

Montgomery County District Courts Are Failing to Implement State-Recommended Policies That Would Protect Domestic Violence Victims

Over 8,500 women and men in Montgomery County are victims of domestic violence every year.¹ One of the most important steps a domestic violence victim can take to achieve safety and self-sufficiency is to obtain a court-issued protective order. But victims need to be safe throughout the protective and peace order process at the courts – both because that is the court’s duty to the public, and because victims are unlikely to come to court if they feel it is a dangerous place.

Yet data collected by Court Watch Montgomery shows that the County’s District Courts are not doing what they should ***in over two thirds of relevant cases*** to keep domestic violence victims safe in and around court facilities. Judges are failing to consistently implement simple, cost-free steps that can protect victims from their abusers – *even though these steps were recommended and promulgated as policy by the court’s state-wide leaders in 2012.*

In this report, we detail the ways in which the county’s courts are failing to protect domestic violence victims as they leave the courthouse, and we suggest a series of simple steps judges and court administrators can take to fulfill their obligations to victims who are parties in court cases.

The Importance of “Staggered Exits”

Although court protective orders usually improve a domestic violence victim’s long-term safety, victims paradoxically enter a dangerous phase when they decide to seek such an order. Studies show this is a time when abusers are particularly likely to initiate and escalate violence, sometimes with lethal results.²

A respondent (the alleged abuser) may emerge from a hearing feeling angry and determined to reassert control. Even if a “no contact” order has just been handed down, an abuser may attempt to get the victim to drop her order, or attempt to hurt her in retribution for coming to court.³

This risk is not abstract. In early 2011, an abuser tried to run over his girlfriend as she was leaving Rockville District Court, immediately after obtaining a protective order. Less than six months later, Court Watch Montgomery learned of an abuser who began harassing a victim at the bottom of the courthouse steps and harangued her all the way to her car, despite the fact that the court had just issued her a “no contact” order. Nationwide, violent acts surrounding court cases – often directed at judges as well as abuse victims – have been steadily rising despite the increased presence of courthouse security.⁴

“When I’m in court my whole body starts to shake inside. My hands sweat. The words won’t come. You’re afraid that after this he is going to come for you. He’s a guy who doesn’t have any respect for the law, who broke my other protective orders many times.”

Domestic violence victim describing the fear of being in court with her abuser.
May, 2015

Fortunately, judicial professionals across the country have devised an effective, no-cost way to guard against such violence: “staggered exits.” The idea is simple: the judge in a domestic violence case holds the respondent (alleged abuser) for 15 minutes after the petitioner (the person asking for protection) exits the courtroom. This procedure provides the victim safe passage – and peace of mind – as she leaves the courthouse and moves to her car or public transportation. The policy avoids unwanted contact between the parties, harassment, and even physical harm outside the courthouse.

Staggered exits impose no costs and no significant burdens. They avoid the more expensive alternative of

law enforcement escorts for victims to their cars or bus stops. Although staggered exits do require respondents to wait 15 extra minutes before leaving their court proceedings, that burden is minor measured against the benefits for victim safety. It is hardly more onerous than other steps the courts already take (e.g. telling parties to arrive 30 minutes early, screenings through metal detectors, not allowing reading in the courtroom) that impose restrictions on personal freedom in the name of efficiency or safety.

The benefits of staggered exits help explain why a wide range of groups have embraced this as a “best practice” for protective order proceedings. This includes a set of judge-written recommendations from the National Council of Juvenile and Family Court Judges (NCJFCJ), after a 3-year multidisciplinary study designed to achieve safer outcomes in domestic violence cases.⁵ Based on such reports, Court Watch Montgomery recommended adoption of staggered exits in all County courts in its first public report, in 2011.

Are Staggered Exits Maryland District Court policy?

In 2012, Maryland’s Chief Judge of the District Courts, The Honorable Ben Clyburn, and the Maryland Committee of Administrative District Court Judges sent a document to every District Court judge in the state entitled “Domestic Violence/Peace Order Best Practices for Judges.” (The full document is in Appendix 1.) The mailing urged judges to adopt the best practices identified by the NCJFCJ to “achieve safer outcomes” in domestic violence cases.

Front and center on the list of domestic violence best practices distributed to all Maryland District Court judges were staggered exits. Earlier the same year Chief Judge Clyburn asked Administrative Office of the Courts personnel to incorporate staggered exits into all new judge and bailiff training state-wide, since effective implementation of staggered exits requires the involvement of both judge and bailiff. The question this report seeks to address is whether those recommendations are being heeded in the Montgomery County District Courts.

