of leaving and therefore, hindering other responsibilities; or a lack of advocacy and information that delays the legal process.

While there is some unavoidable disturbance purely by being in a home with domestic violence, the legal community should do everything possible to allow a child the opportunity to develop the tools to cope with the experience through education. By enhancing advocacy and expanding access to courts for victims who are considering a protection order, the legal system can more consistently support children whose lives are touched by domestic violence.

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<sup>89</sup> Hobart, *supra* note 20, at 8.

#### IV. IMPROVING WASHINGTON'S EMERGENCY PROTECTION ORDER SYSTEM

The availability and effectiveness of protection orders are substantial considerations when a victim is making the decision to leave.<sup>90</sup> As a result, addressing availability and effectiveness is essential to making significant, long-lasting change. Without properly filing a petition, asking for the correct protection, and accurately understanding the order, the victim is unlikely to benefit from the protection an order can offer. Washington can expand the effectiveness of protection and continue to remove barriers that prevent a victim from safely leaving an abuser by enhancing victim understanding of the available tools, streamlining the current system, and expanding access to the court.

##### *A. Understanding the Available Tools*

Possibly the most significant obstruction to protection orders effectively protecting victims is a victim not understanding what type of protection order is best for his or her specific circumstances and not understanding the order once it is in place. Additionally, there is an added complication that many victims can waste essential time while trying to learn how to get the correct protection. This can happen because the resources available are sometimes complex and not always easy for a layperson to understand. Two specific tools that are sometimes difficult for victims to navigate are protection order kiosks and unclearly written court forms.

##### **1. Efficiently Distributing Information about Kiosks**

Lack of access to information about protection order kiosks and the way they work with the courts is a barrier to victims' safety planning. A kiosk is

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<sup>90</sup> Studies show that protection orders can significantly decrease the risk of violence against women and lower the number of domestic homicides. *DV Manual for Judges*, *supra* note 65.

a computer, generally set up in a courthouse or advocacy agency, where victims can electronically file a protection order.<sup>91</sup> In Washington, the kiosks were first implemented in 2007 in Gig Harbor; however, they exist in several other states as well.<sup>92</sup> The idea behind them is that it may be safer for a victim of domestic violence to begin filing an order of protection in a more private setting.

While protection order kiosks serve a valuable purpose, there are several problems that arise directly from the nature of the process. First, there is sometimes a misunderstanding on the part of the victim about when the protection order comes into effect; specifically, the victim is often unaware that he or she must wait for the order to be signed and served on the respondent before it is legally enforceable.

The introduction of technology into domestic violence has been significant both as a means of perpetrating violence and as a way of preventing abuse.<sup>93</sup> Striking like a double-edged sword, there appear to be misunderstandings about kiosks on the part of both younger and older generations. Those that are of the younger generation sometimes believe that when they hit “enter” on the computer they are automatically protected, whereas those that are outside of the tech-friendly-era may be uncomfortable and distrusting of the entire kiosk process.<sup>94</sup> Also, there is not always proper advocacy at the kiosks to inform victims about the process and to conduct follow-up. The Washington Fatality Review Report found that sometimes victims do not know what protection they requested,

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<sup>91</sup> See *Protection Order Kiosk FAQ*, PAC. LUTHERAN UNIV., [http://www.plu.edu/women\\_scenter/voices-against-violence/advocacy-services/faq/](http://www.plu.edu/women_scenter/voices-against-violence/advocacy-services/faq/) (last visited Feb. 15, 2015); *Domestic Violence Protection Order Kiosk*, CITY OF GIG HARBOR, [http://www.cityofgig\\_harbor.net/page.php?id=1625](http://www.cityofgig_harbor.net/page.php?id=1625) (last visited Sept. 22, 2014).

<sup>92</sup> *Domestic Violence Protection Order Kiosk*, *supra* note 91.

<sup>93</sup> See Laura Silverstein, *The Double Edged Sword: An Examination of the Global Positioning System, Enhanced 911, and the Internet and Their Relationships to the Lives of Domestic Violence Victims and Their Abusers*, 13 *BUFF. WOMEN'S L.J.* 97, 99 (2005).

<sup>94</sup> *Id.*

which implies that the victim was not as integrally involved in filling out the motion as he or she should be.<sup>95</sup>

Service on the respondent is also an essential element of a protection order that is frequently misunderstood by the victim. In *State v. Smith*, an Ohio case from 2013, a victim filed a protection order, but the respondent had not yet been served with the order when he broke into the petitioner's home and choked her.<sup>96</sup> The Supreme Court of Ohio held that the State had to establish, beyond a reasonable doubt, that the defendant was served with the order before the alleged violation.<sup>97</sup>

In the media fallout from this case, concerns were voiced about the message that this holding sends to both victims and perpetrators.<sup>98</sup> The biggest concern was that it might encourage perpetrators to avoid service, especially because in this case the petitioner asserted that she showed the respondent the order when he approached her the day before the attack and told him he had to stay away from her.<sup>99</sup>

Two means of addressing the concerns raised by this case are (1) to widen access to information, both online and in person, when a victim petitions for a protection order and (2) to deepen advocate involvement in this initial request for protection. As demonstrated by this case, when a victim relies on a protection order that is not in force, he or she is more vulnerable to injury and manipulation.

