

Enforcement of the Domestic Abuse Act in Minnesota: A Preliminary Study*

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Introduction

The Minnesota Department of Corrections latest figures estimate that over 63,000 incidents of domestic battering occur each year in the state of Minnesota.¹ Due to the inefficiencies and gaps in the reporting system, in Minnesota and across the United States, the true magnitude of the problem is difficult to document.

Researchers have estimated, however, that over 1.7 million people in the United States have at some time faced a spouse with a gun or a knife, and that well over two million have experienced a beating by their spouse.² Thus, while accurate documentation is difficult due to the severe under-reporting of incidents of domestic violence, the problem is clearly one of enormous dimensions with far-reaching societal effects.

Historical, religious, political and legal forces have combined to cover family violence with a cloak of privacy and right. An early case in Mississippi recognized the husband's right to physically chastise and restrain his wife.³ The court's decision expressed not only the notion of the husband's right to chastise, but also the common belief that such matters were not proper to bring before a court and were best left within the private sphere of the home. The court stated that:

[E]very principle of public policy and expediency, in reference

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1. Minnesota Department of Corrections, Minnesota Program for Battered Women: Summary Data Presentation On Information Obtained from Law Enforcement Agencies, 1984-1985, 2 (Sept. 1987).

2. G. Goolkasian, *Confronting Domestic Violence: A Guide for Criminal Justice Agencies*, 1987 National Institute of Justice (May 1986).

3. *Bradley v. State*, 1 Miss. (1 Walk.) 156 (1824).

to the domestic relations, would seem to require, the establishment of the rule we have laid down, in order to prevent the deplorable spectacle of the exhibition of similar cases in our courts of justice. Family broils and dissensions cannot be investigated before the tribunals of the country, without casting a shade over the character of those who are unfortunately engaged in the controversy. To screen from public reproach those who may be thus unhappily situated, let the husband be permitted to exercise the right of moderate chastisement, in case of great emergency, and use salutary restraints in every case of misbehavior, without being subjected to vexatious prosecutions, resulting in the mutual discredit and shame of all parties concerned.⁴

While the husband's right of chastisement was later repudiated,⁵ the belief that such matters are to be resolved in the privacy of the home continues.⁶ Family privacy and the sanctity of the home are deeply ingrained beliefs that limit the willingness of the police, prosecutors, and the judiciary to intervene in domestic violence situations when the same behavior between strangers would result in legal intervention.⁷ The issue of domestic violence has only recently been considered appropriate for public discussion and response. The result of this discussion has been an increased awareness of the magnitude of the problem and the beginning of legal and social policy changes. Among the changes that have occurred in the last few years are attempts to increase the legal protection afforded to battered women through legislation.⁸

One of the most significant legal changes in Minnesota was the passage of the Domestic Abuse Act in 1979.⁹ The Act creates a civil remedy which allows victims of domestic violence to obtain an Order for Protection (OFP). The civil OFP can restrain and exclude abusers from their residence without the victim having to file for marriage dissolution and without necessarily having to go through the criminal process. Many states have passed similar legislation during the last ten years.¹⁰

4. *Id.* at 158.

5. *E.g.*, *Harris v. State*, 71 Miss. 462, 464, 14 So. 266, 266 (1894).

6. G. Goolkasian, *supra* note 2, at 2.

7. *Id.* at 2, 19.

8. See generally S. Schechter, *Women and Male Violence* (1982).

9. Minn. Stat. § 518B.01 (1986 & Supp. 1987).

10. During the late 1970s early 1980s, states enacted legislation to provide legal remedies and protection to victims of domestic violence. The following are examples of such legislation:

Ala. Code §§ 30-5-1 to -11 (1983 & Supp. 1985) (protection order); Alaska Stat. §§ 25.35.010-.060 (1983 & Supp. 1987) (protection order, police intervention, criminal law); Cal. Civ Code § 4359 (West 1983 & Supp. 1987) (protection order); Cal. Civ. Proc. Code §§ 545-548 (West Supp. 1988); Colo. Rev. Stat. §§ 14-4-101 to -105 (Supp. 1986) (protection order); Conn. Gen. Stat. Ann. § 46b-15 (West 1986 & Supp. 1988) (protection order); D.C. Code Ann. §§ 16-1001 to -1006 (1981 & Supp. 1988) (protec-

The Minnesota statute incorporates a two-step procedure. Under the first step, the victim who is in immediate and present danger of domestic abuse may obtain an *ex parte* temporary OFP. The *ex parte* temporary OFP can restrain the abusing party from committing acts of domestic abuse and exclude the abusing party from the residence.¹¹ Once granted, this *ex parte* temporary order is valid for fourteen days. A full hearing, the second step, must be set within seven days from the issuance of the temporary OFP. At the conclusion of the full hearing, the court has discretion under the statute to issue a wide range of relief. The relief available to the petitioner at the full hearing includes, not only the orders restraining and excluding the respondent available under the *ex parte* process, but also the following possible orders: (1) an award of temporary child custody and visitation with the safety of the

tion order, criminal law); Fla. Stat. Ann. § 741.30 (West 1986 & Supp. 1988) (protection order); Ga. Code §§ 19-13-1 to -6 (1982 & Supp. 1988) (protection order); Hawaii Rev. Stat. § 586 (1985 & Supp. 1987) (protection order); Idaho Code § 19-603 (1987 & Supp. 1988) (police intervention); Illinois Domestic Violence Act §§ 101-103, 201-213, Ill. Ann. Stat. ch. 40, para. 2301-1 to -3, 2302-1 to -13 (Smith Hurd 1984 & Supp. 1988) (protection order); Ind. Code Ann. §§ 34-4-5.1 to -6 (Burns 1986) (protection order); Iowa Code Ann. §§ 236-1 to -8 (West 1985 & Supp. 1988) (protection order); Kan. Civ. Proc. Code Ann. §§ 60-3101 to -3111 (Vernon 1983 & Supp. 1987) (protection order); Ky. Rev. Stat. Ann. §§ 209.010-.160, 403.710 (Michie/Bobbs-Merrill 1982 & Supp. 1988) (protection order); Me. Rev. Stat. Ann. tit. 19, §§ 761-770 (1981 & Supp. 1988) (protection order); Md. Cts. & Jud. Proc. Code Ann. §§ 4-404, 4-501 to -506 (1984 & Supp. 1987) (protection order); Mass. Gen. Laws Ann. ch. 208, § 34C, ch. 209A, §§ 1-9 (Law. Co-op 1981 & Supp. 1986) (protection order); Mich. Comp. Laws Ann. §§ 764.15(a)-(c), 769.4a, 772.13, 772.14a (West 1982 & Supp. 1988) (police intervention, criminal law); Miss. Code Ann. §§ 93-21-1 to -29 (Supp. 1988) (protection order); Mo. Rev. Stat. §§ 455.010-.085 (1986 & Supp. 1988) (protection order); Mont. Code Ann. §§ 40-4-121 to -125 (1987) (protection order); Neb. Rev. Stat. §§ 42-901 to -903, -924 to -926 (1984) (protection order); Nev. Rev. Stat. §§ 33.020-.100 (1986 & Supp. 1988) (protection order); N.H. Rev. Stat. Ann. §§ 173-B:1 to -B:11 (Supp. 1988) (protection order); N.J. Stat. Ann. §§ 2C:25-1 to -16 (West 1987 & Supp. 1988) (protection order); N.M. Stat. Ann. § 31-1-7 (Supp. 1988) (police intervention); N.Y. Fam. Ct. Act §§ 153-C, 155, 168, 216-a(ii), 812, 813, 817, 818, 821-828, 832-836, 838, 841-847 (McKinney 1983 & Supp. 1988) (protection order); N.D. Cent. Code §§ 14-07.1-01 to -09 (1981 & Supp. 1987) (protection order); Ohio Rev. Code Ann. §§ 1901.18-19, 1909.02 (protection order); Okla. Stat. Ann. tit. 22, §§ 60-60.6 (West Supp. 1988) (protection order); Or. Rev. Stat. §§ 107.700-.720, 133.310, 133.381 (1984 & Supp. 1988) (police intervention), 35 Pa. Cons. Stat. Ann. §§ 10,182-10,190 (Purdon 1977 & Supp. 1988) (protection order); R.I. Gen. Laws §§ 15-15-1 to -7 (Supp. 1987) (protection order); S.D. Codified Laws Ann. §§ 25-10-1 to -14 (1984 & Supp. 1988) (protection order); Tenn. Code Ann. §§ 36-3-601 to -612 (1984 & Supp. 1988) (protection order); Tex. Fam. Code Ann. §§ 71.01-.19 (Vernon 1986 & Supp. 1988) (protection order); Utah Code Ann. § 30-6-1 to -8 (1984 & Supp. 1987) (protection order); Vt. Stat. Ann. tit. 15, §§ 1101-1109 (Supp. 1988) (protection order); W. Va. Code §§ 48-2A-1 to -10 (1986 & Supp. 1988) (protection order); Wis. Stat. Ann. §§ 767.23, 813.025(2)(a) (West 1981 & Supp. 1988) (protection order); Wyo. Stat. §§ 35-21-101 to -107 (Supp. 1988) (protection order). Lerman, A Model State Act: Remedies for Domestic Abuse, 21 Harv. J. on Legis. 61 (1984).