Methodology

This report is based on the observations of 40 trained volunteers who identified 210 protective and peace order cases heard by 18 Montgomery County District Court regular and visiting (substitute) judges from January 2014 to April 1, 2015 in which staggered exits were warranted. Staggered exits were deemed warranted if there was a temporary or final protective or peace order granted and both parties were present. We did not, for purposes of this report, count staggered exits as “warranted” when orders were dismissed or denied, even though the aftermath of these cases can be dangerous as well and the blanket use of staggered exits would be ideal, and easier for bailiffs to implement. Staggered exits were counted as necessary whether or not either party had counsel.

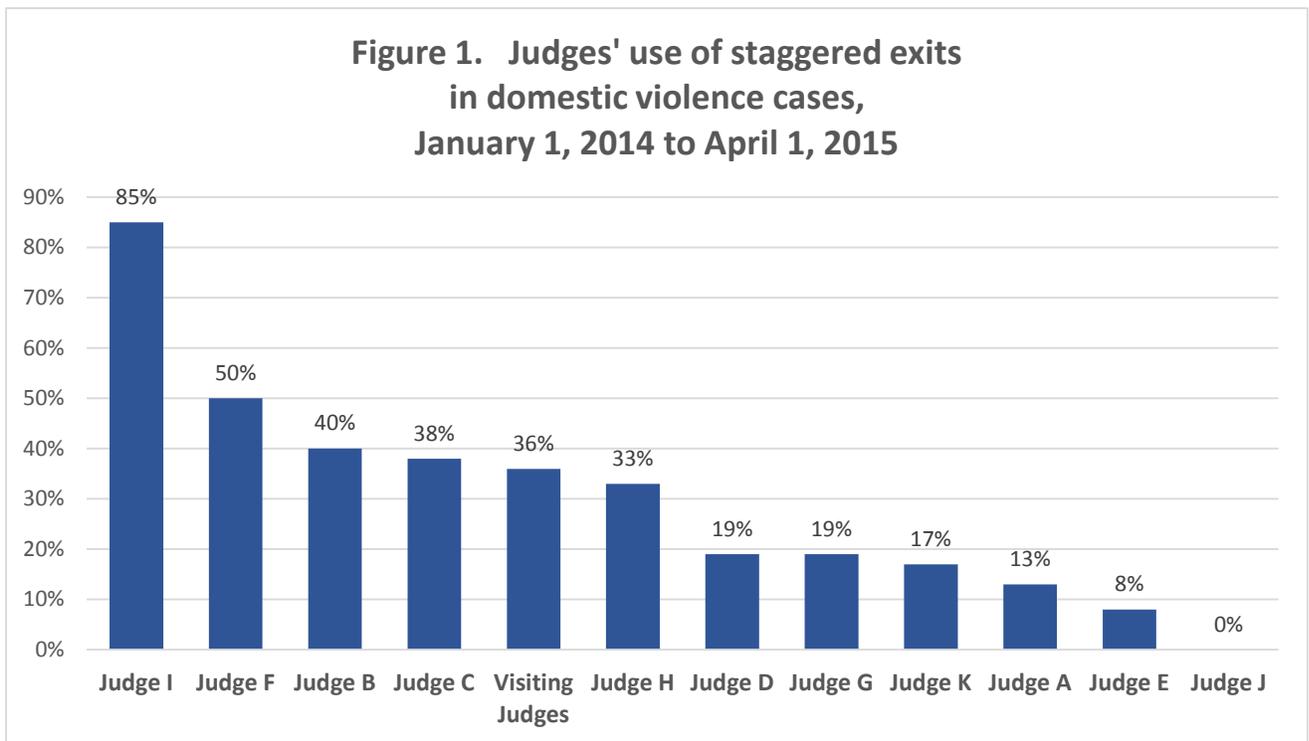
Although the NCJFCJ recommends that respondents be held for a full 15 minutes, for purposes of this study Court Watch counted a hold of 10 minutes as a successful staggered exit to allow for any inaccuracies in monitor timing.

