



**Do domestic violence victims in Montgomery County
have full access to justice?**

**A look at District Court judges' use of five
fundamental practices**

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Do domestic violence victims in Montgomery County have full access to justice?

A look at District Court judges' use of five fundamental practices

Each year, approximately 3,000 victims of intimate partner violence come to Montgomery County courts – and over 30,000 to Maryland courts state-wide – seeking protection in the form of a civil protective order.¹

The Maryland Judiciary's mission is to provide fair, efficient, and effective justice for all.² Nowhere is access to justice for victims more important than in protective order courtrooms. While not a panacea, protective orders stop or significantly reduce intimate partner violence in approximately 70% of cases.³

This report assesses to what extent Montgomery County District Court judges are using five basic practices in protective order courtrooms. These practices, developed by a national panel of judges, keep victims safer and help ensure access to justice for county residents who find themselves the victim of domestic violence.

These practices, coupled with appropriate demeanor, should be the judicial equivalent of a surgeon washing their hands prior to surgery. There is no excuse for failing to employ these fundamental practices in 100% of relevant cases. Yet these basic procedures, which take no court funds and little judicial time, are currently used across all judges in only slightly more than 50% of hearings. Overall use of practices varies widely by judge, with one judge using fundamental practices an average of 23% of the time, and another judge averaging 72% use.

Five fundamental domestic violence courtroom practices

In 2006, the National Council of Juvenile and Family Court Judges (NCJFCJ) launched a 3-year multidisciplinary study to identify ways to achieve safer outcomes in domestic violence cases. A panel of judges developed a set of recommended national best practices which the NCJFCJ summarized in the [*NCJFCJ Civil Protection Orders: A Guide to Improving Practice*](#) (2010).

Court Watch assesses local use of five of the practices advocated by the NCJFCJ using data collected in over 2,500 protective order hearings in Montgomery County's district courts from September 2016 to the end of March 2018.

Each of the five highlighted practices buttresses Maryland Judiciary goals, including responsiveness to community needs, communicating effectively with stakeholders, improving processes and assuring the highest levels of service.⁴

None of the fundamental practices described in this report takes a great deal of judges' time. None cost the courts a penny.

The five recommended judicial practices are:

- When victims wish to drop their case, judges should try to ensure that the victim has not been coerced or intimidated and take a moment to discuss their safety.
- When victims do drop their cases, judges should encourage petitioners to return to court any time they are in danger from an intimate partner.
- Judges should tell every respondent receiving an order that violating a protective order can result in imprisonment.
- Judges should tell every respondent receiving a final protective order that they must surrender all guns to law enforcement immediately.
- Whenever both parties are present for a domestic violence hearing, judges and bailiffs should implement staggered exits, having the respondent wait in the courtroom for a minimum of 15 minutes after the victim's departure to guarantee the victim's safety between the courthouse and their transportation.

These fundamental practices are basic and necessary. They cost nothing and take little of the judges' time.

Coupled with appropriate demeanor, these practices should be the judicial equivalent of a surgeon washing their hands prior to surgery.

Court Watch volunteers collected baseline data in 2011 in over 600 protective order cases. We continue to collect data in at least 500 protective order hearings in Montgomery County courts each year.

Following our initial report in 2011, judges increased their use of some of these practices dramatically. As Chart 1 shows, the use of staggered exits rose from 15% in 2011 to 70% in 2012. However, staggered exit use then dropped precipitously, falling to 29% in 2015.

Domestic violence victims today are protected as they leave the courthouse far less often than they were in 2012 – currently in fewer than half of the cases (45%).

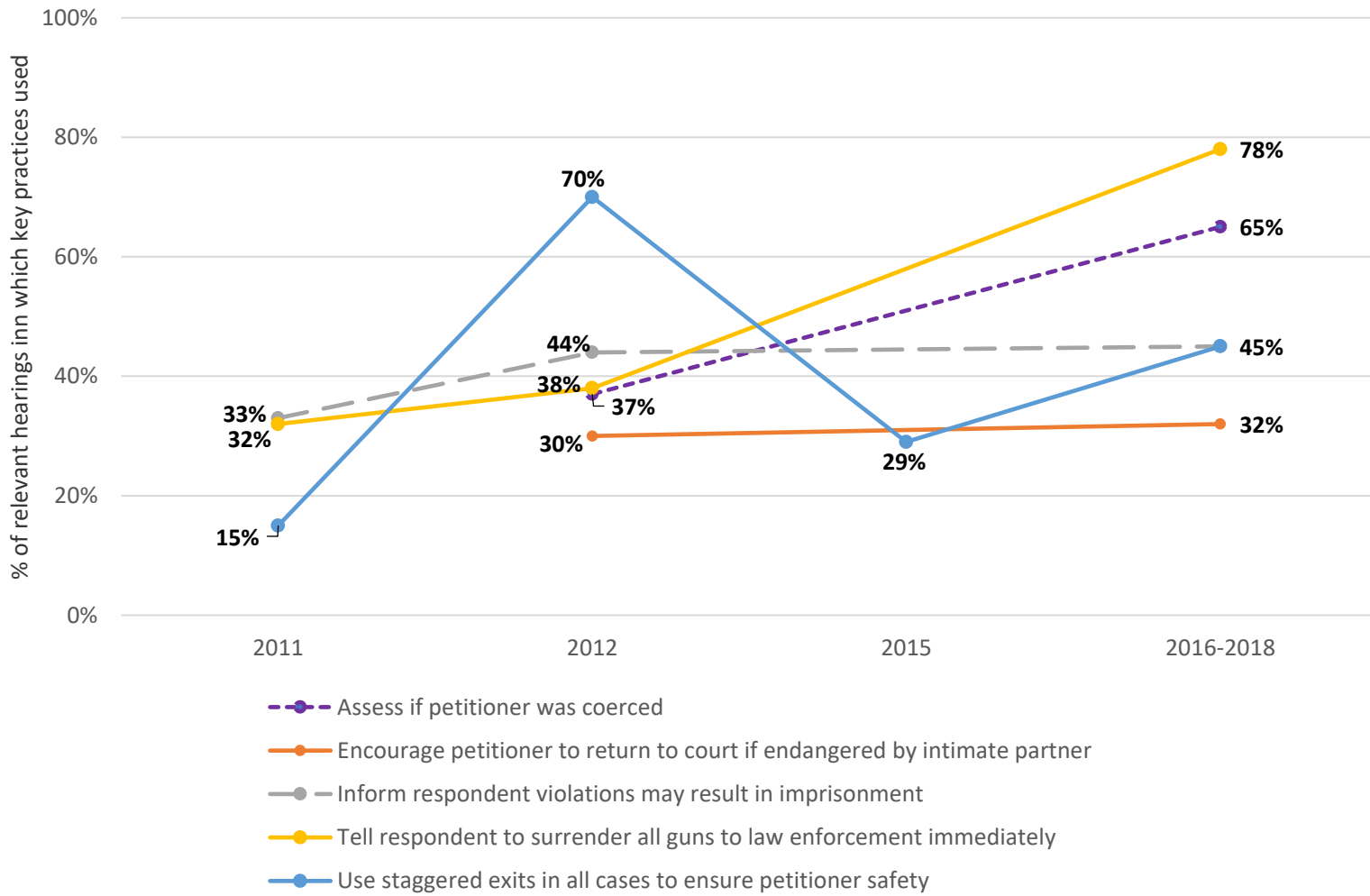
Other fundamental practices have remained at or near the same low rate of use as in 2011.