11. Minn. Stat. § 518B.01(7) (1986).

victim-petitioner to be of primary consideration in determining custody and visitation; (2) an order establishing temporary child support; (3) an order providing for counseling to the parties if requested by the petitioner or, if the parties are married or have children, ordering the abusing party to participate in treatment or counseling services; (4) an order awarding the temporary use and possession of property and restraining one or both of the parties from transferring or disposing of property except under certain circumstances; and (5) other relief as the court deems necessary for the protection of a family or household member.¹² The court which has jurisdiction to hear these proceedings is the same court that hears dissolution matters.¹³

The motivation behind passing the Domestic Abuse Act grew out of the experience battered women have had in attempting to obtain protection from their abusive partners. While the desire for protection and an end to the violence may be strong, many women who are married to abusive spouses are not prepared to proceed with a dissolution action. The only method available for obtaining a civil restraining order prior to the passage of the Domestic Abuse Act was a dissolution action. Moreover, many victims are not married to the abusers and therefore a dissolution proceeding is not even an option for obtaining a civil restraining order. Finally, many women are distrustful of the criminal process. While they desire an end to the violence, many times they do not want to see their partners sentenced to jail. With these considerations in mind, the Minnesota legislature created a civil remedy which would provide protection to the victim while allowing the court the flexibility to order treatment for the abuser, child support, visitation and other relief. The Minnesota Domestic Abuse Act by its very language provides a remedy that supplements other civil and criminal remedies.¹⁴

The advantage of obtaining an OFP pursuant to the Minnesota Domestic Abuse Act is that a violation of the civil order is defined as a misdemeanor.¹⁵ Moreover, the Act provides that if there is probable cause to believe that a person has violated an OFP which restrains or excludes that person, the police officer *shall* arrest and take that person into custody.¹⁶ Therefore, vic-

12. Minn. Stat. § 518B.01(6) (1986 & Supp. 1987).

13. Minn. Stat. § 518B.01(3) (1986).

14. The victim still retains the opportunity of pursuing criminal charges through the prosecuting attorney. The possibility of the victim obtaining a restraining order through a dissolution proceeding remains.

15. Minn. Stat. § 518B.01(14) (1986).

16. Minn. Stat. § 518B.01(14) (1986 & Supp. 1987).

tims have the added protection of a provision which calls for the mandatory arrest of violators of civil OFPs.

Purpose of the Study

This study is the first evaluation of the effectiveness of the Order for Protection (OFP) in Minnesota. Obtaining an OFP is defined for the purposes of this study as both the process of using the court system to apply for and receive an order as well as the response and action of the police and courts in enforcing that order. It is not known whether or not this process is an effective means of reducing violence.

The purpose of the study is to look at the legal system's response to an OFP by recording the level of continuing violence after the issuance of the OFP and looking at variables that might affect enforcement such as race. The study is intended to be an initial exploration into the effectiveness of OFPs as a means of reducing violence. A better understanding of the methodology needed to study the problem of domestic violence and the development of issues for further research resulted.

Definition of the Research Population

For purposes of the study, a total research population of 898 cases was defined. To arrive at this subject population, a list of all domestic abuse files was compiled for two counties in Minnesota: Hennepin County, an urban county, and Beltrami County, a rural county, for the year 1984.¹⁷ Hennepin County had approximately 1900 domestic abuse files that year; Beltrami County had 55. All files that had the same petitioner and respondent in more than one file were analyzed as one case with the later action labeled a "subsequent action." Those individuals in Hennepin County who resided within areas in which a special police intervention project existed¹⁸ were discarded from the research population. This left 848 subjects in Hennepin County and 50 subjects in Beltrami

17. Hennepin and Beltrami counties were chosen so that the study would sample both urban and rural counties. Hennepin County is located in the east central part of Minnesota and includes the city of Minneapolis. Beltrami County is a rural county located in the northern portion of Minnesota.

18. The Minneapolis Intervention Project provides advocates to victims of domestic assault in the city of Minneapolis. At the time this study was conducted, the advocates were available to aid victims in only certain precincts of the city. Intervention Project residents were excluded from the research population because they receive unique treatment not representative of the treatment afforded the general population.

County. Finally, problems with gathering police data further limited the subject population.

There were 46 separate municipalities with subjects in the study. In Minneapolis, the most urban municipality in Hennepin County, there were approximately 450 residents in the sample. In other municipalities, there could be as few as one resident.

Most of the police departments in Hennepin County claimed that the Minnesota Government Data Practices Act¹⁹ forbade release or review of the necessary information. For each of these police departments a records supervisor or police chief had to be contacted. Typically, each police department would then require approval from the city attorney regarding the Government Data Practices Act as it affected that municipality's police records. After lengthy discussions or correspondence with the city attorney, permission would be granted for the researcher to review the records.

The record keeping practices of each police department also caused methodological problems. Except for arrest records, no uniform statewide or even countywide system of record keeping existed. Each municipality within Hennepin County kept separate records. There was no centrally located index or file system for police records for all Hennepin County residents. Some municipalities had police records that were computerized, but not all used the same computer system. Some used an index card file system. There was no standard form used by the various police departments, thus the form and information contained in the incident reports varied. Almost all Beltrami County Orders for Protection are enforced by the sheriff, and all police records are centrally filed in one Law Enforcement Center.

The data sought by this study should have been readily available. According to a Minnesota statute, police are required to make a written report on all alleged incidents of domestic abuse whether or not an arrest is made.²⁰ Another Minnesota statute requires law enforcement agencies to collect certain data on battered women who have been threatened or assaulted by their partners. The statute requires that the data be collected and transmitted to the Department of Corrections "at such times as the commissioner shall, by rule, require."²¹ The Minnesota Department of Corrections provides a form on which this data is to be collected. In the entire research project, this form was seen twice, and in both in-

19. Minn. Stat. § 13.01-.90 (1986 & Supp. 1987).

20. Minn. Stat. § 629.341(4) (1986).

21. Minn. Stat. § 611A.36(2) (1986).

stances, it was not correctly filled out. No file in any police department in Hennepin County showed use of the form. For example, when questioned about this form the Minneapolis police denied it was required, stated they were told that they did not need to fill it out, or speculated that some other unit of the police department had to complete the form.

Because of the difficulty in gaining access to records and because of the *de minimus* effect, a determination was made to exclude from the subject population those individuals who resided in any community within Hennepin County in which there were five or less individuals in the police records. This eliminated 33 municipalities, but only eliminated approximately 9% of the possible subjects.

Thus, a total of 898 subjects were studied. The subjects resided within the following thirteen communities of Hennepin County: Minneapolis, New Hope, Brooklyn Park, Richfield, Maple Grove, Bloomington, Wayzata, Robbinsdale, Mound, Champlin, Eden Prairie, St. Louis Park, and Edina. Since Beltrami County had centrally located records, all communities with a petitioner-victim named in a police report within Beltrami County were included.

Methodology

Once the subject population was determined, data was collected from the family court files. The information recorded included all available data that might have a relationship to subsequent violence. The data included city and county of residence, relationship between the parties, and the type of order issued.²² Subsequent family court involvement was also recorded — whether the parties returned to court to modify the order or on a motion for contempt, or whether the petitioner returned to obtain an OFP where she had first only received the *ex parte* temporary order.

Other data that might have affected the outcome was unavailable. The effect of children on the occurrence of subsequent violence could not be analyzed because the inclusion or absence of children from the order was not ascertainable from the records. While the forms used by the Hennepin County Family Court dif-

22. The Domestic Abuse Act, at the time of this study, allowed a restraining order to be issued against "any party" in addition to the *ex parte* order previously described. Therefore, there were basically three types of orders issued: (1) against the respondent; (2) mutual, i.e. against both parties; and (3) an *ex parte* order. Minn. Stat. § 518B.01 (1986 & Supp. 1987).

ferred for an order "with children" and for an order "without children," either form could have been used. Children may have been in the family, but not have been covered directly by the order. This information was too unreliable to be analyzed.

One of the variables this study was to have analyzed was the effect of race on enforcement of OFPs. Court records, however, did not include race. Therefore, this variable could not be gathered from the family court records.

After review of the family court records, a review was made of police records. Police records were difficult to obtain and difficult to review. A survey of the subject population was taken concurrent with the review of police records. The survey was prepared and mailed to the part of the subject population that resided within Hennepin County. The eight page survey was designed to ascertain both objective and subjective information concerning OFPs.²³

After the police records were reviewed, the criminal court records were analyzed. A search was made for each respondent who, as a result of a violation of an OFP, had been either arrested or issued a summons, in those instances where neither an arrest occurred nor a summons issued, or whose victim had been referred to the city or county attorney for preparation of a complaint. The original charge, final outcome, plea bargain if any, and the sentence received were all recorded.

Reported Incidents of Violence after the Order for Protection was Issued

In order to compile information about the research population after the issuance of the Order for Protection (OFP), Beltrami County and Hennepin County police reports were examined. An analysis of the data revealed no statistically significant difference between the counties on any measured variable.

Of the 898 participants in the study, 198 victim-petitioners were mentioned in a police report.²⁴ This represented 22% of the total subject population.

For each police department or precinct which was notified of an OFP or in which a study subject resided, a master list of victims named in police reports was reviewed for an OFP petitioner's name for the period that the OFP was in effect.²⁵ For individuals, who had *ex parte* temporary orders only, the time period studied

23. See Appendix 1.

24. 848 subjects in Hennepin County and 50 subjects in Beltrami County.