The dissent in *State v. Smith* raised the concerns of the media and heavily introduced victim-weighted discretion. Where the majority held that—under a strict reading of the protection order—service on the respondent is

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<sup>95</sup> Fawcett, *supra* note 7, at 33.

<sup>96</sup> *State v. Smith*, 989 N.E.2d 972, 973 (Ohio 2013).

<sup>97</sup> *Id.*

<sup>98</sup> *Editorial Board Roundtable: Protection orders in domestic violence cases*, CLEVELAND.COM (Sep. 10, 2013), [http://www.cleveland.com/opinion/index.ssf/2013/09/editorial\\_board\\_roundtable\\_pro.html](http://www.cleveland.com/opinion/index.ssf/2013/09/editorial_board_roundtable_pro.html).

<sup>99</sup> *Id.*; *Smith*, 989 N.E.2d at 973.

required for the order to be enforceable, the dissent stated that the order had “independent force, even apart from service.”<sup>100</sup> The dissent reasoned that the protection order’s validity began with its issuance.<sup>101</sup> Although this is an Ohio case, it exemplifies a common concern with protection orders generally: if a victim believes himself or herself to be protected by an order after the commissioner signs it, but in fact is not protected because the perpetrator is not served, the victim is more prone to danger. The dissent reasoned that the special nature of domestic violence requires special protection, something with which Washington courts also struggle.<sup>102</sup>

## 2. Clarifying Protection Order Language

In Washington, there is also some confusion and frustration over what type of order is appropriate for the individual. “Restraining” and “protection” are often used interchangeably, which can make it difficult for the victim to get his or her hands on the correct petition paperwork. Washington, in particular, is completely reliant on forms—developed and used for family law cases. At times, this may simplify access to the court. At other times, this may make the petitioner feel the need for a guide in order to jump through the various required hoops. A victim who arrives at ex parte court with a petition for a temporary order, rather than an ex parte temporary order, will very likely be told to go back out and fill out the correct petition. This can be a frustrating and debilitating process for the victim.

Victims often rely heavily on an order of protection, which can have serious repercussions on a family if the order is misunderstood or if the court chooses not to enforce some part of it, as in the case of *State v. Veliz*. In this Washington State case, the petitioner believed that the order in place

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<sup>100</sup> *Smith*, 989 N.E.2d at 977 (Lazinger, J., dissenting).

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

was adequate protection for her child and relied on the court to enforce the order when the respondent took her son out of the state.<sup>103</sup> The Washington Supreme Court held that the protection order was insufficient to function as a parenting plan, meaning the protection offered by the order did not sufficiently substitute for a parenting plan, and therefore, the petitioner did not have access to a custodial interference claim.<sup>104</sup>

However, the dissent asserted that the majority unnecessarily narrowed the definition of "court-ordered parenting plan."<sup>105</sup> The dissent supported its conclusion that the court unnecessarily narrowed protections by quoting the Washington legislature's declaration of intent "to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity."<sup>106</sup> This case is an example of the confusion and danger that can breed when a victim tries to navigate the numerous orders available without assistance. It also demonstrates the lack of judicial consensus on how to construe the orders.

In an effort to simplify the process for seeking protection, to make it more accessible and comprehensible, some states have only one order that can be expanded or retracted based on the needs and circumstances of the person filing. California is one such state. In California, there is one restraining order with a broad scope. The two requirements for the California order are: that the person filing has experienced or has been threatened with abuse, and that the person filing has a close relationship to the person to be restrained.<sup>107</sup> For anyone who does not meet these two requirements, there is also a harassment restraining order.

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<sup>103</sup> *State v. Veliz*, 298 P.3d 75, 76 (Wash. 2013).

<sup>104</sup> *Id.* at 82.

<sup>105</sup> *Id.* at 84.

<sup>106</sup> *Id.* at 83 (Johnson J., dissenting) (quoting WASH. REV. CODE § 7.69.010 (1985)).

<sup>107</sup> Restraining Orders, JUDICIAL BRANCH OF CAL., <http://www.courts.ca.gov/1260.htm> (last visited Apr. 13, 2014).

In the legislative notes of the Petition for an Order of Protection, the Washington Legislature states that “[r]efinements are needed so that victims have the easy, quick, and effective access to the court system envisioned at the time the protection order process was first created.”<sup>108</sup> The Washington protection order system could still benefit from refinement of the titles and language of the orders to help victims request the appropriate protection. In Washington there is a restraining order, for petitioners who are married, and a civil protection order, for unmarried petitioners, as well as an antiharassment order. There is also a parenting plan separate from all protective orders,<sup>109</sup> and the multitude of orders can lead to confusion for victims.