As Chart 2 shows, use of fundamental practices continues to vary widely by judge. One judge told only 12% of respondents to surrender all guns to law enforcement, while another judge told 100% of respondents. The differences between judges' use of each approach is of interest, since both parties coming to court deserve to receive generally the same approach to their case no matter what day they arrive. Protective orders should not be a "Russian roulette" experience where which judge a Montgomery County couple faces dramatically changes the treatment or outcomes they receive.

Table 1 lists the use of each practice by judge. Judges are listed by randomly assigned letters to emphasize overall broad systemic issues rather than focusing on individual judges. Court Watch privately informs the court which judge corresponds to each letter.

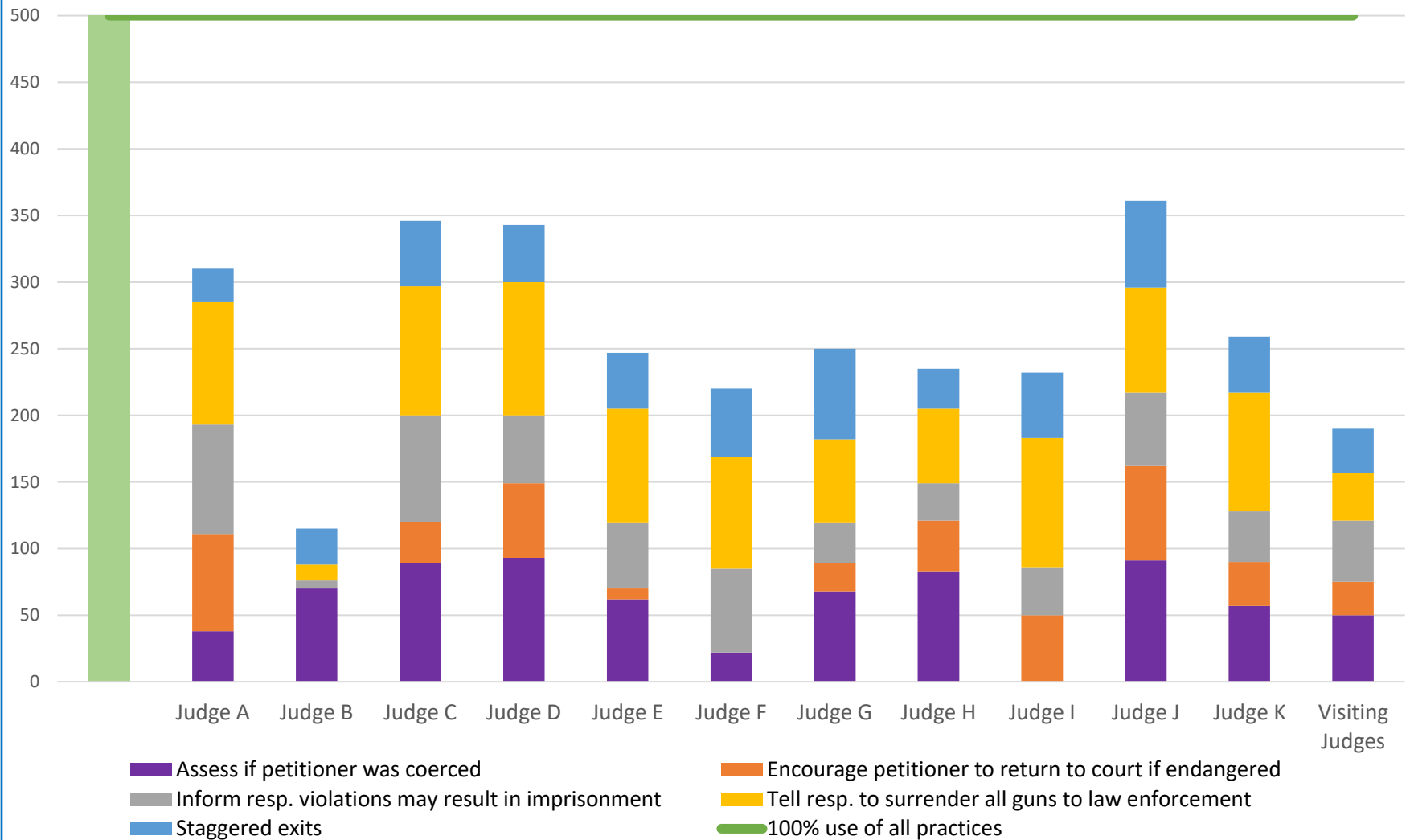
While petitioners benefit a great deal from use of fundamental practices, respondents do as well. Respondents deserve to understand what is required of them in any order granted and the consequence of non-compliance.

**Chart 1. Use of 5 Fundamental Practices in Montgomery County District Courts
2011-present***



* Data is unavailable for all practices in all years. Actual data points are identified with a marker dot. Other lines are interpolations.

Chart 2. The Use of Five Fundamental Practices, by judge, 2016-2018



Dismissal practices rates for Judges I, K and visiting judges are based on a small number of hearings.