25. A master list was compiled by each police department of all persons who

was defined as the one year period after the issuance of the order. If the victim-petitioner's name appeared on the master list, the reports were reviewed.

The police report review was not limited by the police department's characterization of the incident reported. A preliminary review of the master list, which coded the alleged offense compared with the incident report itself, led to a decision not to pre-screen police reports based on the offense code used by the police. Reports were found to have been coded with a type of offense that did not immediately appear to be a violation of an OFP. For example, approximately 16% of the offenses examined in Hennepin County were described by the police as being property crimes, thefts, burglaries, damage to property and the like. A review of the report itself often revealed, however, that the suspect in the crime was the OFP respondent and the property in question had been awarded to the petitioner-victim as part of the OFP. Therefore, the police reports analyzed were those incident reports where the petitioner's name appeared as complainant, as victim, or was otherwise named. If the suspect in the incident report was the OFP respondent, and the incident in any way pertained to the OFP, the report was counted as a violation of the OFP for the purposes of this study.

Of the 198 victim-petitioners who were named in any police report, the majority, 63%, had only one police report in the target year. Twenty percent had two reports, 12% had three reports and only 5% had four or more reports in the target year. The mean number of reports for Hennepin County residents with any reports was 1.6 while the mean for Beltrami was 2.1, a difference that was not statistically significant.

For all victim-petitioners named in a police report, the study further analyzed the first incident report. The incident was characterized based upon the researcher's analysis of the police narrative. The nature of the incident was divided into nine possible categories: (1) physical assault with a weapon; (2) physical assault without a weapon; (3) threats of violence; (4) harassment by telephone; (5) being followed by the respondent; (6) harassment by the respondent's friends or family; (7) violation of the custody or visitation provisions of the order; (8) respondent entering petitioner's home without being asked and refusing to leave; or (9) other. The category "other" included all the property related offenses such as damage to property and burglary.

had contact with the police. This list included victims, complainants and alleged offenders.

No statistically significant difference was found between the counties regarding the nature of the incident. The most frequently occurring incidents were physical assaults without a weapon, comprising 40% of all police reports. While not statistically significant, it is interesting that for Beltrami County, 63% of the reported incidents were physical assaults without a weapon. Nine percent of all incidents were assaults with a weapon. Threats, including those assaults which were verbal but not physical, comprised 15% of the incidents. The category of "other" made up 23% of the total. Telephone harassment made up 8%.

Each police report included the crime that the police determined to have been committed. Police reports designated the crime either by a word or a reference to the ordinance or statute that had been violated. The officer at the scene of the crime determined these categories. The violations that the police labeled fell into the following categories:

assault, simple or fifth degree ²⁶	33%
"domestic" ²⁷	21%
theft, ²⁸ burglary, ²⁹ larceny ³⁰	10%
violation of the OFP ³¹	9%
assault, felony or third degree ³²	8%
harassment ³³	7%
property damage ³⁴	6%
terroristic threats ³⁵	4%
disorderly conduct ³⁶	2%

26. Minn. Stat. § 609.224 (1986 & Supp. 1987).

27. There is no specific ordinance or statute that is defined as a "domestic" or "domestic assault". These assaults are charged as a simple or fifth degree assault under Minn. Stat. § 609.224 (1986 & Supp. 1987).

28. Minn. Stat. § 609.52 (1986 & Supp. 1987).

29. Minn. Stat. § 609.582 (1986).

30. Minn. Stat. § 609.52 (1986 & Supp. 1987).

31. Domestic Abuse Act, Minn. Stat. § 518B.01(14) (1986 & Supp. 1987).

32. Minn. Stat. § 609.223 (1986).

33. At the time of this study there was no separate statutory crime entitled harassment. There was, however, a statute which stated that "[a] person who enters upon another's property and surreptitiously gazes, stares or peeps in the window of a house or place of dwelling of another with intent to intrude upon or interfere with the privacy of a member of the household is guilty of a misdemeanor." Minn. Stat. § 609.746(1) (1986 & Supp. 1987). The Minnesota Legislature, subsequent to the time period under consideration in this study, amended the trespass statute to include returning to the property of another "with the intent to harass, abuse or threaten." Minn. Stat. § 609.605(1) & (13) (1986 & Supp. 1987).

34. Minn. Stat. § 609.595 (1986 & Supp. 1987).

35. Minn. Stat. § 609.713 (1986).

36. Minn. Stat. § 609.72 (1986).

The Legal System's Response to an Order for Protection Violation

I. Police

For each police report, five possible police actions were determined to exist: (1) arrest of suspect, (2) citation, (3) separation of the parties, (4) removal of the offender (5) talk (mediate, refer to another agency, or take no action). There was no statistically significant difference between the counties across these categories.

One of the most significant findings of this study is that arrests were made in only 22% of the cases. In 60% of the cases the police response was no action, defined here as those situations where police merely made a report, where police "mediated" the situation and where a passive referral to another agency was made. In approximately 8% of the cases, the police removed the offender or otherwise separated the parties.

Minnesota's Domestic Abuse Act, *requires* the police to arrest without a warrant and take into custody any person whom the officer has probable cause to believe has violated an OFP.³⁷ This statute requiring arrests in the cases of violations of OFPs had been in effect since 1983. Another statute allows probable cause arrests for domestic violence when a victim has been assaulted, threatened with a weapon, or placed in fear of immediate bodily harm within the four hours preceding police response. This broader statute is exceptional in that it allows police arrest for a misdemeanor not committed in the presence of the police officer, but does not require the arrest of the domestic assault perpetrator. This study, however, looked at only violations of OFPs. The mandatory arrest provision of the Domestic Abuse Act was expressly applicable to OFP violators.

Minneapolis Police Officer Lt. Tom Hanson, head of the Domestic Assault Unit at the time of this study, stated in an interview that the Minneapolis police department had a mandatory arrest policy for all domestic assaults. He stated this policy had not been in effect at the time of this study.³⁸ After the interview, other sources indicated that this policy may have been officially in effect as early as February 1984 and certainly by July 1985.³⁹

Regardless of the date when the police department adopted its mandatory arrest policy, the incidents studied here were primarily incidents which occurred *after* the issuance of an OFP.

37. Minn. Stat. § 518B.01(14)(b) (1986 & Supp. 1987).

38. Interview of Minneapolis Police Officer Lt. Tom Hanson by researcher Katie Trotzky (September 14, 1987).

39. See Appendix 2.

Mandatory arrests for OFP violations were required by statute⁴⁰ and should have been made. This study has found that, despite statutes that would allow, and in some cases require arrest, and despite a stated Minneapolis Police Department policy of mandatory arrests, very few incidents of domestic violence resulted in arrests.

The dispositions of the cases by the police departments were also analyzed. Not all of the police departments use the same code or description for reporting the disposition of a case. Pursuant to the Uniform Crime Reporting Program,⁴¹ four general categories exist: (1) pending, (2) case closed unfounded, (3) case closed exceptionally cleared, and (4) case closed by arrest. In Minneapolis, five choices existed for a police report disposition: (1) continued open, (2) continued pending further leads, (3) closed exceptionally cleared (lack of prosecution), (4) closed arrest, and (5) closed unfounded.⁴² Minneapolis used the "continued pending further information leads" category when other departments would close the case. This is important given Minneapolis' large size in the overall sample, since almost 20% of the Minneapolis cases were "continued pending further information leads."⁴³ Overall, 37% of the cases were "closed exceptionally cleared," the category often used when the victim's lack of desire to proceed results in no complaint being issued. Seventy-one percent of the Beltrami County cases fell into this category. Less than 2% of cases were still listed as "continued open" two to three years after the police report.

All information that might have affected the disposition of a case was gathered from the police records themselves. These records did not necessarily indicate whether or not the officer on the scene knew of the OFP. Some police departments stated that it was routine for officers to ask the victim whether she had an OFP. If so, the narrative in the officer's report would not need to indicate that the police officer knew the order existed. Sometimes the police report indicated the officer gave the victim information regarding how to obtain an OFP when the victim already had one. Knowledge of an OFPs existence would be valuable to the officer

40. Minnesota Domestic Abuse Act Minn. Stat. § 518B.01(14) (1986 & Supp. 1987).

41. The Uniform Crime Reporting Program provides a nation-wide view of crime based on the submission of statistics by law enforcement agencies throughout the country. The UCR Program is administered by the Federal Bureau of Investigation. U.S. Dept. of Justice, Federal Bureau of Investigation, Uniform Crime Reporting Handbook 41.44 (1984).

42. Conversation with Douglas Nicks, Crime Analysis Unit, Minneapolis Police Department (April 12, 1988).

43. Minneapolis issued the greatest number of OFPs for study.

on the scene, since a violation of the order would be cause for mandatory arrest.

The effect of the victim's desire to proceed with prosecution also could not be analyzed because the reports did not reliably contain the data. Some of the police report narratives specifically mentioned that the victim did not wish to cooperate with prosecution. Most did not specify what the victim preferred. The victim is often portrayed in anecdotal accounts as wanting neither the arrest nor the prosecution of the perpetrator. No evidence of the prevalence of such victim attitudes beyond officers' impressions was found.

II. Criminal Court

Very few cases resulted in criminal court action. The protocol this study used was to trace the same incident identified in the review of the police reports; that is, the first of multiple police reports was followed from police response through criminal court action.