### *B. Streamlining the Current System*

The courts in Washington have held that there is a substantial public and governmental interest in “reducing the potential for irreparable injury” caused by domestic violence, and therefore have lessened the initial burden of notice for a temporary order.<sup>110</sup> This explicit recognition of the gravity of the domestic violence crisis should be further reflected in a collaborative and efficient court system.

#### **1. Improving the Expertise of Ex Parte Commissioners on Domestic Violence**

Washington can improve the current protection order system by encouraging commissioners and judges who come into contact with domestic violence cases to be more familiar with the specific needs of

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<sup>108</sup> WASH. REV. CODE § 26.50.030 (2005), Notes—Findings 1992; Act effective June 11, 1992, ch. 111, sec. 1, 1992 Wash. Laws 442, 442–43 (relating to domestic violence protection orders).

<sup>109</sup> Temporary Order for Child Visitation, WASH. COURTS, <https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=35> (last visited Feb. 15, 2015).

<sup>110</sup> *State v. Karas*, 32 P.3d 1016, 1021 (Wash. Ct. App. 2001).

victims and perpetrators. To expand the effectiveness of the temporary protection order, this article advocates for a broader application of the available protection during the initial 14-day period.

While there is a substantial need to uphold due process for the alleged perpetrator, there is also a need for immediate and effective initial protection.<sup>111</sup> Most of the data available about the experiences of petitioners in ex parte court comes from victims sharing their own experiences because the nature of the ex parte system does not provide for case law to review. However, one can decipher where the courts have room to improve in granting and applying protection orders by examining the national policy statements by federal government officials, the legislative intent statements in the RCW, and the dissenting and concurring opinions of Washington permanent protection order cases.

The Office on Violence against Women (OVW), in the DOJ, has identified some of the challenges that affect the safety of domestic violence victims and their children in regard to custody proceedings. The structural and procedural barriers in the courtroom diminish the safety of survivors.<sup>112</sup> Additionally, OVW cited that courts and third-party assessments create a barrier to safety by failing to properly identify and understand domestic violence.<sup>113</sup>

In Washington State, the recommendations from the 2010 Fatality Review Report pinpoint that, for example, “judges, commissioners, attorneys, and evaluators share the misconception that domestic violence by one parent toward the other is a tangential concern and not central to the

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<sup>111</sup> Some argue that the civil protection order system violates due process while others argue there is a conflict between the way protection orders are granted and the right to parent under the Constitution.

<sup>112</sup> Press Release, Dep't. of Just., Justice Department Selects Four Courts to Identify Promising Practices in Custody and Visitation Decisions in Domestic Violence Cases (Nov. 12, 2013), <http://www.justice.gov/opa/pr/2013/November/13-ovw-1205.html>.

<sup>113</sup> *Id.*

issues of parenting.”<sup>114</sup> The report suggests “[creating] mentorship opportunities that pair judges and commissioners who are experienced in domestic violence . . . with other judicial officers.”<sup>115</sup>

Actions under the Domestic Violence Protection Act (DVPA), chapter 26.50 RCW, are special proceedings.<sup>116</sup> This means that the judge or commissioner has greater discretion and the proceeding is not governed by the civil rules for superior court.<sup>117</sup> Therefore, judges and commissioners should be particularly familiarized with domestic violence in order to make the best use of these special proceedings.

In the Washington Court of Appeals case, *Scheib v. Crosby*, the court acknowledged this special position. In this case, a victim had petitioned pro se for a domestic violence protection order to protect her from her child’s father.<sup>118</sup> At the hearing for the permanent order, the trial court denied the father’s requests to depose the petitioner.<sup>119</sup> On review from the decision, the appellate court held that proceedings under the DVPA were special proceedings because the legislature established them as distinct forms of action.<sup>120</sup> The court held that the DVPA proceedings’ intent was to prevent domestic violence.<sup>121</sup> In reading the DVPA “as a whole,” the court found, “it is apparent that this is a special proceeding not governed by the civil rules.”<sup>122</sup> Actions under the DVPA grant the court discretion to fulfill the legislative intent—to prevent domestic violence.<sup>123</sup> Washington courts overall do acknowledge the special nature of domestic violence, but can

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<sup>114</sup> Fawcett, *supra* note 7, at 33.

<sup>115</sup> *Id.* at 36.

<sup>116</sup> *Scheib v. Crosby*, 249 P.3d 184, 185 (Wash. Ct. App. 2011).

<sup>117</sup> *Id.* at 187.

<sup>118</sup> *Id.* at 185.

<sup>119</sup> *Id.* at 186.

<sup>120</sup> *Id.* at 187.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 186.

<sup>123</sup> *Id.*

also create further progress in ending its perpetuation through more awareness of signals of power and control, as well as lethality.