Table 1. Rates of use of fundamental practices by judge, 2016-2018

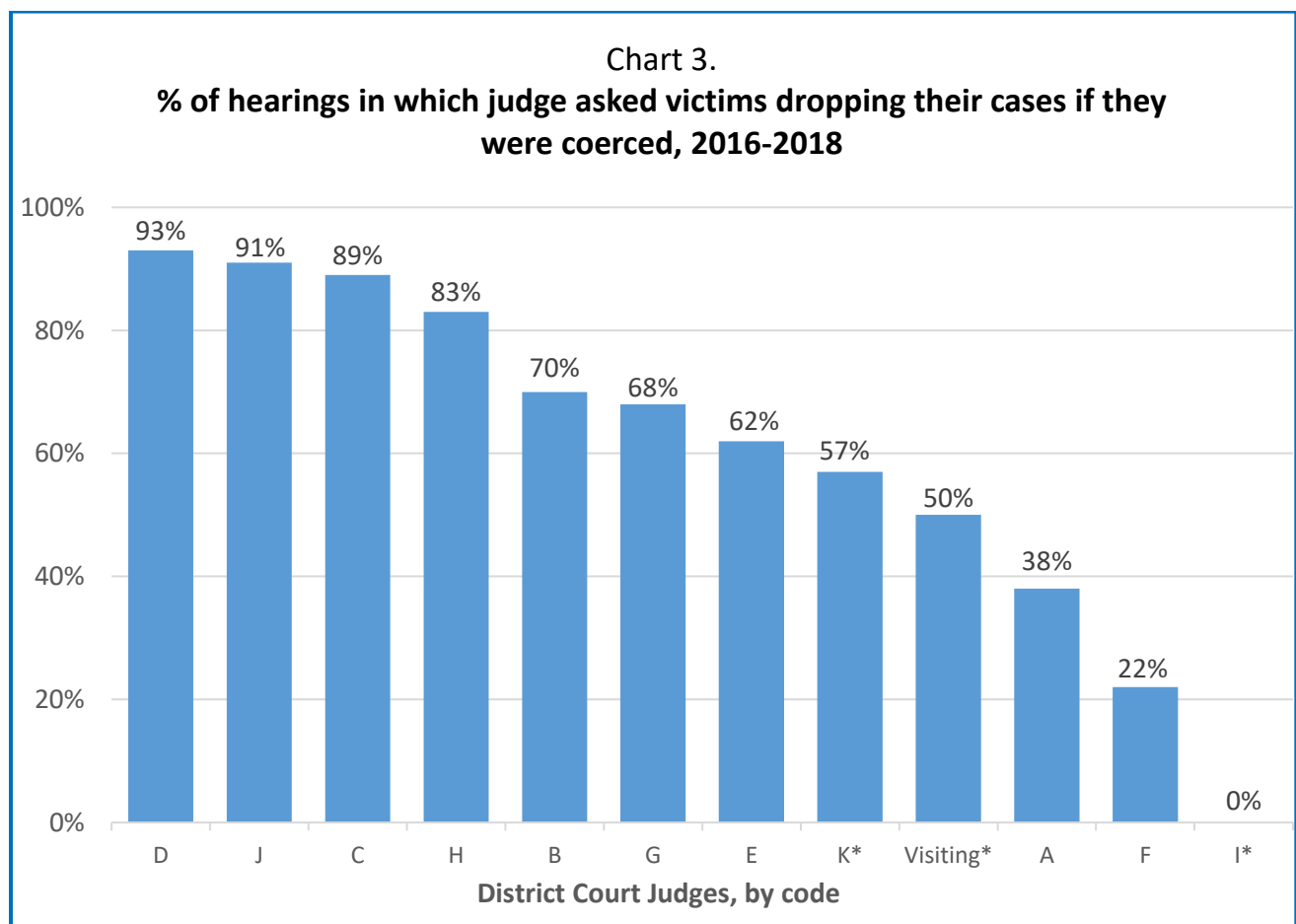
Judge	Addressing petitioner		Addressing respondent		Safety in court
	Did anyone coerce you in any way into dropping this case?	You can come back to court any time and file another petition if you in danger	Violating this order can result in imprisonment	You must turn in all firearms to law enforcement for the length of your order	Staggered exits used to ensure litigant safety outside the courthouse
Judge A	38%	73%	82%	92%	25%
Judge B	70%	0%	6%	12%	27%
Judge C	89%	31%	80%	97%	49%
Judge D	93%	56%	51%	100%	43%
Judge E	62%	8%	49%	86%	42%
Judge F	22%	0%	63%	84%	51%
Judge G	68%	21%	30%	63%	68%
Judge H	83%	38%	28%	56%	30%
Judge I	0%*	50%*	36%	97%	49%
Judge J	91%	71%	55%	79%	65%
Judge K	57%*	33%*	38%	89%	42%
Visiting Judges	50%*	25%*	46%	36%	33%
Weighted Average	65%	32%	45%	78%	45%

*Based on data from a small number of dismissal hearings.

Judges should assess whether a petitioner has been coerced into dropping their protective order

The [NCJFCJ Guide to Improving Practice](#) recommends that judges engage victims in a conversation to elicit information about their safety before dismissing their cases. This not only gives the judge more information but reminds the victim that the courts take their case seriously. Was the victim coerced by the respondent, his/her family or friends, into dropping the case? Does the respondent have access to guns?

In 2012, Montgomery County judges asked only 37% of petitioners who wanted to drop their cases whether they had been coerced. Today judges ask 65% of petitioners in relevant cases. Chart 3 shows the wide variety between judges in rates of use. The white area above the blue columns represents the petitioners who were not well-served on the issue of intimidation.



*Judges K, I and Visiting Judge rates are based on data from a small number of dismissal hearings.

A petitioner, all alone in front of the judge, asked to dismiss her case.

She told the judge that the respondent had threatened to kill her, their baby and himself. The judge encouraged her to talk to her mother before dismissing.

The judge asked no questions, nor did he tell her that she had the right to request a court-ordered emergency psychological evaluation for her husband if he was a threat to himself or others.

The judge did not ask her to speak with the victim advocate prior to dismissing. The advocate could have ensured that the victim knew about all her options, including urgently needed shelter.

September 2016, court monitor notes

While the increase in the use of this procedure is encouraging, judges should ensure the integrity of the legal process and the safety of the petitioner by assessing whether victims have been coerced in 100% of hearings.

Assessments should go beyond directly asking the victim in open court in front of their abuser about coercion. Commendably, one judge asks victims to approach the bench to privately discuss their situation.