Report findings

- ***In 71% of relevant cases, District Court judges and other court personnel failed to implement even minimal staggered exits*** (i.e., holding the abuser at least ten minutes after the victim’s departure). In only 29% of relevant cases were adequate staggered exits used.⁶
- Staggered exit were being used only 12% of the time when Court Watch published its first report in 2011. Following that report, and substantial media coverage, judges began using correct staggered exits in **70% in all relevant cases in 2012**. The current low rate of 29% staggered exit use is a dramatic decline.
- As Figure 1 shows, rates of “staggered exit” use varied dramatically across judges, with one judge ***never*** using the measure, while another judge used staggered exits in 85% of relevant cases.
- Many judges and bailiffs held respondents for just two to three minutes – well short of the 15 minute guideline. This approach amounted to little more than “a running start” for the victim and did very little to protect them. Indeed, initially seeing the respondent “held” may have given victims a false sense of security.
- We believe that sharp decline in the use of staggered exits in the county is due mainly to a lack of direction from judges, who need to tell bailiffs to implement full 10-15 minute waits. A number of judges voiced the opinion to Court Watch volunteers and to other court

personnel that judges do not have the right to hold respondents following hearings, although as noted, judges take many other restrictive steps to ensure safety. More than one bailiff told monitors that “judges don’t think we have the right to hold respondents”.

National Council of Juvenile and Family Court Judges staff, who work with judges and court staffs across the United States, tell us they know of no other state in which judges oppose staggered exits based on a lack of authority to hold respondents. Staggered exits are well within the scope of judicial authority to ensure the safety of participants following court proceedings.



Note: Codes for individual judges are different than codes used in earlier reports, due to the significant turnover in judges.

- Changes in courtroom procedure may have contributed to reduced use of staggered exits. Since 2012, temporary and final orders have been handed out in the courtroom, which is a safer procedure than the previous approach of sending both parties to an unguarded clerks’ office. The new process creates more courtroom activity and more for bailiffs to do, but we

do not believe that staggered exits impose too great a burden for bailiffs, even with the new procedures.

- The *Maryland Judges Domestic Violence Resource Manual* has not been updated since 2009, and does not currently include a recommendation to use staggered exits.
- In Montgomery County, about a third of protective orders are considered at the Circuit Court level. Montgomery County Circuit Court judges during this same study period correctly staggered exits at a higher rate than their District Court counterparts – 51% of the time – but still were failing to do so regularly. Further study is needed, as these data are based on a relatively small number of cases.
- Staggered exits were very rarely used in criminal domestic violence hearings in relevant cases. This is particularly disturbing since these are by definition more serious cases.

**Examples of District Court protective/peace order cases
in which correct staggered exits were not used**

Alleged incident	Use of staggered exit
Bit ex-partner's nose, took her phone, hit her head. Previously found guilty of intimidating a juror.	No staggered exit
Told ex-partner "this is the end of your life. This is your last day." Removed battery from her car following service of the protective order.	4 minute staggered exit
Petitioner broke off engagement because she was physically assaulted. Strangulation. Police were called.	Bailiff said "once you receive your paperwork everyone is free to go." 3 minute staggered exit
Held knife to victim's throat, head-butted her. Previous protective orders.	Respondent left first because he didn't want a copy of the protective order.
Unknown incident	2 minute staggered exit
Detained in home for 11 hours. Stalked outside residence. Bit partner in chest when she refused to have sex. Slapped.	5 minute staggered exit
When victim said she wanted to file for divorce he pinned her to a chair and threatened suicide. Anger escalating. Intimidated victim when exchanged children in parking lot.	Bailiff let the respondent leave first. Petitioner and her lawyer left 4 minutes later.
Criminal charges filed for assault.	4 minute staggered exit
Threats to kill petitioner if she filed for child support. Hit her in the back. Previously punched her in eye requiring eye surgery.	4 minute staggered exit
Unknown incident	1 minute staggered exit
Respondent very angry following child support hearing. Deputy had to restrain him. Respondent said "I'll fuck you up." He has guns. Petitioner fears he will kill her and himself.	Respondent and lawyer left first.

Recommendations

Based on these findings, Court Watch Montgomery urges state and county judicial officials to immediately take the following steps:

- All Montgomery County judges should ensure that their court personnel allow the victim to leave the courtroom 15 minutes before the offender is released from the courtroom in all intimate partner protective and peace order cases.
- Judicial leaders in both District and Circuit Court should show leadership on this critical issue and assert judges' authority to stagger exits to provide victim safety, as well as stressing the need for consistent use of this best practice.