Although due process rights are often at risk of infringement in temporary protection order cases, the ex parte system was established to address urgent need for safety and risk of irreparable harm. Washington courts have stated that, "the legislature has carefully enacted protection order procedures in the hope of protecting the important interests implicated. Judges and commissioners must exercise discretion."<sup>124</sup> The court emphasized that there are important due process rights at stake for the respondent in these cases, but that the nature of the process is to allow the commissioner or judge to evaluate each particular case.<sup>125</sup> Because commissioners and judges are granted so much discretion in temporary protection orders, it is important that they have robust understandings of domestic violence in weighing due process and risk of irreparable injury.

Furthermore, when courts demonstrate knowledge of and concern for domestic violence, it reinforces the significance and weight of a protection order. In 2001, in *State v. Goodman*, the appellant argued that the trial court was not justified in relying on future dangerousness and the violations of a protection order in coming to a sentencing determination.<sup>126</sup> The Washington Court of Appeals, Division Two, clarified that domestic violence did not alter the elements of a crime charged, but could act as an aggravating factor to be considered by the court.<sup>127</sup> The appellate court held that the exceptional sentence imposed on the defendant was proper and that the court properly used the information to ensure that the law was "equitably and vigorously enforced."<sup>128</sup> This holding indicates a willingness

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<sup>124</sup> *Gourley v. Gourley*, 145 P.3d 1185 (Wash. 2006).

<sup>125</sup> *Id.* at 1188–89.

<sup>126</sup> *State v. Goodman*, 30 P.3d 516 (Wash. Ct. App. 2001).

<sup>127</sup> *Id.* at 521.

<sup>128</sup> *Id.* at 519.

both to stand firmly behind protection orders and to resolutely deter violations of the orders.

By improving court officials' awareness of and familiarity with domestic violence, courts can better apply the protections available to specific circumstances and can better ensure victim safety.<sup>129</sup> In part because of the evidentiary exception for protection orders in Washington, Evidence Rule 1101(c)(4), discretion is largely left to commissioners and judges. For instance, admission of hearsay evidence is allowed in protection order hearings,<sup>130</sup> and the discretion is in the hands of commissioners and judges to provide the appropriate protection for the parties.<sup>131</sup>

However, two of the barriers frequently reported by victims are (1) inadequate responses from the courts, or "failure of court[s] to hold perpetrators accountable or protect victims[.]" and (2) victim blaming by the courts.<sup>132</sup> The National Institute of Justice looked at the impact of protection orders and found that "with thousands of victims petitioning for protection orders, judges have a unique opportunity to intervene in domestic violence cases."<sup>133</sup> When commissioners turn away victims because they do not speak up or because they fill out the wrong paperwork, those victims may leave discouraged and not return.<sup>134</sup> Similarly, when commissioners and judges do not consider the need for tailored relief, the victim may receive inadequate protections and distrust the courts in future.

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<sup>129</sup> Peter Finn & Sarah Colson, *Civil Protection Orders: Legislation, Current Court Practice and Enforcement*, NAT'L INST. OF JUST. 2 (Mar. 1990), <https://www.ncjrs.gov/pdffiles1/Digitization/123263NCJRS.pdf>.

<sup>130</sup> WASH. R. EVID. 1101(c)(4).

<sup>131</sup> See *Gourley*, 145 P.3d at 1189; See also, ABA COMM'N ON DOM. VIOLENCE, *supra* note 57.

<sup>132</sup> *Domestic Violence Information*, WASH. COURTS, <http://www.courts.wa.gov/dv/?fa=dv.guide#a9> (last visited Sept. 22, 2014).

<sup>133</sup> Finn & Colson, *supra* note 129, at 1.

<sup>134</sup> See generally JAMES PTACEK, *BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSES* (1999).

## 2. Expanding the Protection Order Advocacy Program

Another means of demystifying the legal system for victims is to expand the Protection Order Advocacy Program, already established in a few Washington counties. Currently, the program is established in King and Pierce Counties.<sup>135</sup> By placing advocates in the courthouse who can assist with filing petitions and orders,<sup>136</sup> the program addresses two issues: first, that victims simply do not understand the resources available to them and, second, that they may not understand what to do if their requests for protection are denied.

Advocates assist with filing; provide information and referrals to social service agencies; support, inform, and help prepare victims prior to court hearings; advocate during and after court proceedings; and work on safety planning and lethality assessment.<sup>137</sup> Advocates cannot speak for the victim in *ex parte* court, but advocates can accompany the victim to court, walk the victim through the filing process, and help the victim understand court procedures and court customs.<sup>138</sup> This program helps ensure that paperwork is filed correctly the first time, that victims are able to make their needs heard, and that victims will not have to return repeatedly to *ex parte* court to achieve a result. While this resource demands funding, the expense of an inefficient court system, along with the societal cost of domestic violence, far surpasses the cost of the Protection Order Advocacy Program and therefore, the program should be extended to additional counties.

Many petitioners who successfully apply for a temporary protection order do not then receive a full order; a trend observed and studied by the WSCADV's Fatality Review in 2008.<sup>139</sup> One contributing factor to this

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<sup>135</sup> KING COUNTY DOMESTIC VIOLENCE PROTECTION ORDER ADVOCACY PROGRAM, <http://protectionorder.org/> (last visited Dec. 29, 2014).