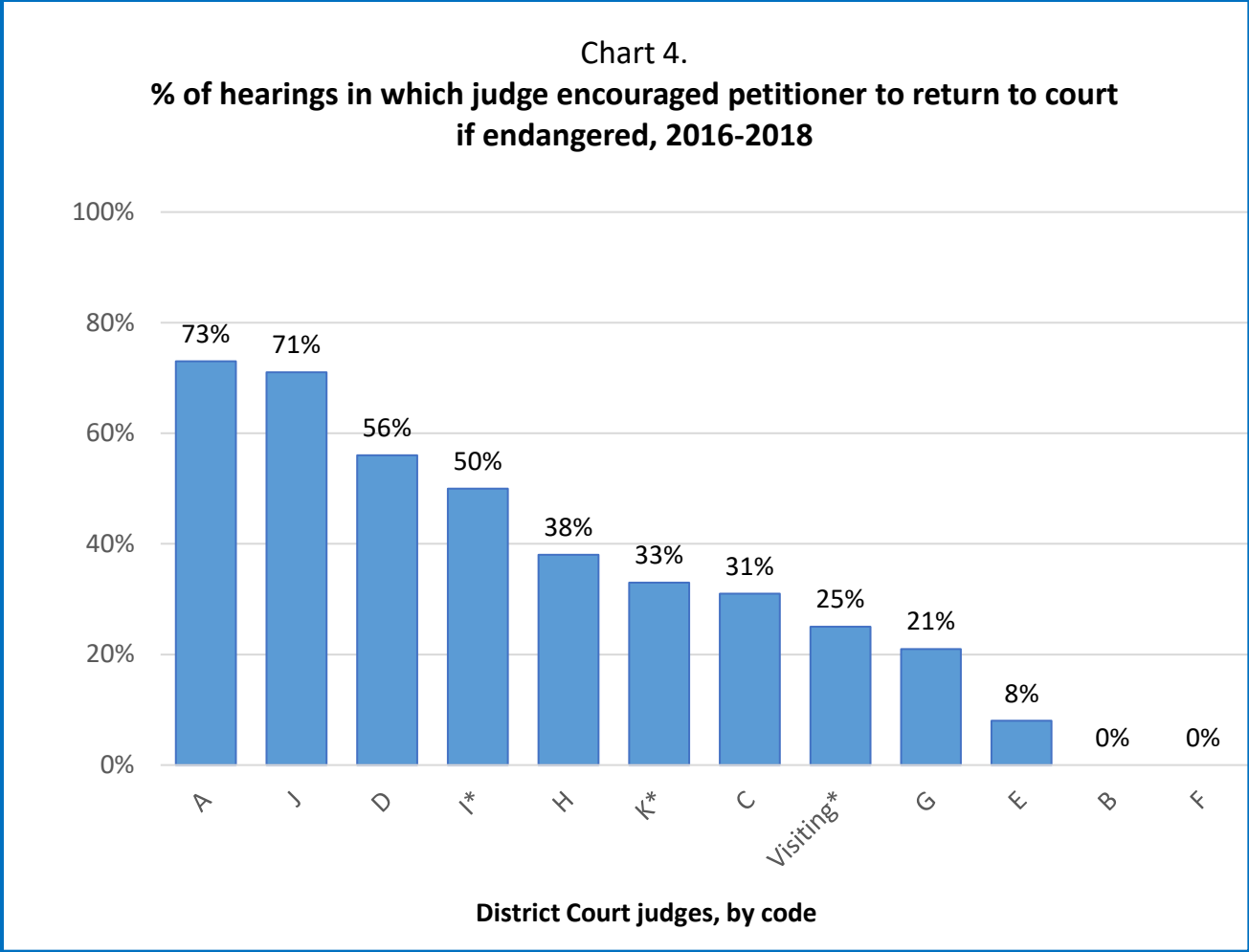
Judges often underutilize county-provided victim advocates in the courtroom, particularly when residents who have been victimized come to court without counsel. Victims' risk of assault rises when they drop their order; courtroom victim advocates are uniquely suited to speak privately with victims about their reasons for dropping their case, possible options, and talk through elements of a safety plan to address their heightened danger.

Judges should consider asking petitioners who wish to drop their case to speak briefly with a victim advocate before finalizing the dismissal.

Many victims are unaware that they can change their order to be limited to "no abuse," but still ensure that guns are removed and that the respondent is put on notice that the court is watching. If judges do not make use of a victim advocate, judges should be sure that un-represented petitioners know that they have a right to change their order to better meet their needs rather than dropping the entire order.

Victim advocates are uniquely suited to speak privately with victims about their reasons for dropping their case, to explain options and help the petitioner develop a safety plan.

Judges should consider asking petitioners who are not represented to speak briefly with a victim advocate before finalizing their dismissal.



*Judges K, I and Visiting Judges' rates are based on data from a small number of dismissal cases.

Victims should be encouraged to return to court and file another petition if they become fearful of their intimate partner