There were 68 individuals in the Hennepin County sample where the police disposition was an arrest, the issuance of a ticket or referral to the city attorney's office to pursue prosecution. Half (34) of the OFP petitioners were named in misdemeanor criminal court records that were readily found and that matched the offense described in the original police report.

In Hennepin County, only two defendants had felony records for any offense arising from violations of an OFP. One of these defendants had the felony charge arising from the first police incident subsequent to the issuance of an OFP. The defendant pleaded guilty to third degree assault arising from an incident in which the defendant attempted to choke the victim and broke her arm. He was sentenced to three years probation. The conditions of probation included chemical dependency treatment. The other felony defendant had a misdemeanor charge from the first violation of the OFP and later had a felony conviction for a more serious assault. The felony charge was attempted murder. The defendant plea bargained to attempted manslaughter and was sentenced to 43 months in prison.

Misdemeanor charges against OFP respondents were far more common. There were six categories of misdemeanor charges: (1) violation of the OFP;⁴⁴ (2) assault in the fifth degree (also charged as 'domestic assault');⁴⁵ (3) damage to property;⁴⁶ (4) tres-

44. Minn. Stat. § 518B.01(14)(a) (1986 & Supp. 1987).

45. Minn. Stat. § 609.224 (1986 & Supp. 1987).

pass;⁴⁷ (5) disorderly conduct;⁴⁸ and (6) making an obscene phone call.⁴⁹

The fifth degree assault charge, used in 53 percent of the cases, was most prevalent. In Hennepin County there were 18 cases of fifth degree assault charges arising from violations of an OFP. Five of these cases were dismissed by the city attorney within a few days of the charges. Of the remaining cases, eight defendants pleaded guilty and five pleaded not guilty. In all cases where the defendant entered a plea of not guilty, the charges were dismissed by the city attorney. In the eight cases where a guilty plea was entered, five were continued for dismissal within one year provided no same or similar offenses occurred. Of the three remaining guilty pleas, the most serious sentence was 90 days, which was stayed provided domestic abuse and chemical dependency treatment were completed.

The outcomes for a charge of violation of the OFP were similar. All of the four defendants who pleaded not guilty had the charges dismissed before trial. Of the three defendants who pleaded guilty, the most serious sentence was 50 days, which was stayed provided appropriate treatment was completed and no same or similar charges were brought within one year.

Similar sentences resulted from the other misdemeanor charges such as damage to property, trespass, disorderly conduct and making an obscene phone call. A guilty plea usually resulted in a dismissal in one year provided no same or similar offenses occurred. A plea of not guilty usually resulted in the city attorney dismissing the charges in the months after the arraignment but before trial. As far as this study was able to detect, no defendant charged with a misdemeanor was ordered to serve time or pay a fine. The only time served was for a violation of the terms of a stay.

Cases in Beltrami County produced similar results. Because the cases were few, all criminal court records were analyzed. Nevertheless, the results were similar to the results in Hennepin County. Five individuals had misdemeanor level criminal court records. One of these had four charges for acts resulting from a violation of the OFP. Of the eight charges reviewed for these five individuals, five were citations for violation of an OFP, one charge was for disorderly conduct, one for "domestic abuse" and one for assault in the fifth degree. The most serious consequence was ap-

46. Minn. Stat. § 609.595 (1986 & Supp. 1987).

47. Minn. Stat. § 609.605 (1986 & Supp. 1987).

48. Minn. Stat. § 609.72 (1986).

49. Minn. Stat. § 609.79 (1986 & Supp. 1987).

plied to the defendant who appeared on his fourth related offense within the year. He pleaded guilty and received a sentence of 20 days and a fine of \$100. Of the first time offenders, three had charges dismissed for various reasons, while one pleaded guilty and received a sentence of five days with credit for time served.

III. Family Court

Most of the petitioners did not return to family court. In almost 95% of the cases, there was no further family court action beyond the issuance of the order. This was true for both counties.

Of the 5% that did have subsequent family court involvement, there were three possibilities for subsequent court action: (1) the order could be dismissed, (2) a contempt hearing could be held,⁵⁰ or (3) an OFP could be obtained where only an *ex parte* temporary order had been obtained initially. If a motion and affidavit alleging contempt of court due to violation of an OFP were brought, four outcomes were possible: (1) the motion could be granted, (2) the motion could be denied, (3) the petitioner could move to dismiss, or (4) the original order could be modified by the court. Only 3.7% of the subjects returned for a contempt hearing. Of this group, only 16% received an order finding the respondent in contempt. That is, only .6% of all the subjects returning to family court ever received a contempt order against the respondent. It was twice as likely for the court to modify the original order (32% of the contempt hearing group, 1.2% of the total subjects) rather than to find the respondent in contempt.

Determination of the Extent of Non-reported Violence after the Order for Protection

The data requested from the subject petitioners included information comparable to that in police records as well as additional subjective information. The survey asked whether or not the police were called for an act of violence in violation of the OFP. The survey also asked about the petitioner's degree of subjective satisfaction with the police and with the court response to the OFP violation.

The survey attempted to receive supplemental information. It recognized that such a survey would be answered by only a self-

50. The Domestic Abuse Act allows a petitioner or a police officer to file an affidavit alleging a violation of an OFP. Upon the filing of the affidavit, the court may issue an order to the respondent requiring him or her to appear and show cause why he or she should not be found in contempt of court and punished therefor. Domestic Abuse Act, Minn. Stat. § 518B.01(14)(d) (1986 & Supp. 1987).

selected few. The survey was mailed to approximately 1900 individuals concerning an incident that occurred up to three years before. The only means of contact was through the address found within the court file. Much of the mail was returned as undeliverable. The response rate was approximately 9% overall, but 19% of the study subjects returned the survey.⁵¹

Of the 162 responses returned, 90 individuals stated that they had experienced subsequent violence, and 72 reported no subsequent violence. Individuals answering the survey, who reported post-OFP violence, reported more incidents of violence than detected by the police reports. Fifty-three percent of the people surveyed stated they had experienced four or more acts of violence by the OFP respondent since they obtained the OFP.

Of those who experienced subsequent violence, 65% said they had notified the police; 35% said they had not notified the police. Most of the survey participants, who said they notified the police, also said the police responded to the phone call. Yet, 12% claimed that the police did not respond to their call.

When police reports were compared to this survey result, there were two interesting results. First, as one would expect, there were no police reports for those individuals who claimed to have called the police where the police did not respond. Second, some individuals, who said the police responded, did not have a corresponding police report of the incident. Therefore, there appear to be cases where no incident report is filed despite a police response. This lack of reporting is confirmed by the Minneapolis Police Department itself. The Minneapolis Police Department admitted that for 1986, of 24,948 "domestic" assault calls, police filed only 3,645 reports.⁵²

The survey participants were given the same categories as the research to describe the nature of the assault. While more than one category was available to the survey participant, the researcher assigned one description when a multiple answer was made by choosing to assign the most violent category. Thirty-three percent of the survey participants experienced an incident involving physical assaults without a weapon; the same percentage experienced threats of violence. Eighteen percent experienced

51. The survey was sent to all persons who had received an OFP during the requisite time period. The study, as indicated previously, eliminated those persons who resided in an area which had a functioning intervention project. *See supra* p. 87. Thus, the overall return rate was 9%, the return rate for those included in the study was 19%.

52. *Police Called Slacking on "Domestic Calls,"* Minneapolis Star & Trib., Aug. 1, 1987 at 1B, col. 1.

harassment by telephone. Nine percent suffered an incident in which the respondent-partner entered the home and refused to leave. Three percent experienced violations of the custody or visitation provisions of the order. Just over 1% experienced a physical assault with a weapon. The other 3% were evenly divided between the categories of "being followed by the partner" and "other-miscellaneous."

The survey response and the police incident report data are in agreement as to the pattern of police action. Survey participants report 54% of the incidents result in talk or mediation by the police, while the police incident report data showed 60%. Similarly, the survey participants report the suspect was arrested or jailed about 20% of the time while the police reports showed this outcome 22% of the time. Survey participants also report the police did nothing in response to their calls in 16% of their cases. While the police would appear at the scene, they took no other action.

With regard to OFP petitioners' subjective views of police enforcement, participants responded to two inquiries: one concerning their perception of police attitudes and another concerning their satisfaction with the police response. Twenty-two percent believed the police to be helpful and understanding; 45% believed the police did their job and no more; 22% believed the police to be neither helpful nor understanding; and 10% felt the police attitude toward them was rude and discourteous. Thus, 77% of the individuals answering this question did not think the police were helpful and understanding. Of the subjects who answered the question on the survey, 33% were very dissatisfied with the police response, 25% were somewhat dissatisfied, 23% were very satisfied and 19% were somewhat satisfied.

Interviews with Legal Personnel

Interviews were held both formally and informally with personnel of the court and police systems. Structured interviews were held with key officials in the Hennepin County legal system. During the process of data collection, the views and comments of police officers were noted informally. The informal conversations occurred frequently as the researcher was gathering data from police reports. The following discussion includes the impressions of the researcher of these off-the-cuff comments as well as the more formal answers of interviewed police department personnel.