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> FAWCETT ET AL., *supra* note 46, at 71–74.

pattern was that victims did not make appropriate safety plans because they did not understand their orders or the additional available resources.<sup>140</sup>

For many reasons, a victim's safety is at risk if his or her first attempt to file a temporary order of protection is unsuccessful or misinformed. It is difficult to demonstrate in case law the frequency with which victims misunderstand or rely, unsuccessfully, on emergency protection orders because, among other things, due to the order's short duration, the denials are rarely appealed. Furthermore, Washington courts have found that commissioner's rulings are subject to revision by the superior court and that it is the decision of the superior court that is appealable.<sup>141</sup> In many cases, appeal would, therefore, be useless for the purposes of temporary protection orders when time is of the essence.

Washington's statutory provision for ex parte temporary protection orders acknowledges the need for haste by specifically stating, "where an application under this section alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent, the court may grant an ex parte temporary order for protection."<sup>142</sup> Therefore, the value of connecting domestic violence victims with advocacy resources early on is clear.<sup>143</sup> Access to advocacy support enables domestic violence victims to successfully navigate any inconsistency in the manner protection orders are granted and the manner the court interprets the scope of the protection.<sup>144</sup>

The issues that arise in protection orders can be intricate and confusing. For example, in an unpublished Washington Court of Appeals, Division

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<sup>140</sup> *Id.*

<sup>141</sup> *State v. Ramer*, 86 P.3d 132,136 (Wash. 2004).

<sup>142</sup> WASH. REV. CODE § 26.50.070(1) (2010).

<sup>143</sup> FAWCETT ET AL., *supra* note 46, at 71–74.

<sup>144</sup> Susan Keilitz, *Civil Protection Orders: The Benefits and Limitations for Victims of Domestic Violence*, NAT'L INST. OF JUST. vii (1997), available at <https://www.ncjrs.gov/pdffiles1/pr/172223.pdf>.

One, case, *Wright v. Olney*, the court denied the petitioner protection over her son in common with her husband because there was a parenting plan in place, but granted the requested protection over her daughter from a previous relationship.<sup>145</sup> While this case addressed a one-year protection order, rather than a 14-day order, the petitioner's circumstances highlights significant issues in ex parte court: the speed at which the process is performed and the lack of information on what to do after a request is denied. Understanding a decision such as this, without legal experience, is difficult and can cause a victim to give up on the system. A victim is unlikely to appeal an ex parte decision; instead, he or she will have to start the process over.

Lack of predictability in the court system, when coupled with a lack of advocacy to help the victim through the process, can lead to many complications that result in barriers to leaving. The following represent a few of the obstacles that may arise: the petitioner may be denied the order of protection; the petitioner may request the wrong kind of order and consequently be denied; and the petitioner may not adequately safety plan because he or she does not understand the limits of the order. Overall, the likelihood that a victim will ask for the correct protection for his or her specific circumstances and successfully receive the order is higher with the help of a legal advocate.<sup>146</sup>

### *C. Expanding Accessibility to the Courts*

The final element in opening access to legal resources is the petitioner's actual ability to get to the court for a protection order when it is necessary.

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<sup>145</sup> *Wright v. Olney* No. 69314—0—I, 2013 Wash. App. LEXIS 2173, \*1–\*4 (Wash. Ct. App. Sept. 16, 2013) (unpublished case).

<sup>146</sup> Keilitz, *supra* note 144, at vii.

### 1. Integrating the Limited License Legal Technician Rule

In Washington, an untapped resource that may be coming down the pipeline is adoption of the new Admission and Practice Rule (APR) 28, the Limited License Legal Technician (LLLT).<sup>147</sup> The Washington Supreme Court outlined the reasons for this rule to include aiding “the prompt and orderly administration of justice.”<sup>148</sup> It also went on to state, “We have a duty to ensure that the public can access affordable legal and law related services.”<sup>149</sup>

The rule was written in 2008 but was adopted June 15, 2012.<sup>150</sup> In the order adopting the rule, the court stated that the civil legal system is “unaffordable not only to low income people but, as the 2003 Civil Legal Needs Study documented, moderate income people as well.”<sup>151</sup> The court adopted the LLLT rule with the belief that it would begin to address the “thousands of unrepresented (pro se) individuals . . . who seek but cannot obtain help from an overtaxed, underfunded civil legal aid system.”<sup>152</sup> While the LLLT rule is in its infancy, the order provides suggestions on how it might be applied stating, “it may be that non-profit organizations that provide social service with a family law component (e.g., domestic violence shelters . . . ) will elect to add limited license legal technicians onto their staffs.”<sup>153</sup> This prediction seems intuitive because there is an evident need for more hands-on legal assistance for victims of domestic violence.