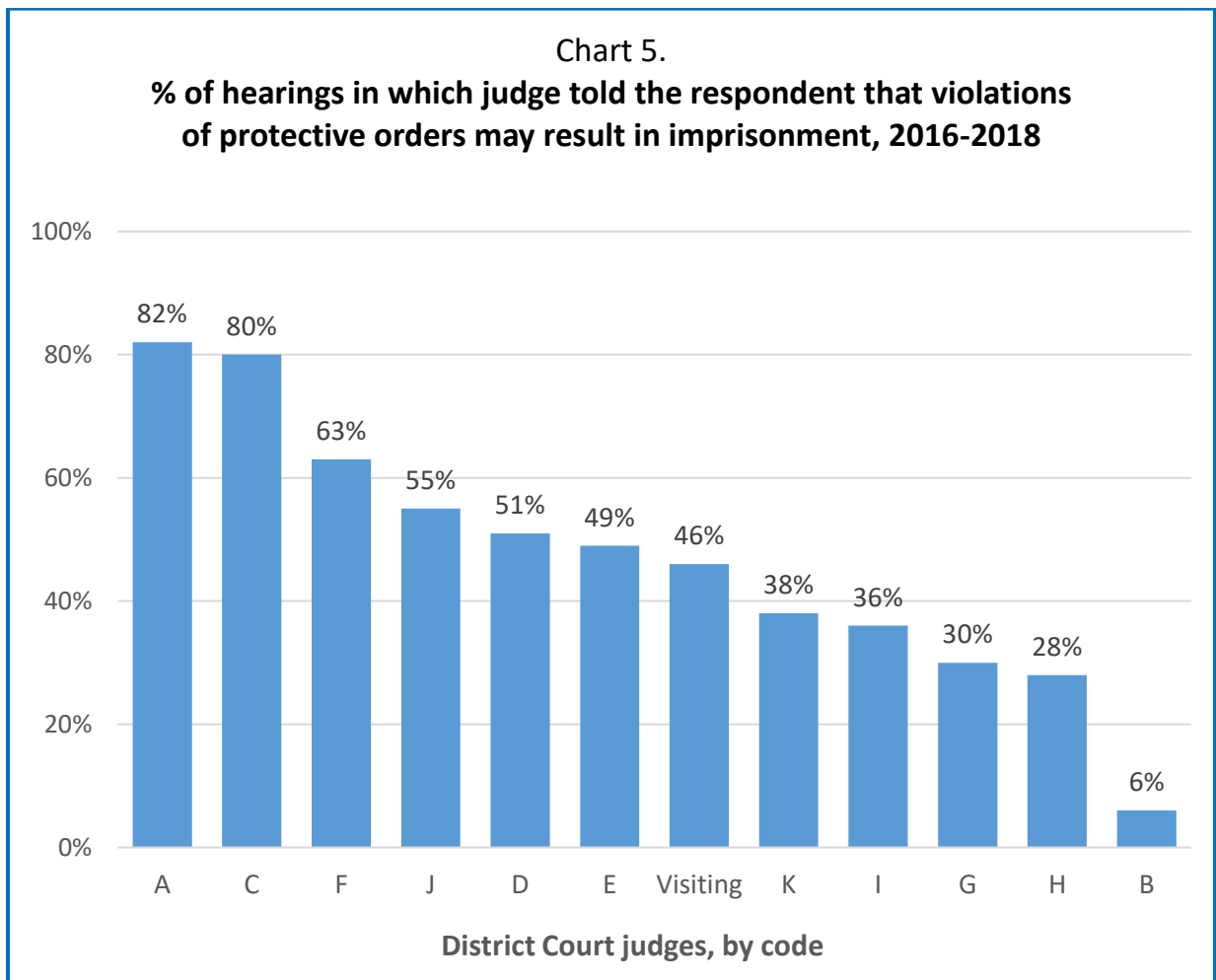
Many victims assume that dropping one case means they lose their right to file another. Many victims assume, incorrectly, that judges and other court personnel will be angry with them if they ask for protection a second time. A judge's encouragement to a victim to return to court can save many county residents from additional assault.

In 2011, judges encouraged only 30% of victims to return to court whenever necessary to file a new protective order. There has been essentially no change in the use of this fundamental practice in the last 5-7 years. As Chart 4 shows, use of this best practice also varies widely across Montgomery County District Court judges.

Respondents need to know that a violation of a protective order may result in imprisonment and that an arrest for a violation of an order will result in the respondent being held without bond.⁵

Protective orders work better if offenders understand the likely consequences of violating them. In 2011, Montgomery County District Court judges told only 33% of respondents that it is a crime to violate a protective order. From mid-2016 to present, judges informed only 45% of respondents of these critical facts, which could have created a significant deterrent.

A respondent who does not hear a verbal warning about the penalties of violating an order may well walk out of court not understanding the seriousness of the order. While written orders do contain this warning, a description of possible consequences coming directly from the judge is a far more powerful deterrent that can improve victim safety. As Chart 5 shows, judges vary widely on employment of this fundamental practice, from a high of 82% to a low of only 6%.



Judges should tell all respondents with final orders that they must surrender all guns to law enforcement immediately

When an abuser has ready access to a firearm, it places abuse victims at high risk of terrifying harassment, injury or homicide. A nationwide study shows that when an abuser has access to a gun the victim's risk of homicide rises 500%.⁶

Maryland law requires that all respondents receiving a final protective order must turn in all guns to law enforcement for the duration of the order and may not possess or purchase any firearms while the order is in place. Sheriffs work hard to remove firearms from abusers, but judges issuing final protective orders should use the authority of their position to underscore that guns must be turned in immediately.

In 2011, judges told only 32% of respondents that they must surrender their guns to law enforcement. In this study, covering September 2016 – March 2018, judges informed 78% of respondents. (See Chart 6). While the improvement is notable, it is worrisome that judges do not stress this point in 100% of hearings given the dramatic risks involved when abusers have access to firearms. Once again, there is significant variation in the frequency with which judges make this point, with one judge telling respondents to turn in guns 100% of the time, while another tells only 12% of respondents.

The petitioner told the judge that her boyfriend had been living with her but paid no rent. He had begun hitting her in the face and not letting her leave their bedroom. The previous week he tried to strangle her.

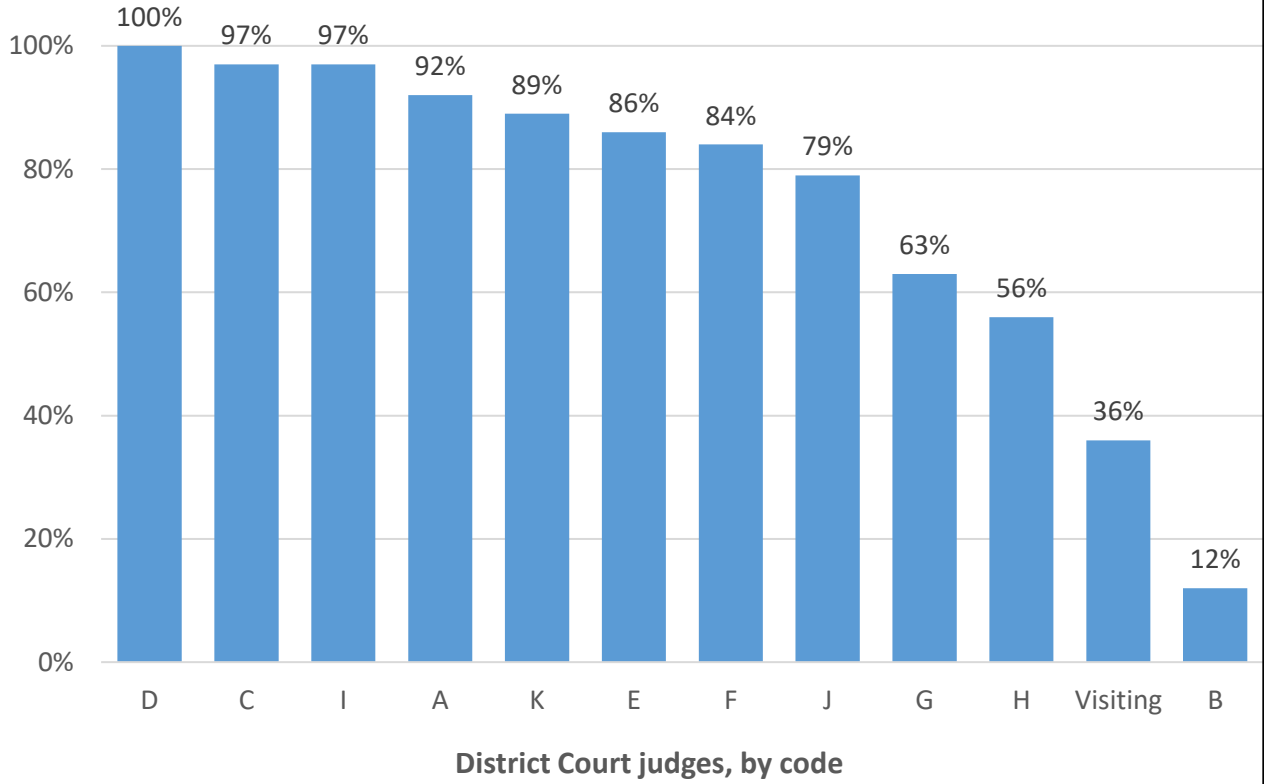
The judge granted a final protective order but didn't tell the boyfriend that violations of the order could result in imprisonment. The judge didn't ask if the respondent had any guns, nor tell him that he must turn guns in for the length of the order.