Police officers had little or no statistical evidence for the positions they took, but relied on their personal experience. Many of-

ficers related anecdotes supporting stereotypes of typical OFP violations that in fact were the most infrequently occurring situations in the data analyzed for this study. For example, while complaining about the new mandatory arrest policy for domestic assaults of the Minneapolis Police Department, one sergeant repeatedly gave examples of situations that from his perspective should not warrant arrest. He referred to assaults between non-intimate roommates, siblings, and between parents and their adult children. Yet the data collected in this study indicate that those situations are not frequent, making up less than 7% of the sample. Similarly, police believed that most victims make multiple calls to the police for enforcement of the OFP. Yet this study indicated that 63% of the people with any subsequent police involvement had only one recorded report and only 4% had four or more police reports. Thus, based upon an analysis of police reports, in the vast majority of cases the police were reporting only one initial incident of a violation of an OFP and very few repeated reports.⁵³

Relying upon anecdotes, the police seemed to believe that most victims of domestic violence will refuse to cooperate with the prosecution. Police in Minneapolis saw themselves as caught between the department's mandatory arrest policy and the inability of the jail, city attorney and court to handle the great volume of domestic violence cases, which in their view, would not result in convictions due to victim refusal to cooperate. Another complaint concerning the mandatory arrest policy focused on the decreased police discretion any mandatory policy requires. Police officers expressed resentment about the loss of discretion.

The police did not distinguish between enforcing an OFP from enforcing the assault statute in a domestic situation. Even though the law provides for mandatory arrest in cases of OFP violations and discretion in arresting for other types of assault, they believed it was appropriate to treat domestic assault the same whether or not there was an existing OFP.

Although the police asserted that they enforce all criminal statutes equally, they seemed to place a hierarchical value on enforcing different types of crime. They perceived a felony such as robbery as a more rewarding arrest and domestic violence as less satisfying. No officer would directly admit to such a view. They would mention that other cops held such views. The higher or lower value would be mentioned in choosing which offense to

53. Since the police themselves admit that only a small percentage of "domestic calls" result in filed reports, this feeling by police officers is difficult to substantiate or refute.

charge so that a misdemeanor property crime was seen as higher or better than a violation of an OFP, even though all misdemeanors have the same penalties.

Hennepin County District Court Judge Mary Davidson Winter was interviewed for the family court's perspective.⁵⁴ Judge Winter believed that the success or failure of OFP enforcement hinged upon the drafting of the order itself. She believed it was important to narrowly draft the orders so that the police and courts would know what to enforce. Judge Winter related difficulties of enforcement to the broad scope of the domestic abuse statute itself. Her view was that property disputes belonged in conciliation court and not in family court on contempt motions.⁵⁵

Judge Winter believed that contempt hearings within family court presented uncertain issues. She believed that the movants in most contempt hearings are ambivalent about the relief they are seeking. In Judge Winter's view, the movant often does not want the respondent in jail; rather, she wants the circumstances to improve. With this perspective, Judge Winter was not surprised by this study's findings concerning the small number of contempt orders and the large number of modifications of the original order.

Judge Winter sees advantages and disadvantages to the use of contempt as a means of enforcing orders for protection. The primary advantage is the influence upon the respondent's behavior of his knowledge that contempt and confinement exist as a possibility. The disadvantage of this use of contempt is the difficulty of fashioning the terms of confinement so that the respondent has in his control the means of purging the contempt.⁵⁶

Larry Warren, head of the criminal division of the Minneapolis City Attorney's Office, was interviewed for insight into the

54. Interview of the Honorable Mary Winter, Judge of the Hennepin County Family Court, by researcher Katie Trotzky (September 16, 1987).

55. The Domestic Abuse Act provides for an "award [of] temporary use and possession of property and restrain one or both parties from transferring, encumbering, concealing or disposing of property. . . ." Minn. Stat. § 518B.01(6)(g) (1986).

56. Contempt proceedings can be either criminal or civil. The purpose of criminal contempt is to vindicate the authority of the court and punish the contemnor for past behavior. The purpose of civil contempt is to obtain compliance with the court's order, not punishment. *In Re Marriage of Nelson*, 408 N.W.2d 618 (Minn. Ct. App. 1987). Therefore, civil contempt orders must be fashioned so that the contemnor has the ability to effect his release from confinement by compliance or by his agreement to comply. *Hopp v. Hopp*, 279 Minn. 170, 156 N.W.2d 212 (1968). Otherwise, the contempt order may be viewed as criminal contempt invoking procedural rights such as the right to a jury trial and state prosecution. *Peterson v. Peterson*, 278 Minn. 275, 153 N.W.2d 825 (1967). Such procedural requirements would make the use of contempt as a means of enforcement of OFPs extremely difficult.

prosecutor's view of domestic violence and enforcement.⁵⁷ Mr. Warren believed that the city attorney's role was to prosecute those cases that could be won. He did not see the role as a political or sociological one. The policy of his office was to treat domestic assaults as any other fifth degree assault with one difference. The difference is a greater degree of support given to the victim of a domestic assault to encourage her to assist the prosecution.

While few records are kept to distinguish OFP victims from victims of assault, Mr. Warren kept statistics for a one month period (August 1987) for all fifth degree assaults presented to his office for prosecution — both domestic assaults and other assaults. Only one fourth "came to anything," that is, resulted in a conviction. According to Mr. Warren, however, no difference in the conviction rate existed between domestic and non-domestic fifth degree assaults. Few charges of violation of an OFP itself were brought. Few records distinguish a domestic assault by either the existence of or the absence of the OFP.

Regarding the mandatory arrest policy, Mr. Warren made an analogy to a funnel. There are more cases being directed into the system, but not more prosecutors to handle the caseload. In general, Mr. Warren believes the Minneapolis City Attorney's Office does a good job given the resources available.

Variables in Enforcement

A number of enforcement patterns were studied. All available data from the court records and from the police records were collected and analyzed to see whether certain factors bore a statistically significant relationship to the occurrence of subsequent violence.

The information from the family court order itself was analyzed. One factor studied was the type of order obtained — mutual or one party restraining order. Differences between individuals who obtained the OFP and those who applied for and received an *ex parte* temporary OFP were also analyzed. The judge or referee issuing the order was another factor reviewed. The relationship between the parties, county of residence, municipality of residence (for Hennepin County residents) were also studied. None of the above factors bore a statistically significant relationship to subsequent violence.

57. Interview of Larry Warren, head of the criminal division of the Minneapolis City Attorney's Office, by researcher Katie Trotzky (September 16, 1987).

Statistical Findings

- 22% of all persons who had obtained an OFP during the time period under study were named in subsequent police reports of domestic violence.
- 63% of those persons named in subsequent police reports for OFP violations had only one such report in the year following the issuance of the OFP.
- 22% of police reports showed arrests of OFP respondents; 60% showed no police action (only talk, mediation, or a referral).
- 70 (about 1%) files resulted in criminal court action.
- In Hennepin County, only half of those with possible criminal court action had criminal court records that could be readily found and reviewed.
- In every misdemeanor case, where a not guilty plea was entered, the case was dismissed.
- 95% had no further family court involvement; .6% received an order finding the respondent in contempt.

For most individuals, an OFP is an effective means of reducing domestic abuse. For at least 22% of the individuals who had gone to court, however, violence continued. These individuals are confronted with a legal system that is in part responsive to the petitioner-complainant, but is not effective in following-through so that the abuser will know that repeated violence will not be tolerated. We have a police system that does respond to a call on a "domestic," but does not always arrest the violent perpetrator. From the data available, it appears that the criminal court does not take the violation of an OFP seriously.

Twenty-two percent of people who had used the court system to obtain at least the *ex parte* temporary OFP had a police report describing a subsequent act of violence against them in the year following the issuance of the order. The police reports are only one measure of the level of violence that occurs after the issuance of an OFP. This measure does not include individuals who may have suffered subsequent violence, but did not call the police. Thirty-five percent of the survey respondents stated that they had experienced such subsequent violence but did not call the police. The 22% figure for subsequent violence also does not include those individuals who had suffered violence and called the police, but for whom the police never filed a report. According to 1986 Minneapolis Police Department figures, of the 24,948 domestic calls to the Minneapolis Police Department, police filed only 3,645 reports-

slightly less than 15%.⁵⁸ Nevertheless, the 22% figure is a base line for all subsequent studies since there are no other known studies measuring violations of orders for protection in Minnesota.

A mean police report rate of one to two incidents of violence in the year following the OFP is an important finding. The actual number of violent incidents in violation of an Order may be higher than police records indicate since our survey participants reported a higher number of such incidents.

The low arrest rate, 22% overall, is noteworthy. Despite legislation and police department policies favoring mandatory arrests, arrests did not happen. In 60% of the cases, the police response was talk: mediating, referral to another agency, or merely obtaining the information to fill out a report.⁵⁹

The very low rate of cases in the criminal court system indicates inadequacy in the handling of domestic violence cases. In Hennepin County, only half of the victims with cases, where arrests or criminal complaints were made, could even be found in the record keeping system. The consequences to an offender were minimal. In summary, domestic violence is a crime that can be committed with only a minimal threat of consequences.

Finally, civil contempt within the family court system was not being used as an enforcement option. Ninety-five percent of the study subjects had no subsequent family court involvement. This study found only 3.7% of all subjects returned to family court on a contempt motion and only 16% of those obtained an order finding the respondent in contempt.

A disturbing trend was discovered — the progressive disappearance of cases proceeding from obtaining an OFP to criminal court conviction for violation of that order. A total of 898 subjects was reduced to 198 with police reports to 44 perpetrator arrests (a total of 73 arrests and referrals for preparation of a complaint) to 39 with criminal court records. This suggests that cases of domestic violence are vanishing from the criminal justice system after the initial OFP is obtained. Such disappearance calls into question the effectiveness of enforcement of these orders and the ability of the system to protect victims.