Washington should take one step further, however, and allow LLLTs to vocally advocate for victims in ex parte court. At this time, LLLTs are

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<sup>147</sup> The Adoption of New APR 28—Limited Practice Rule for Limited License Legal Technicians, Order No. 225700-A-1005, WASH. COURTS (Jun. 15, 2012), <http://www.courts.wa.gov/content/publicUpload/Press%20Releases/25700-A-1005.pdf>.

<sup>148</sup> *Id.* at 1.

<sup>149</sup> *Id.* at 6.

<sup>150</sup> *Id.* at 1.

<sup>151</sup> *Id.* at 4.

<sup>152</sup> *Id.* at 4.

<sup>153</sup> *Id.* at 9.

required to clearly inform clients that they “may not appear or represent a client in court, formal administrative adjudicative proceedings, or other formal dispute resolution process or negotiate the client’s legal rights or responsibilities, unless permitted under GR 24(b).”<sup>154</sup> This Practice of Law Rule, section (b)(6), allows an exception to an individual providing assistance to another to complete a form provided by a court for protection under RCW Chapter 26.50 when no fee is charged to do so.<sup>155</sup> This means that the advocate can accompany the victim to the court, but cannot speak for the victim.<sup>156</sup>

The next step is to grant the LLLTs authority to advocate in ex parte court for a victim filing a petition for protection. While there is resistance to allow too much authority to LLLTs,<sup>157</sup> it appears that this specific role is a role that attorneys are not fighting to retain.<sup>158</sup> Additionally, if one of the goals of the new APR 28 is to aid in the prompt and orderly administration of justice, it seems reasonable to expand the LLLT’s ability to advocate for a pro se client, in ex parte court, and only on emergency orders.<sup>159</sup>

Of the concerns voiced about expanding the rule, one of the strongest is that LLLTs cannot possibly offer the depth of knowledge that attorneys can; however, it is not clear that they need to in order to provide this service. Particularly in the matter of filing for an emergency protection order, what a victim needs is immediate support and access to the court. Additionally, the victim may need a representative who is not emotionally tied to the result.

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<sup>154</sup> New Admission to Practice Rule 28: Limited Practice Rule for Limited License Legal Technicians (G)(3)(a).

<sup>155</sup> Wash. State Ct. R. GR 24(b)(6).

<sup>156</sup> New Admission to Practice Rule 28: Limited Practice Rule for Limited License Legal Technicians (H)(5).

<sup>157</sup> Dissent to Order, Limited Practice Rule for Legal Technicians and New APR 28, No. 25700-A, WASH. COURTS (June 14, 2012), available at <http://www.courts.wa.gov/content/publicUpload/Press%20Releases/25700-A-1005.pdf>.

<sup>158</sup> Order No. 225700-A-1005 at 7–8.

<sup>159</sup> Order No. 225700-A-1005 at 4.

The LLLTs already can help clients fill out forms and it seems reasonable that they could offer the needed assistance, including informing the client of applicable procedures, deadlines, and documents; reviewing documents or exhibits; selecting and completing documents; performing legal research and drafting documents if reviewed by a Washington lawyer; and advising the client what other documents may be necessary.

While adding responsibilities to the LLLTs may appear to encroach on the role of a lawyer, the need is evident, particularly, when the initial time of leaving is known to be the most dangerous. The economic and social impact of domestic violence on the community is a matter of national significance. Increasingly, society recognizes that domestic violence can impact anyone “regardless of race, age, sexual orientation, religion, or gender [and] . . . affects people of all socioeconomic backgrounds and education levels.”<sup>160</sup> As a result, there has been an overall increase in efforts to address the issue. Congress funded the CDC to conduct a study to obtain national estimates of the occurrence of intimate partner violence-related injuries and to estimate the costs to the health care system.<sup>161</sup>

The study is called “Costs of Intimate Partner Violence Against Women in the United States,” and looks at both actual expenses and lost productivity.<sup>162</sup> The study indicates that the total cost of violence against women “exceed[s] an estimated \$5.8 billion,”<sup>163</sup> with variation depending on reporting. The study divides the cost into \$4.1 billion in direct costs of medical care and mental health care and nearly \$1.8 billion in the indirect costs of low productivity and the present value of lost lifetime earnings

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<sup>160</sup> *Domestic Violence*, *supra* note 1.

<sup>161</sup> CENTERS FOR DISEASE CONTROL AND PREVENTION, NAT’L CENTERS FOR INJURY PREVENTION AND CONTROL, COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES, 32 (2003), *available at* <http://www.cdc.gov/violence-prevention/pdf/ipvbook-a.pdf>.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

(PVLE). This study is conservative in that it looks at female victims only and primarily at health care costs. Therefore, if the impact of violence is so great, surely it is reasonable to focus resources on preventing the violent occurrences and LLLTs are a promising and efficient means to do this. By restricting LLLTs to filing temporary orders in ex parte court, victims will receive a necessary resource and the LLLT rule will not be overly extended.