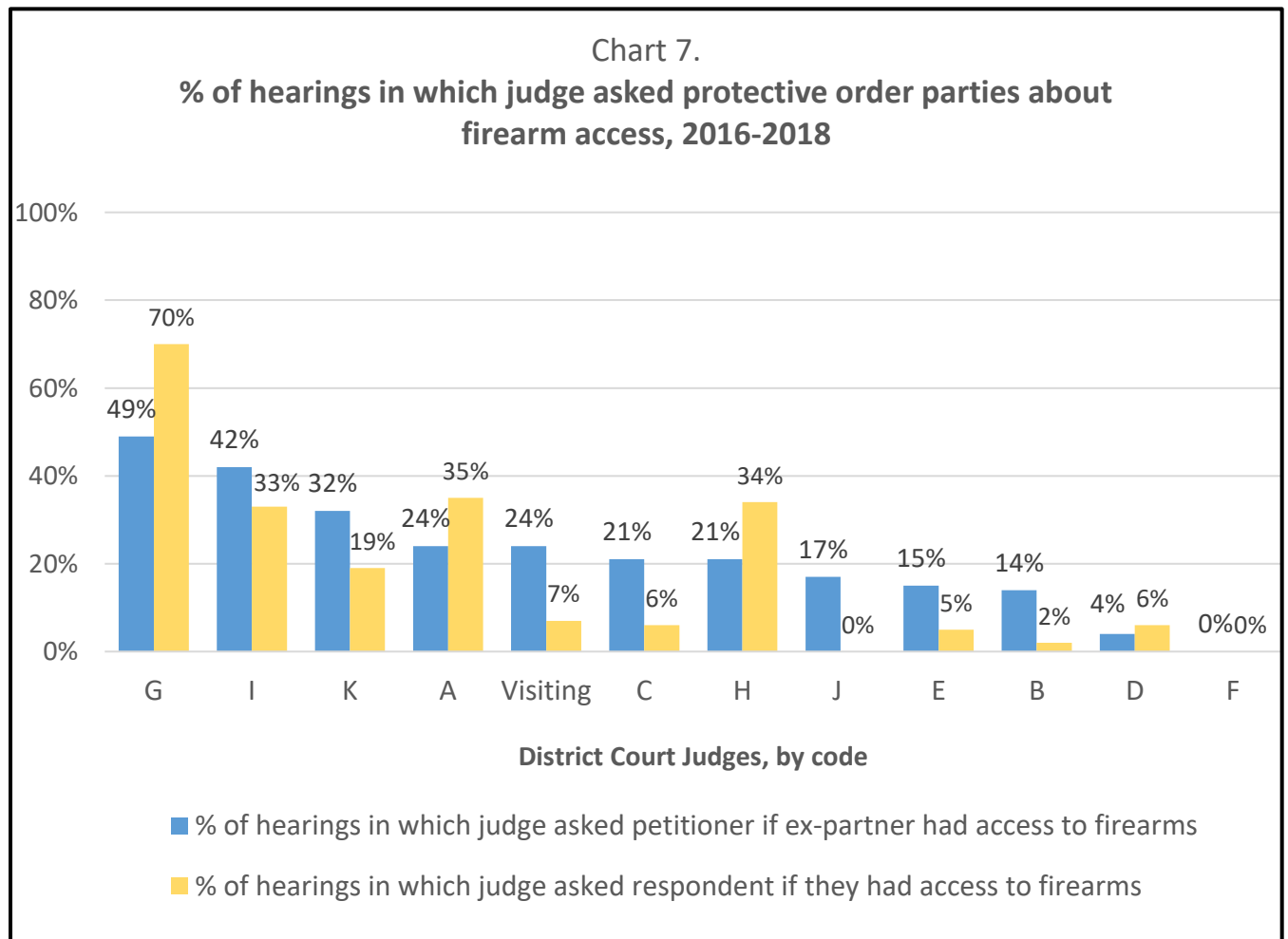
February 2017, court monitor notes

In May of 2018 the Maryland Judicial Conference Subcommittee on Domestic Violence began suggesting to all judges that they ask petitioners whether the respondent has access to firearms. Court Watch has long embraced this approach as a necessary part of evaluating the petitioner's level of risk.

From 2016 to 2018, judges asked 22% of petitioners whether their ex-partner had access to a gun. Judges also asked 20% of respondents directly. The Sheriff's Department and Montgomery County Police Department can use any new information provided during court hearings to enhance enforcement. (See Chart 7.)

Chart 6.
% of hearings in which the judge told the respondent to surrender all
firearms to law enforcement





Staggered exits

Victims need to be safe throughout the protective order process at the courts – both because that is the court’s duty to the public, and because victims are unlikely to come back to court if they experience it as a dangerous place.

Fewer than half of domestic violence victims today (45%) are protected by basic safety protocols as they leave the Rockville and Silver Spring District Courts.

In addition to being effective, staggered exits impose no costs for the court and no significant burdens on judges or bailiffs. Staggered exits avoid far more expensive alternatives, such as law enforcement escorts for victims to their cars or bus stops.

“Some courts hold you for 15 minutes, but I’ll let you get out of here in two or three minutes. I know you have things to do.”