- Judges should announce at the beginning of the domestic violence docket that petitioners will leave the courtroom following their hearing first, and that respondents will wait in the courtroom to avoid any chance of inadvertent violation of the no contact order; they will be instructed by the bailiffs when they may leave. A team approach between judges and bailiffs is necessary to ensure victim safety. A judge’s announcement of staggered exits explicitly confers authority to bailiffs to hold respondents.
- Victims who wish to remain in the courthouse to access services should not be pressured into leaving quickly; rather, in such cases, bailiffs should release the respondent first. Victims may have important business with victim advocates or counsel. Advocates and counsel will address any safety concerns their clients have following meetings.
- Even if the judge has left the bench for the morning, a bailiff should remain in sight of the respondent until 15 minutes have passed after the petitioner leaves the courtroom.
- Staggered exit protocol should be incorporated into new judge and bailiff training. The *Maryland Judges Domestic Violence Resource Manual* should be revised to include information on the importance of staggered exits and how to use them properly, as well as information on other nationally recognized best practices.
- Staggered exits should be used whether or not either of the parties is represented by counsel. Lawyers are not responsible for ensuring victim security or holding respondents, and most do not spend sufficient time with clients following hearings to do so.
- Judges hearing criminal domestic violence cases should always stagger exits when the victim is present and the case is postponed or the defendant is found or pleads guilty but is not incarcerated.

“I was terrified of him even when we weren't in court. Each time as I left the safety of the courthouse, I would find myself panicked because I knew that it was the only place he could pinpoint me in the exact same location as he was.”

Hera McLeod, describing court appearances with her ex-partner Joaquin Rams. Mr. Rams is currently in jail awaiting trial for allegedly killing Prince Rams, the couple’s 15 month old child during an unsupervised visit.

Conclusion

Safety in public places is one of the central obligations any state owes its people. It is particularly important in domestic violence hearings. Improving victim safety in and around the courthouse helps ensure victims feel comfortable petitioning the court for

initial protection, following through for a final order, and returning to court should there be problems or should they need further assistance.

We applaud the sensible directive Judge Clyburn gave to the state's District Court judges in 2012, and we believe his guidance on staggered exits should be reaffirmed as state policy, and more effectively implemented – including in Montgomery County.

We do not believe this is a matter that requires further legislation. Judges have all the authority they need – as well as clear precedents from other states and clear guidance from national “best practices” studies – to adopt this procedure on their own.

As Court Watch Montgomery has regularly noted, judges have difficult jobs. We know domestic violence cases are typically complex and emotional – and are only one aspect of judges' caseloads – and we do not take lightly the idea of imposing any additional procedural requirements on them. Yet the burden created by staggered exits is minimal compared to the gains – in terms of public security, and the greater likelihood of victims coming to court to seek protection. We respectfully suggest that judges and other court personnel embrace these recommendations as a way to protect the public they serve.

Footnotes

1. U.S. Census Bureau, DP-1. Profile of general demographic characteristics: Census 2010 Summary File, Montgomery County Maryland.

<http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>

Tjaden, Patricia & Nancy Thoennes. National Institute of Justice and the Natl. Center for Disease Control and Prevention. “Extent, Nature and Consequences of Interpersonal Violence: findings from the National Violence Against Women Survey (NVAWS), 2000. According to the NVAWS, 1.5 percent of surveyed women and 0.9 percent of surveyed men said they were raped and/or physically assaulted by a partner in the previous 12 months. Men in same sex relationships are twice as likely to suffer abuse as heterosexual men (Peterman, 2003).

2. Waul, Michelle R., Civil Protection Orders: An opportunity for intervention with domestic violence victims, 6 GEO. Public Policy Review 51, 53 (2000).
3. Victims are sometimes referred to as female in this study since women are the victims of the vast majority of serious heterosexual partner violence (See Logan, T.K., Walker, Robert et al. 2009; Rennison & Welchans, 2000; and Tjaden 2000). Female victims tend to sustain

more serious injuries. Injuries to males are often due to self-defense on the part of the female partner. In 70-80% of heterosexual intimate partner homicides, no matter which partner was killed, the man physically abused the woman prior to the murder. Men in same sex relationships are twice as likely to suffer abuse as heterosexual men (Peterman, 2003).