## 2. Creating Friday Night Court

Finally, for numerous reasons, many crises seem to arise on Fridays. There are many conceivable explanations for this pattern—pay day, the end of the work week, the end of the school week, etc.—but it is evident that there is a need for substantial legal assistance outside of the court's regular hours.

Across the board, most courthouses stop hearing petitions for ex parte orders by Friday at 4:00 p.m. and are not available again until Monday at 10:00 a.m. It seems disconnected to expect individuals dealing with the decision to leave to only seek a protection order during weekday business hours. It is proven that a person is more likely to successfully leave abuse if they are financially stable.<sup>164</sup> Additionally, the weekend is generally the least disruptive time (e.g. to avoid school disruption, missing work, etc.) for an individual to remove his or her children from the home, whether it is to a friend's home, a relative's home, or a shelter.

As previously noted, one method of addressing this issue is installing protection order kiosks across Washington. A goal of the protection order kiosk is to extend access to protection for victims who may not be able to get to the courthouse, whether because of safety concerns or

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<sup>164</sup> Klein & Orloff, *supra* note 66, at 990. See also, Anne L. Ganley, *Domestic Violence: The What, Why and Who, as Relevant to Civil Court Cases*, in DOMESTIC VIOLENCE IN CIVIL COURT CASES: A NATIONAL MODEL FOR JUDICIAL EDUCATION 23, 44 (1991).

transportation.<sup>165</sup> However, the kiosks do not eliminate the issue of courthouse hours because the kiosks are generally open during the same hours as the courts. Also, even when kiosks are accessible outside of the hours of the courts, an order cannot be signed if there is no commissioner available to review the petition. After a commissioner signs the order, the victim must return and print the signed order and then have it served.<sup>166</sup> As a result, these kiosks do not address the issue that victims frequently need assistance outside of business hours.

Although there is legislation that prevents employers from firing an individual who must miss work for a court date or other legal necessity, missing work still puts a strain on victims' financial stability. Occasionally, a victim may have an understanding employer or an accommodating schedule that lets him or her address legal issues during the hours the court is available. However, it is at least equally possible that the victim will be restricted by his or her abuser, his or her own responsibilities, or his or her children's needs and will be unable to reach out for a protection order during the business day. It is also likely that if the victim is not salaried, he or she will have to sacrifice wages for getting to the court.

One resource available to victims of domestic violence who are seeking information over the weekend is the network of national and local crisis lines.<sup>167</sup> However, most crisis lines cannot offer legal advice, only legal information and referrals.<sup>168</sup> Therefore, for legal advice, the victim must wait until the business week begins. On a very basic level, this poses a problem because it means that a victim who may already be calling an extensive list of homeless shelters, domestic violence shelters, and social

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<sup>165</sup> *Domestic Violence Protection Order Kiosk*, *supra* note 91.

<sup>166</sup> *Protection Order Kiosk FAQs*, PAC. LUTHERAN UNIV. ADVOC. SERVS., <http://www.plu.edu/voices/Advocacy-Services/Protection%20Order%20Kiosk/FAQs.php>.

<sup>167</sup> THE NAT'L DOM. VIOLENCE HOTLINE, <http://www.thehotline.org/help/resources/> (last visited Dec. 29, 2014).

<sup>168</sup> *Id.*

services resources will have to add legal services numbers to the list. Additionally, while a victim may only need legal information to understand the process of filing for a protection order, if there is any need for advice beyond logistics, he or she will be out of luck until Monday morning. In addition to hotlines, there are web-based self-help materials, but many are ill-equipped to provide the kind of tailored assistance a victim seeks.<sup>169</sup>

Many other states, such as Tennessee, recognize the need for legal services outside of regular business hours and have adopted night court. This means that there is a special session of ex parte court during the evening hours, sometimes with a specific focus, such as domestic violence. In Nashville, in Davidson County, there is a night court that, among other things, issues ex parte orders of protection, as well as citations for violations of such orders.<sup>170</sup>

In Washington, several counties including Clallam County, King County, Pierce County, and Spokane County, have domestic violence courts but only one county has a night court, Whatcom County, in which the biggest city is Bellingham.<sup>171</sup> This night court is also not a domestic violence ex parte court. While domestic violence courts are doing good work, they are not generally hearing emergency civil protection orders. Instead, they are focused on felony domestic violence and traditional problems such as “low reports, withdrawn charges, threats to victim, lack of defendant accountability, and high recidivism.”<sup>172</sup>

Domestic violence courts are specialized to offer wrap-around problem solving, meaning they are more likely to invoke the resources of the

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<sup>169</sup> Order No. 225700-A-1005 at 5.

<sup>170</sup> *Night Court*, GENERAL SESSIONS COURT, METROPOLITAN NASHVILLE & DAVIDSON COUNTY, <http://jis.nashville.gov/portal/page/portal/generalSessions/nightCourt> (last visited Apr. 17, 2014).