Montgomery County District Court bailiff, to a well-dressed Caucasian man who had just been given a final protective order.

November 2017, court monitor notes

None of us would expect to see judges or bailiffs standing at the metal detector and deciding ad hoc who should be screened and who “gets a pass” coming into the courthouse.

Such policies are set and uniformly implemented precisely because it is hard to know in every instance who is dangerous and who is not.

Domestic violence victims deserve the same type of uniformly implemented process that currently protects court personnel.

The *NCJFCJ Guide to Improving Practice* recommends a minimum fifteen-minute interval after the petitioner leaves a courtroom before the respondent is released to ensure the victim can leave the court without risk of being pursued and intimidated or attacked by the abuser. For purposes of our research, Court Watch considered a full 10 minutes between departures to be a staggered exit and anything less than 10 minutes a failure to use the procedure.

In 2011, District Court judges used staggered exits in only 15% of relevant domestic violence protective order hearings. Following Court Watch’s first report, staggered exit rates zoomed up to 70% in 2012.

That same year, Maryland’s Chief Judge of the District Courts, The Honorable Ben Clyburn, and the Committee of District Court Administrative Judges sent every District Court judge a document urging them to adopt the best practices identified by the NCJFCJ to “achieve safer outcomes” in domestic violence cases.

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 requires the involvement of both judge and bailiff.

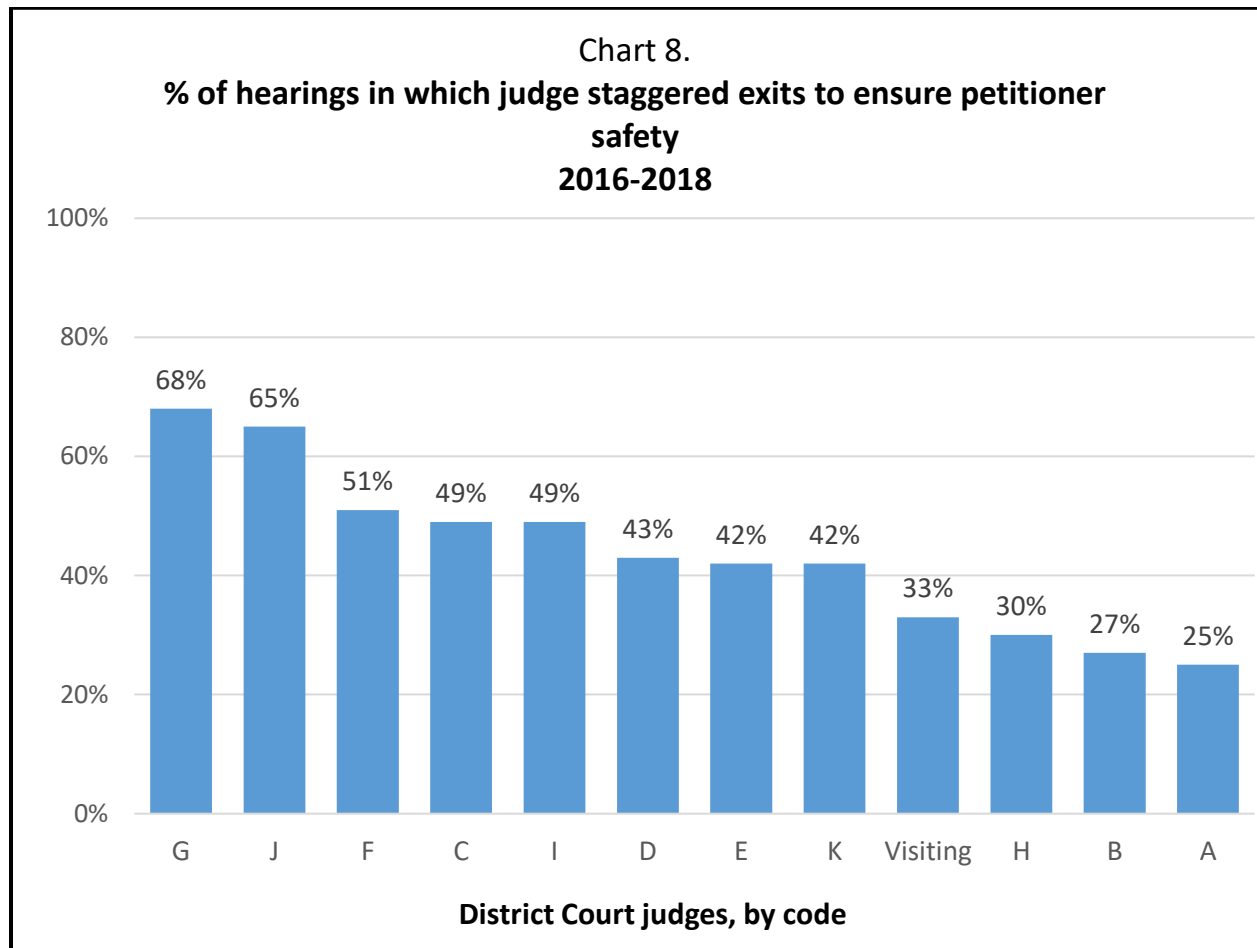
Montgomery County District Court policy appears to be that each judge and each bailiff can decide for themselves whether they will implement basic security procedures, despite strong, clear communications from the Chief Judge of the District Courts of Maryland and other judicial leaders on domestic violence underscoring the importance of using staggered exits.

When bailiffs and/or judges announce prior to the docket that exits will be staggered, then hold respondents for only 1 to 3 minutes, they put victims at heightened risk, because victims may let their guard down and assume they are safe when they are not.

Montgomery County District Court policy appears to be that each judge and each bailiff can decide for themselves whether they will implement basic security procedures.

Without one court-wide policy, judges and bailiffs will continue to make independent decisions about which victims deserve protection and which do not, to the great detriment of many victims. None of us would expect to see judges or bailiffs stand at the metal detector and decide ad hoc who should be screened and who “gets a pass.” Such policies are set and uniformly implemented precisely because it is hard to know in every instance who is dangerous and who is not. The same should be true for staggered exits.

The only way to be sure that victims will be safe in the area immediately surrounding our courts is for county and/or state court administrators to establish a written policy that clarifies that, in accordance with national best practices, respondents will be informed that they will wait a minimum of 15 minutes following the petitioner’s departure in all protective order hearings.



The fact that staggered exits are used in some courtrooms 25% of the time and in others 68% of the time, suggests that the judges play a central role. Judges should reiterate at the beginning of the docket that all respondents will wait 15 minutes to leave the courtroom to avoid any contact since a “no contact” order has just been put in place.