Recommendations

Several recommendations are made as a result of this study.

58. See Minneapolis Star & Trib., *supra* note 52, at 1B.

59. The Minneapolis Police Department's own statistics from 1986 indicate that of 24,948 domestic calls in 1986, only 3,645 police reports were filed and there were only 1,389 arrests. *Id.*

1. Legislation or rules should be enacted to provide penalties for government non-compliance with the statutes and rules requiring the collection of data pertaining to battered women. Invaluable to the study of enforcement of OFPs, these statutes should have a penalty provision for non-compliance.

2. Police practice should be changed so that the forms filled out by the police officer at the scene are easy to use and have check-offs in addition to lengthy narratives to be completed. The St. Paul, Minnesota police use a separate domestic abuse incident report form which includes all the data required by the Minnesota Department of Corrections and also includes such useful information as whether the abuser was under the influence of alcohol or other drugs.

3. Police must make themselves aware of the existence of the OFP. The courts forward a copy of the OFP to the police departments, but officers on the scene do not seem to know whether an order exists. If the second recommendation concerning a domestic violence incident form is adopted, the form should include the inquiry and response to the possible existence of the OFP.

4. Police training in domestic violence must be expanded. Police must be informed of the statutes concerning OFPs, the probable cause arrest statute and police departments' own policies on mandatory arrests in domestic assault cases. For example, in Minnesota, police should be informed of recent legislative changes to the domestic abuse statute that make clear that the "respondent is forbidden to enter or stay at the petitioner's residence, even if invited to do so . . . [and] in no event is the order voided" by the admittance of the respondent into dwelling from which the respondent is excluded.⁶⁰

Police must be reminded that state law *requires* an arrest when an OFP is violated. Police must modify their demeanor so that the next study does not find a 77% rate of victims who believe the police are neither helpful nor understanding.

5. More violations must be pursued through the criminal court. Prosecutors must begin to charge these offenses and pursue prosecution more vigorously. The criminal justice system must look very carefully at the high dismissal rates and the extremely lenient sentencing patterns imposed.

6. Police, prosecutors, and criminal and family court judges must coordinate their procedures and should establish an ongoing task force for discussion and coordination. For example, when police begin enforcing the mandatory arrest policy, the prosecuting attor-

60. Minn. Stat. § 518B.01(2) (1986 & Supp. 1987).

ney's office should be consulted. If new legislation clarifies that the OFP is not voided by an invitation into the victim's home, family court, police, and criminal court personnel must be prepared for the consequences.

Conclusion

Although this study looked at files and enforcement activities from 1984, there is little reason to believe that the criminal justice system's response to violations of OFPs has changed substantially.⁶¹ Data collection is difficult and the reporting mechanism does not effectively respond to non-compliance. Police officers still are not fully informed as to the circumstances under which an arrest is not only proper, but mandatory. While the Minneapolis Police Department has made a renewed effort to comply with the mandates of its own arrest policy,⁶² it will be difficult to determine if increased arrests will result in more effective prosecutions and court response. It appears that assaulting one's spouse or partner continues to be a crime that is committed with little consequence. While the notion that the husband has the legal right to physically control his spouse has been rejected in principle in case law and statute,⁶³ the legacy of that belief continues to affect the legal system today.

The existing legislation, rules and policies provide tools to protect women from domestic violence.⁶⁴ The problem of enforcement lies in convincing the police to arrest, the prosecutors to vigorously prosecute, and the court system to respond appropriately. Moreover, it is critical to coordinate those efforts so that the system works in an integrated fashion to intervene effectively and provide effective protection.

This study examined only enforcement of OFPs. Much more research is needed in this area. Further research is needed to determine whether an assault in a domestic situation is treated differently by the criminal justice system than a stranger-to-stranger assault. A comparison between those individuals who never use the court system and those who apply for or receive the order should be made. More research is needed to analyze the prosecutors' actions and criminal courts' sentencing practices and those practices' affect on recidivism.

This study found serious deficiencies in the enforcement of

61. See Minneapolis Star & Trib., *supra* note 52, at 1B.

62. *Id.*

63. See *supra* notes 5 & 11.

64. See Appendix 2. See *supra* notes 11, 27-37 and accompanying text.

OFPs by the criminal justice system. It has been a first step toward gathering sufficient information about how the system actually operates so that action to improve its response in domestic violence cases can be taken.

APPENDICES

- 1. Surveys
- 2. Minneapolis Police Department Policies
- 3. Department of Corrections Program and Services for Battered Women Law Enforcement Data Collection Form
- 4. Variables

Appendix 1 Surveys:

- A. Domestic Abuse Act Survey for subjects who received Orders for Protections in 1984
- B. Domestic Abuse Act Survey for subjects who received *ex parte* Temporary Order for Protection in 1984 but did not receive an Order for Protection

APPENDIX 1A

DOMESTIC ABUSE ACT SURVEY

- 1. Your race
 - _____ 1. Black
 - _____ 2. Asian American
 - _____ 3. Hispanic
 - _____ 4. American Indian
 - _____ 5. White
 - _____ 6. Other — please explain _____
- 2. Partner's race
 - _____ 1. Black
 - _____ 2. Asian American
 - _____ 3. Hispanic
 - _____ 4. American Indian
 - _____ 5. White
 - _____ 6. Other — please explain _____

SECTION A — Order for Protection (OFF) Information

- 3. Has the Order for Protection issued to you in Hennepin County in 1984 ever been violated?
 - _____ 1. Yes
 - _____ 2. No

ATTENTION — If you answered NO to question 3, you may STOP here. Please put your questionnaire in the attached self-addressed, stamped envelope and mail it back to us. Thank you for your help.

If you answered YES to question 3, please answer the rest of this questionnaire. Thank you.

4. How many times has your OFP been violated?
- 1. Once
 - 2. Twice
 - 3. Three times
 - 4. Four or more times
5. What was the nature of the violation(s)? PLEASE CHECK ALL THAT APPLY.
- 1. Physical violence with a weapon
 - 2. Physical violence without a weapon
 - 3. Threats of violence
 - 4. Harrassment by phone
 - 5. Followed by partner
 - 6. Harassment by partner's friends or relatives
 - 7. Violation of visitation or custody agreement
 - 8. Entering your home without being asked
 - 9. Other — please explain _____
-

SECTION B — Police Action

6. Were the police notified of the OFP violation?
- 1. Yes
 - 2. No

ATTENTION — If you answered NO to question 6, go on to Section C - Page 4.

If you answered YES to question 6, please continue. Thank you.

7. When were the police contacted?
- 1. During the incident
 - 2. Less than 24 hours after the incident
 - 3. More than 24 hours after the incident
8. How long did it take the police to arrive after your call? _____
9. If the police did not respond to your call, what was the reason(s) given? CHECK ALL THAT APPLY.
- 1. The violation did not take place in your home
 - 2. You asked your partner in
 - 3. You don't live in their precinct
 - 4. The action was not a violation of your OFP
 - 5. Your OFP was expired at the time of the action
 - 6. You've called too many times in the past
 - 7. No reason given
 - 8. Other — please explain _____
-

10. Did the police ask to see your OFP?
 _____ 1. Yes
 _____ 2. No
 _____ 3. Not sure/cannot remember
11. Did the police check on the existence of an OFP?
 _____ 1. Yes
 _____ 2. No
 _____ 3. Not sure
12. What action did the police take? PLEASE CHECK ALL THAT APPLY.
 _____ 1. None
 _____ 2. Arrested my partner
 _____ 3. Jailed my partner
 _____ 4. Ticketed my partner
 _____ 5. Other — please explain _____
-
13. If no action was taken, what was the reason(s) given? PLEASE CHECK ALL THAT APPLY.
 _____ 1. Your partner left before the police arrived
 _____ 2. The violation was not serious enough
 _____ 3. Your OFP was not clearly written
 _____ 4. You asked your partner in
 _____ 5. Your OFP expired
 _____ 6. You asked the police to take no action
 _____ 7. Not sure
 _____ 8. No reason given
 _____ 9. Other — please explain _____
-
14. Were assault charges pressed?
 _____ 1. Yes
 _____ 2. No
 _____ 3. Not sure
15. If assault charges were not pressed, why not?
16. If there was an assault, were you physically injured?
 _____ 1. Yes
 _____ 2. No
17. If you were physically injured, please describe your injuries.
18. Did the police officer(s) call the paramedics or the hospital?
 _____ 1. Yes
 _____ 2. No
 _____ 3. Does not apply

19. Did the police officer(s) offer to take you to a safe place?
 _____ 1. Yes
 _____ 2. No
 _____ 3. Does not apply
20. Were you given information on your rights and available services?
 _____ 1. Yes
 _____ 2. No
 _____ 3. Not sure/cannot remember
21. What do you feel was the attitude of the police toward you?
 _____ 1. They were helpful and understanding
 _____ 2. They did their job but no more
 _____ 3. They were not helpful or understanding
 _____ 4. They were rude and discourteous
22. How satisfied were you with the response of the police?
 _____ 1. Very satisfied
 _____ 2. Somewhat satisfied
 _____ 3. Somewhat dissatisfied
 _____ 4. Very dissatisfied

SECTION C — Criminal Court Action

23. Did you inform the prosecutor of the violation?
 _____ 1. Yes
 _____ 2. No
24. Did the police report the violation to the prosecutor?
 _____ 1. Yes
 _____ 2. No
 _____ 3. Not sure

ATTENTION — If you answered NO to both questions 23 and 24, you may go on to Section D - Page 5.