<sup>171</sup> *DUI and/or Domestic Violence Courts*, WASH. COURTS, [http://www.courts.wa.gov/court\\_dir/?fa=court\\_dir.psc&tab=6](http://www.courts.wa.gov/court_dir/?fa=court_dir.psc&tab=6) (last visited Dec. 29, 2014).

<sup>172</sup> *Id.*

community or involve other parties to create a more long-lasting resolution.<sup>173</sup> They are made up of a permanent judge who works with the prosecution and defense, and typically involve victim advocates and social services.<sup>174</sup> The goal is to “provide the victim with the housing and job training needed to begin an independent existence from the offender; and continuously monitor the defendant in terms of compliance with protective orders and substance abuse treatment.”<sup>175</sup> A recent study, funded by the National Institute of Justice and submitted for the DOJ, found that there are about 208 specialized domestic violence courts, but that almost half are in New York or California.<sup>176</sup>

Domestic violence night court targets a need that is untouched by the current domestic violence courts in Washington, and is overall an undeveloped service in the state. There is only one court in Washington currently utilizing night court, not for domestic violence, and it only devoted 0.42 percent of its budget in the 2011–2012 year.<sup>177</sup> The night court primarily focused on small claims.<sup>178</sup>

To broaden access to the courts, Washington should consider holding Friday night *ex parte* court. This court would enable victims to seek protection orders after the regular work and school week. It would also allow advocacy agencies that have protection order kiosks to have the order signed by a commissioner and served so that the order is in force over the weekend. It would finally further involve knowledgeable commissioners in domestic violence prevention. King County and Pierce County have the

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<sup>173</sup> Anat Maytal, *Specialized Domestic Violence Courts: Are They Worth the Trouble in Massachusetts?*, 18 B.U. PUB. INT. L.J. 197, 222 (2008).

<sup>174</sup> *DUI and/or Domestic Violence Courts*, *supra* note 171.

<sup>175</sup> *Id.*

<sup>176</sup> Melissa Labriola et al., *A National Portrait of Domestic Violence Courts*, CTR. FOR CT. INNOVATION ix (2009).

<sup>177</sup> 2011–2012 FINAL BUDGET, WHATCOM CNTY., vol. 2, 58, available at <http://www.co.whatcom.wa.us/as/finance/pdf/budgets/2011-2012/vol2/11-12dc.pdf>.

<sup>178</sup> *Id.*

highest rates of domestic violence lethality in the state and, therefore, would be the ideal place to test a night court.<sup>179</sup>

#### V. CALL TO ACTION

When a victim of domestic violence is making the decision to leave and planning for his or her safety, the temporary order of protection should be a reliable option. Frequently, victims report that they were hindered from leaving because they were concerned about homelessness, about their employment, and about their children.<sup>180</sup> All of these factors are impacted by a victim's inability to effectively access the courts. In an effort to address this barrier to breaking the perpetuation of violence, this article recommends the following: (1) distributing information about the protection order kiosks more efficiently; (2) clarifying the language of protection orders; (3) improving the familiarity and expertise of ex parte commissioners on domestic violence; (4) expanding the Protection Order Advocacy Program; (5) integrating the LLLTs into domestic violence advocacy work; and finally, (6) creating a Friday night court where victims can seek ex parte temporary protection orders in either Pierce or King County.

True and lasting change will come from a new approach to the issue that builds off of current efforts and a wide-scale change in perception. A unilateral approach is unlikely to be effective because domestic violence poses a pervasive threat to communities through more than one avenue. To combat domestic violence, advocates must address the financial strain domestic violence places on the economy, on the criminal justice system, on government-funded programs, and on medical care. Additionally, advocates

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<sup>179</sup> Washington State Domestic Violence Fatalities by County, Domestic Violence Fatality Review, WASH. STATE COAL. AGAINST DOM. VIOLENCE, <http://dvmfatalityreview.org/2013/12/31/updated-fatalities-by-county/> (last updated Jun. 30, 2013).

<sup>180</sup> *Barriers to Victims Leaving*, *supra* note 22.

must tackle the long-lasting harm domestic violence produces when it creates new generations of victims and perpetrators.

A crime that touches so much of the population, in so many ways, requires a wrap-around approach. Much success has been seen on a small scale where courts, community programs, and police departments work in conjunction, or in a “coordinated community response.”<sup>181</sup> The court’s role as an active part of the prevention, rather than a reactive party, is key to breaking the cycle.

By strengthening the temporary protection order and improving accessibility to the courts, Washington can better combat domestic violence and better control the negative impact it has on children. The first step is to ensure that the first few days after leaving an abusive relationship are safe, in orders to allow a victim time to plan intelligently. This security is crucial to increasing the number of successful transitions out of violence.

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<sup>181</sup> See, Betsy Tsai, *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*, 68 FORDHAM L. REV. 1285, 1300 (2000); Elena Salzman, *The Quincy District Court Domestic Violence Prevention Program: A Model Legal Framework for Domestic Violence Intervention*, 74 B.U. L. REV. 329, 338–39 n.57 (1994).