Some Montgomery County judges assert that they do not have the right to hold respondents following their hearing.

A 15-minute delay for respondents is no more onerous than other procedures that Montgomery County courts requires every day that impose minor limits on individual movement in the name

of efficiency or safety. Courts require parties to arrive 30 minutes prior to the beginning of the docket for the sole purpose of efficiency. They require all persons coming to court to wait in line to be screened through metal detectors to ensure the safety of court personnel. Many jurisdictions across the country implement staggered exits in virtually all relevant domestic violence cases without any problems arising. The great majority of people in court do exactly what a judge asks them to do.

Sylvia broke up with Martin after he ripped her dress and grabbed her by the throat. But Martin kept coming back to the house.

Once, he pushed inside and knocked her against a wall. Sylvia's 13-year-old woke up and called 911.

The judge gave Sylvia a final protective order. She felt safe leaving court because a bailiff had said at the beginning of the docket that exits would be staggered.

The bailiff released Martin 4 minutes after Sylvia. Martin had plenty of time to catch up with her outside the building.

December 2017, court monitor notes

Expectations for domestic violence victims are extraordinarily high. We expect them to come to court to file a protective order despite the greatly increased risk of assault from their partner when they assert their independence. We require victims to return to court, sometimes twice, to obtain one year of protection. It does not seem too much to ask to have responsive courts regularly follow a simple procedure that can easily ensure victims are not harassed, intimidated or assaulted as they complete the steps required by the court to obtain one year of protection.

After finishing one case, judges must move on to the next and cannot be expected to monitor how long each respondent waits. It is incumbent upon the bailiffs to ensure that the courts' policy is implemented.

Court Watch documented many cases in which the respondent was told by a bailiff that he or she could leave the courtroom within 1-3 minutes after the petitioner left. This amounts to little more than a "running start" for the victim. Some of these releases occurred even after a judge had explicitly stated at the end of a case that exits would be staggered.

All bailiffs in the state are now trained on how to implement staggered exits but they are apparently given no minimum time to have respondents wait, rendering the practice virtually useless in many cases.

Many bailiffs feel they can "assuage" an upset or distraught respondent by walking them out of the courthouse prior to the victim's departure and talking to them to calm them down. Unfortunately, that approach provides an opportunity for an angry abuser to find the victim's car or watch for his or her ex-partner and intimidate or assault them.

Conclusion

This report has reviewed Montgomery County District Court judicial use of five fundamental domestic violence courtroom practices that achieve safer outcomes in protective order cases. There are positive trends to note, specifically improvements in the overall percentage of District Court judges asking petitioners who want to drop their cases whether they have been coerced and informing respondents that they must turn in their guns to law enforcement.

What is striking, however, is how far Montgomery County District Courts remain from full implementation of fundamental procedures to improve the effectiveness of protective orders and keep domestic violence victims safe. In addition to respectful demeanor, the five practices laid out in this report should be the judicial equivalent of a surgeon washing their hands prior to surgery.

Victims of intimate partner violence face significant barriers when they decide to seek help from Montgomery County's courts. Their level of understanding of the court system, their ability to access counseling and other services, their access to adequate transportation or legal representation will vary as much as their individual situations and the degree of abuse they are experiencing.

The courts cannot be expected to address all these issues or their underlying causes. But judges can and should ensure that victims of domestic violence are not dropping out of the legal system because of intimidation. Judges can and should tell respondents two critical items in 100% of cases – if you violate your protective order it may lead to imprisonment, and you must turn in all your guns immediately. Our courts can and should ensure that all victims are uniformly provided safety in courthouses and surrounding areas as they go through the required steps to obtain one year of legal protection.

When judges fail to use basic, fundamental practices to improve safety in domestic violence cases, they are limiting residents' access to the full measure of justice they deserve. These five fundamental practices, coupled with appropriate demeanor, should be standard practice and used in 100% of relevant domestic violence protective order hearings in Montgomery County and throughout Maryland.

Footnotes

1. Maryland Judiciary. [FY 2017 Statistical Abstract](#), 2018.
2. [Maryland Judiciary Strategic Plan Update December 2017](#), Maryland Judiciary, 2017.
3. Holt, V.L., M. Kernic, T. Lumley, Wolf, M., Rivara, F. "Civil protection order and risk of subsequent police-reported violence." JAMA, Vol. 288, No. 5. August 7, 2002.

Logan, T.K., 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.

Waul, Michelle R. "Civil Protection Orders: An opportunity for intervention with domestic violence victims." 6 GEO. Public Policy Review (2000).

Although intimate partner abusers often violate protective orders, particularly in the temporary phase and immediately after a final protective order is granted, the severity and frequency of violence is still usually reduced. In one study, the majority of petitioners whose orders were violated said they would still apply for one again if they needed it.

4. Maryland Judiciary, 2017. "[Maryland Judiciary Strategic Plan Update December 2017](#)".
5. Maryland Criminal Procedure, § 5-202(e).
6. Campbell, J.C., D.W. Webster, J. Koziol-McLain, et al., "Risk factors for femicide within physically abusive intimate relationships: results from a multi-site case control study", 93 Amer. J. of Public Health 1089-1097 (2003).

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Waul, Michelle R. "Civil Protection Orders: An opportunity for intervention with domestic violence victims." 6 GEO. [Public Policy Review](#) (2000).

Appendix 1. Methodology

This study includes 11 judges who served on the District Court bench between September 2016 and March 2018 for whom we had data on a minimum of 60 protective order cases. Visiting judges, who serve as substitutes for regular judges, are included as a group.

Judges most recently appointed to the bench are not included in the study because Court Watch did not have data from 60 or more cases each. Two of the judges included in this study are no longer on the District Court bench.

Data was collected in over 2,500 protective order hearings in both Rockville and Silver Spring district court locations by teams of volunteers, from September 2016 to the end of March 2018. Volunteers received extensive initial and continuing education and training on the court process, data collection, and intimate partner violence. Court monitors received frequent feedback on the data forms they completed to improve data quality and ensure that everyone was completing data forms in the same manner.

Court Watch Montgomery is deeply appreciative of all the volunteers who spent many hours collecting, entering and analyzing data for this report and providing thoughtful edits on the draft report.



Court Watch Montgomery reduces intimate partner violence in Maryland by ensuring that victims have access to responsive justice and vital services that can stop abuse quickly and permanently.

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