If you answered YES to either or both questions 23 and 24, please continue. Thank you.

25. Did the prosecutor decide to prosecute?
 _____ 1. Yes
 _____ 2. No
 _____ 3. Not sure
26. If you answered YES to question 25, what was your partner prosecuted for?
 _____ 1. Assault
 _____ 2. Disorderly Conduct
 _____ 3. Terroristic Threats
 _____ 4. Other — please explain _____

27. If the prosecutor decided not to prosecute, what was the reason given?
- 1. Not a strong enough case/not enough evidence
 - 2. Not really a violation according to the order
 - 3. No police report on file
 - 4. My partner pleaded guilty
 - 5. No reason given
 - 6. Not sure
 - 7. Other — please explain _____
28. Were you contacted by the prosecutor's office?
- 1. Yes
 - 2. No
29. Were you kept up-to-date by the prosecutor's office about the proceedings?
- 1. Yes
 - 2. No
30. Did the case go to trial?
- 1. Yes
 - 2. No
31. Were you asked to testify?
- 1. Yes
 - 2. No
32. If you were asked to testify, were you willing to do so?
- 1. Yes
 - 2. No
33. Did you end up testifying?
- 1. Yes
 - 2. No
34. What was the outcome of the trial?
- 1. My partner was found not guilty
 - 2. My partner was found guilty by a judge without a jury
 - 3. My partner was found guilty by a judge with a jury
 - 4. My partner plead guilty
35. If guilty, what was your partner found guilty of? _____

36. What was your partner sentenced to?

- 1. Jail
How long? _____ What were the conditions of this sentence? _____
- 2. Probation
How long? _____ What were the conditions of this sentence? _____
- 3. A fine
How much? _____ What were the conditions of this sentence? _____
- 4. Other. Please explain. _____
- 5. Does not apply

37. How satisfied were you with the prosecutor's action?

- 1. Very satisfied
- 2. Somewhat satisfied
- 3. Somewhat dissatisfied
- 4. Very dissatisfied

38. How satisfied were you with the court proceedings?

- 1. Very satisfied
- 2. Somewhat satisfied
- 3. Somewhat dissatisfied
- 4. Very dissatisfied

SECTION D — Family Court Action

39. Did you go to Family Court to file papers charging your partner with contempt?

- 1. Yes
- 2. No

ATTENTION — If you answered NO to question 39, you may STOP here. Please put your questionnaire in the enclosed self-addressed, stamped envelope and mail it back to us.

40. What was your reason for filing papers charging your partner with contempt?
- 1. Physical violence with a weapon
 - 2. Physical violence without a weapon
 - 3. Threats of violence
 - 4. Harassment by phone
 - 5. Followed by partner
 - 6. Harassment by partner's friends or relatives
 - 7. Violation of visitation or custody agreement
 - 8. Entering your home
 - 9. Other — please explain _____
41. What was the outcome of the hearing?
- 1. No contempt was found and the charges were dismissed
What was the reason given? _____
 - 2. Contempt was found
What was your partner sentenced to? _____
 - 3. I chose to drop the contempt charges
42. Were you represented by an attorney?
- 1. Yes
 - 2. No
43. Did you have a domestic abuse advocate?
- 1. Yes
 - 2. No
44. How satisfied were you with the Family Court proceedings?
- 1. Very satisfied
 - 2. Somewhat satisfied
 - 3. Somewhat dissatisfied
 - 4. Very dissatisfied

Please put your questionnaire in the enclosed self-addressed, stamped envelope and mail it back to us.

Thank you for your time in filling out this questionnaire.

APPENDIX 1B

DOMESTIC ABUSE ACT SURVEY

1. Your race

- 1. Black
- 2. Asian American
- 3. Hispanic
- 4. American Indian
- 5. White
- 6. Other — please explain _____

2. Partner's race

- 1. Black
- 2. Asian American
- 3. Hispanic
- 4. American Indian
- 5. White
- 6. Other — please explain _____

SECTION A

3. In the year after your 1984 application for an Order for Protection, did you have any further problems with the person against whom you originally sought that order?

- 1. Yes
- 2. No

ATTENTION — If you answered NO to question 3, you may STOP here. Please return your questionnaire in the envelope provided.

4. In the year after the 1984 application, how many times did you experience further violence/incidents?

- 1. Once
- 2. Twice
- 3. Three times
- 4. Four or more times

5. What was the nature of the violence/incident? PLEASE CHECK ALL THAT APPLY.

1. Physical violence with a weapon
 2. Physical violence without a weapon
 3. Threats of violence
 4. Harrassment by phone
 5. Followed by partner
 6. Harassment by partner's friends or relatives
 7. Violation of visitation or custody agreement
 8. Entering your home without being asked
 9. Other — please explain _____
-

SECTION B — Police Action

6. Were the police notified of the incident?

1. Yes
 2. No

ATTENTION — If you answered NO to question 6, go on to Section C - Page 3.

If you answered YES to question 6, please continue.
 Thank you.

7. When were the police contacted?

1. During the incident
 2. Less than 24 hours after the indicent
 3. More than 24 hours after the incident

8. How long did it take the police to arrive after your call? _____

9. If the police did not respond to your call, what was the reason(s) given? CHECK ALL THAT APPLY.

1. The violation did not take place in your home
 2. You asked your partner in
 3. You don't live in their precinct
 4. You've called too many times in the past
 5. No reason given
 6. Other — please explain _____
-

10. What action did the police take? PLEASE CHECK ALL THAT APPLY.

1. None
 2. Arrested my partner
 3. Jailed my partner
 4. Ticketed my partner
 5. Other — please explain _____
-

11. If no action was taken, what was the reason(s) given? PLEASE CHECK ALL THAT APPLY.

1. Your partner left before the police arrived
 2. The violation was not serious enough
 3. You asked your partner in
 4. You asked the police to take no action
 5. Not sure
 6. No reason given
 7. Other — please explain _____
-

12. Were assault charges pressed?

1. Yes
 2. No
 3. Not sure

13. If assault charges were not pressed, why not?

14. If there was an assault, were you physically injured?

1. Yes
 2. No

15. If you were physically injured, please describe your injuries.

16. Did the police officer(s) call the paramedics or the hospital?

1. Yes
 2. No
 3. Does not apply

17. Did the police officer(s) offer to take you to a safe place?

1. Yes
 2. No
 3. Does not apply

18. Were you given information on your rights and available services?

1. Yes
 2. No
 3. Not sure/cannot remember

19. What do you feel was the attitude of the police toward you?

1. They were helpful and understanding
 2. They did their job but no more
 3. They were not helpful or understanding
 4. They were rude and discourteous

20. How satisfied were you with the response of the police?

1. Very satisfied
 2. Somewhat satisfied
 3. Somewhat dissatisfied
 4. Very dissatisfied

SECTION C — Criminal Court Action

21. Did the police report the incident to the prosecutor?
 _____ 1. Yes
 _____ 2. No
 _____ 3. Not sure
22. Did the prosecutor decide to prosecute?
 _____ 1. Yes
 _____ 2. No
 _____ 3. Not sure
23. If you answered YES to question 22, what was your partner prosecuted for?
 _____ 1. Assault
 _____ 2. Disorderly Conduct
 _____ 3. Terroristic Threats
 _____ 4. Other — please explain _____
24. If the prosecutor decided not to prosecute, what was the reason given?
 _____ 1. Not a strong enough case/not enough evidence
 _____ 2. Not really a violation according to the order
 _____ 3. No police report on file
 _____ 4. My partner pleaded guilty
 _____ 5. No reason given
 _____ 6. Not sure
 _____ 7. Other — please explain _____
25. Were you contacted by the prosecutor's office?
 _____ 1. Yes
 _____ 2. No
26. Were you kept up-to-date by the prosecutor's office about the proceedings?
 _____ 1. Yes
 _____ 2. No
27. Did the case go to trial?
 _____ 1. Yes
 _____ 2. No
28. Were you asked to testify?
 _____ 1. Yes
 _____ 2. No
29. If you were asked to testify, were you willing to do so?
 _____ 1. Yes
 _____ 2. No
30. Did you end up testifying?
 _____ 1. Yes
 _____ 2. No

- 31. What was the outcome of the trial?
 - 1. My partner was found not guilty
 - 2. My partner was found guilty by a judge without a jury
 - 3. My partner was found guilty by a judge with a jury
 - 4. My partner plead guilty

- 32. If guilty, what was your partner found guilty of? _____

- 33. What was your partner sentenced to?
 - 1. Jail
How long? _____ What were the conditions of this sentence? _____
 - 2. Probation
How long? _____ What were the conditions of this sentence? _____
 - 3. A fine
How much? _____ What were the conditions of this sentence? _____
 - 4. Other. Please explain. _____
 - 5. Does not apply

- 34. How satisfied were you with the prosecutor's action?
 - 1. Very satisfied
 - 2. Somewhat satisfied
 - 3. Somewhat dissatisfied
 - 4. Very dissatisfied

- 35. How satisfied were you with the court proceedings?
 - 1. Very satisfied
 - 2. Somewhat satisfied
 - 3. Somewhat dissatisfied
 - 4. Very dissatisfied

SECTION D — Family Court Action

- 36. Did you go to Family Court to file papers about (any of) these incidents?
 - 1. Yes
 - 2. No



ATTENTION — If you answered NO to question 36, you may STOP here. Please put your questionnaire in the enclosed self-addressed, stamped envelope and mail it back to us.