4. Fautsko, Timm, Berson, S. and S. Swensen. Courthouse Security Incidents Trending Upward: The Challenges Facing State Courts Today. National Center for State Courts. 2012.
<http://www.ncsc.org/~media/Microsites/Files/Future%20Trends%202012/PDFs/TRENDS%202012%20BOOK.ashx>
5. The National Council of Juvenile and Family Court Judges. Civil protection orders; a guide for improving practice. 2010. (NCJFJC). Reno, Nevada.
http://www.ncjfcj.org/sites/default/files/cpo_guide.pdf
6. District Court judges and bailiffs failed to implement even minimal staggered exits in 150 out of 210 cases. Correct staggered exits (counted as at least 10 minutes for purposes of this report) were completed in 60 cases. The national standard is 15 minute staggered exits.

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Logan, T.K., Robert Walker et al. The Kentucky Civil Protective Order Study: a Rural and Urban Multiple Perspective Study of Protective Order Violation, Consequences, Responses and Cost. National Institute of Justice Grant. 2009.

Logan, T, Walker, R, Shannon L, Cole, Jennifer. Factors Associated with Separation and Ongoing Violence Among Women with Civil Protective Orders. Journal of Family Violence. Vol. 23. No. 5, 377-385, 2008.

Logan, T., Walker, R., Jordan, C., & Campbell, J. (2004). An integrative review of separation and victimization among women: Consequences and implications, *Violence, Trauma, and Abuse*, 5, 143-193.

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http://www.ncjfcj.org/sites/default/files/cpo_guide.pdf

Maryland Judicial Conference, Administrative Office of the Courts, Maryland Judge's Domestic Violence Resource Manual. Annapolis, 2009.

<http://mdcourts.gov/family/publications/dvmanualcomplete.pdf>

Peterman, B., Dixon, G. Intimate partner abuse between same sex partners; implications for counseling. Journal of Counseling and Development. 81: 40 – 59. 2003.

Rennison, Callie Marie and Susan Welchans. (2000). Intimate partner violence: a special report. Bureau of Justice Statistics.

http://www.atria.nl/epublications/2000/intimate_partner_violence.pdf

Appendix 1

“Domestic Violence/Peace Order Best Practices for Judges”. (Sent to all Maryland District Court Judges by Chief Judge of the District Courts Ben Clyburn and the Administrative Judges Committee). October 18, 2012.

Domestic Violence/Peace Order Best Practices for Judges

Is the Petitioner Requesting Dismissal? Ask them:

- Do you feel that you are safe?
- Have you been coerced or threatened in any way to drop this case?
- Do you feel you will be harmed if you do not dismiss this case?
- Do you understand that you can return to court at any time to file another petition if you are in danger?

Caution Respondent/Offender:

- Do you understand you must turn in all firearms you own or possess to law enforcement and not have any firearms in your possession for the duration of this Protective Order?
- Do you understand that a violation of this Order is a crime that may result in imprisonment?

Advise Petitioner/Victim:

- Does the Respondent own or possess any firearms?
- This Order requires the Respondent to turn in all firearms s/he may own or possess to law enforcement and not have any firearms in their possession for the duration of this Order.
- If you feel you are in danger from the Respondent you should call 911 immediately.
- If the Respondent violates any condition of this Order, you may file a Petition for Contempt or you may seek criminal charges.

Reiterate to Both Parties:

- Do you have any questions about this Order or what happened here today?
- Do you fully understand the requirements and prohibitions of this Order?
- If both parties appear for the Temporary Protective Order hearing after the entry of an Interim Protective Order, both parties must voluntarily consent to proceed to a Final Protective Order hearing. Judges should not pressure the parties to consent to the Final Protective Order hearing.

Judicial Discretion

- Judicial Discretion should be exercised in each domestic violence case to determine appropriate conditions of custody, visitation, and emergency maintenance.
- Relief must be evaluated on the facts of each case.
- Final Protective Orders are issued upon a finding of clear and convincing evidence of abuse.
- There is no requirement for physical evidence; judges need to evaluate these cases based upon all the evidence, including the demeanor and credibility of the witnesses.
- If either of the parties fails to appear at the first call of the docket, consider passing the case to the end of the docket and recalling it at that time.
- Referrals to Mediation or an alternative dispute resolution process or even the

suggestion to "work it out" are never appropriate in domestic violence cases.

REMEMBER TO STAGGER EXIT TIMES!

- Have the Petitioner leave FIRST, after receiving a copy of the Order.
- Wait at least 15 minutes after Petitioner leaves the courthouse before allowing Respondent to exit.