- 37. What was the outcome of the hearing?
 - 1. No contempt was found and the charges were dismissed
What was the reason given? _____
 - 2. Contempt was found
What was your partner sentenced to? _____
 - 3. I chose to drop the contempt charges _____
- 38. If you received an Order for Protection, what was the date of that order and the court's file number (it's on the order)?
- 39. Were you represented by an attorney?
 - 1. Yes
 - 2. No
- 40. Did you have a domestic abuse advocate?
 - 1. Yes
 - 2. No
- 41. How satisfied were you with the Family Court proceedings?
 - 1. Very satisfied
 - 2. Somewhat satisfied
 - 3. Somewhat dissatisfied
 - 4. Very dissatisfied

Please put your questionnaire in the enclosed self-addressed, stamped envelope and mail it back to us.

Thank you for your time in filling out thie questionnaire.

APPENDIX 2

SPECIAL ORDER MINNEAPOLIS POLICE DEPARTMENT BY ORDER OF THE CHIEF OF POLICE MPD 3083 R(3/79)		DATE ISSUED:	NUMBER:
		11 July 85	585 - 38
		DATE EFFECTIVE:	PAGE:
		11 July 85	1 of 1
TO:		RETENTION DATE:	
DISTRIBUTION: " A "		Until issuance of correction to Dept. Manual	
SUBJECT:		APPROVED BY:	
ADDITION: TO DEPARTMENTAL MANUAL SECTION 6-507.1			

Commencing with the effective date of this order, The Department Manual, and Special Order 584-9, shall be revised to reflect the following changes:

6-507.1

DOMESTIC ABUSE CALLS

It is the policy of this agency to progressively utilize the arrest powers granted by the State Legislature. Arrests, based on probable cause, are expected if any of the following circumstances exist:

- 1) Signs of injury or impairment
- 2) Dangerous weapon involved
- 3) Alleged assault - No signs of injury
- 4) Victim alleges to be in fear of immediate bodily harm

In all cases of Domestic Violence, alleged acts of Domestic Abuse, or Violations of a Protective Order, an Offense Report shall be completed. If no arrest is made, The Offense Report shall clearly show sufficient reasons for not making the arrest. All reports shall be reviewed by a superior officer.

Arrests are required by statute if the following conditions exist:

- 1) An order of protection exists and can be verified
- 2) The officer has probable cause to believe the offender is in violation of the order
- 3) The offender is present

An Order of Protection is not void if the petitioner has invited the offender into the residence. Enforcement is still required.

Officers shall advise victims of their legal rights, available shelters and community services, and provide victims with a copy of the Notice of Rights statement as required in Minnesota State Statute 629.341. Printed material with this information may be obtained from Central Supply.

In determining the appropriate course of action in domestic abuse cases, the primary concern of the officer is the protection of all from further acts of violence.

APPENDIX 3

DEPARTMENT OF CORRECTIONS
PROGRAMS AND SERVICES FOR BATTERED WOMEN



OFFICER INFORMATION: Complete this form to make a written police report on all alleged incidents of domestic abuse to which you are called whether or not an arrest is made. The statute covers spouses, former spouses and people who are residing together or have resided together in the past. Please complete this form and submit it to your supervisor or other person to whom your employer's rules require reports to be made.

DOMESTIC ABUSE CASES
LAW ENFORCEMENT DATA COLLECTION
SUPERVISOR INSTRUCTIONS:
According to Minnesota Statutes 241.66, all law enforcement agencies are required to collect data on women who have been assaulted and/or threatened with assault by their spouses, husbands, former spouses, or persons with whom they are residing together. This form is to be completed for every female victim over 18 and made available. Fill form in full, staple the edge, and mail to return address printed on reverse side.

LOCATION OF CALL	LOCATION OF INCIDENT	Date of Incident (7-10) Mo. Day Year	Time of Incident (7-10) AM (1) PM (2)
VICTIM NAME	VICTIM ADDRESS	Victim Zip Code (12-14)	Sex (23) 1. M 2. F
ASSAULTANT NAME	ASSAULTANT ADDRESS	Assaultant Zip Code (12-14)	Age (24) 1. 18-24 2. 25-34 3. 35-44 4. 45-54 5. 55-64 6. 65+
NARRATIVE (Describe incident including injuries, property damage, etc.)			
Relationship of victim to assaultant (26) 1. Spouse living together 2. Spouse or ex-spouse not living together 3. Relative 4. Friend (bring together) 5. Ex-spouse (bring together) 6. Friend (formerly living together) 7. Other (specify)		Race (25) 1. Am. Indian 2. Black 3. Hispanic 4. White 5. Other (specify)	
Alleged assault (38) <input type="checkbox"/> Threatened with a dangerous weapon (40) <input type="checkbox"/> Use of dangerous weapon (41) <input type="checkbox"/> Assault with physical signs of injury or impairment (42) <input type="checkbox"/> Assault without physical signs of injury or impairment (43) <input type="checkbox"/> Threats of immediate bodily harm (44) <input type="checkbox"/> Other (specify)		Alleged Order Violation (45) <input type="checkbox"/> Violation of OPP/Probation (46) <input type="checkbox"/> Violation of OPP/Parole (47) <input type="checkbox"/> Violation of OPP/Other (48) <input type="checkbox"/> Violation of other restraining order	
Action taken (49) <input type="checkbox"/> Arrest by officer (50) <input type="checkbox"/> Citation (51) <input type="checkbox"/> Separation (52) <input type="checkbox"/> Mediation (53) <input type="checkbox"/> Citizen's Arrest		Offense (54) <input type="checkbox"/> 1st Degree Assault (55) <input type="checkbox"/> 2nd Degree Assault (56) <input type="checkbox"/> 3rd Degree Assault (57) <input type="checkbox"/> 4th Degree Assault (58) <input type="checkbox"/> 5th Degree Assault	
If no arrest made, indicate reason			
CHARGE	REPORTING OFFICER(S)	DATE	
(1) <input type="checkbox"/> Yes (2) <input type="checkbox"/> No (63) Did officer arrive within 4 hours of incident? (1) <input type="checkbox"/> Yes (2) <input type="checkbox"/> No (64) Did officer inform victim of services and legal remedies as required by law? (1) <input type="checkbox"/> Yes (2) <input type="checkbox"/> No (65) Was an order for protection in effect? (1) <input type="checkbox"/> Yes (2) <input type="checkbox"/> No (66) Was officer injured?		Law Enforcement Agency & City Officer License Number	

APPENDIX 4

Variables

Domestic Abuse File Number
Petitioner's name
Street address
City
Zip
County
Respondent's name
Relationship between the parties
 spouse
 live(d) together
 child in common
 divorced
 other
Order obtained
 ex parte only
 plaintiff v respondent
 mutual
 got OFP then returned to family court for dismissal
 not clear/other
Date of OFP or of ex parte order if no OFP
Judge
 name of judge or referee who heard original OFP or ex parte
 motion
Police violence (Was there a police report of violence/violation of the
OFP in the one year period the order was in effect?)
 Yes
 No
Violence number
 How many such incidents occurred in the one year period?
Police report date
 the date of the first such incident
Police file number
 the number for the first incident
Police department description of the incident:
 domestic assault
 5th degree/simple assault
 felony/3rd degree assault
 theft/burglary/assault
 criminal sexual conduct(rape) damage to property
 terroristic threats
 harrasement
 violation of an OFP
 disorderly conduct/disturbing the peace
 other
Was this description later changed by the police and if so to which of
the categories?
What was the nature of the assault/incident?
 physical assault with a weapon

physical assault without a weapon
 threats of violence(also used for verbal fights/arguments)
 harrassment by telephone
 followed
 harrassment by respondent's friend/family
 violation of OFP terms concerning custody/visitation
 entered home without being asked/refusing to leave
 other(used for property offenses)

Did the police report mention injuries and if so were the injuries independently confirmed by police or self reported?

Were injuries severe?

Did the police report mention whether or not the officers knew of the existence of the OFP?

Did the police report mention whether the suspect was present, if not present was sought or no mention?

Did the police report state the victim's desire to pursue prosecution?

no mention

mentioned victim did wish to pursue,

mentioned victim did not wish to pursue.

Was the victim referred to the city attorney to prosecute?

Did the police report state if the police gave information about orders for protection?

no mention

yes gave oral information

yes gave written information

Did the report state "recommend further investigation"

What was the result of the incident?

arrest

citation

separate parties/remove offender

talk/refer to other agency/mediate/no apparent action

other

Was there a subsequent police report?

no report

yes was report but no mention of whether or not victim wished to pursue

yes was report and report mentioned victim wished to pursue,

yes report mentioned victim did not wish to pursue

What was the police disposition of the case

continued open

continued pending

closed exceptional clear

closed arrest/complaint

closed unfounded

Did the police refer the matter for prosecution?

Criminal court file number

for the offense that matched the first police report

Charge initial

Criminal court outcome

plead guilty

found guilty by judge

by jury

found not guilty

dismissed
If guilty to what charge
Sentence

