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An Update on Denied and Dismissed Protective Orders in Montgomery County, Maryland

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Court Watch Montgomery reduces intimate partner violence by ensuring that victims have access to responsive justice and vital services so the violence can be stopped, quickly and permanently.

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An Update on Denied and Dismissed Protective Orders in Montgomery County, Maryland

Protective orders, when paired with safety plans, are a highly effective means of improving the safety of intimate partner violence (IPV) victims. Yet only 42% of the many victims in Montgomery County who asked local district courts for protection in 2018 ended up with a final protective order. What happened? Despite filing detailed court petitions describing abuse at the hands of an intimate partner, many victims ultimately dropped their cases. Others were denied a final order by a judge.

It is critical that we understand the circumstances under which victims drop their requests for legal protection or are denied an order by the court in order to ensure that all intimate partner violence victims have full access to justice. This study analyzes data collected by Court Watch Montgomery in 2,997 hearings for protective orders from 2015 to 2018 that resulted in judges granting final protective orders, denying the requests for protection, or victims dropping their cases. We examine variables associated with dismissals and denials of petitions, possible gaps in court-based or community services, barriers to victims following through with the court process, and issues concerning the denial of orders. We recommend approaches to addressing these challenges.

Filing a Protective Order Petition in Montgomery County

According to Montgomery County's brochure "How to file for a Peace or Protective Order"[1] the entire process takes four steps: 1) complete the correct petition, 2) file the petition, 3) appear for a temporary hearing, and 4) appear for a final hearing.[1] When court is closed victims can request the court's protection at Commissioner Stations, which involve an extra step. Unfortunately, many cases are not that linear (see Table 1 in the Appendix A for different outcomes of based on the type of hearing). In the "best-case scenario" the process takes 2 weeks at most. However, the process is frequently not so straightforward.

Changes over time in protective orders granted, dismissed or denied

In 2015, 54% of Montgomery County petitions resulted in a granted final protective order; by 2018, that number had dropped to 42%. As Chart 1 shows, during the same time period, dismissals increased from 32% in 2015 to a full 49% of all petitions in 2018. The percentage of denied petitions remained more

consistent, but gradually declined from 13% in 2015 to 9% in 2018, probably due to the state legislature lowering the legal standard for final protective orders from "clear and convincing evidence" to a "preponderance of evidence."

Two trends of note from 2015-2018 may have impacted whether victims received final orders. There was a slight increase in petitions where both parties were of the same sex, from 2.6% in 2015 to 5.3% in 2018. In addition, there was a slight decrease in petitions between parties who had children in common. Couples with children in common made up 70% of the court parties in 2015; by 2018 that percentage had dropped to 63% of all cases.

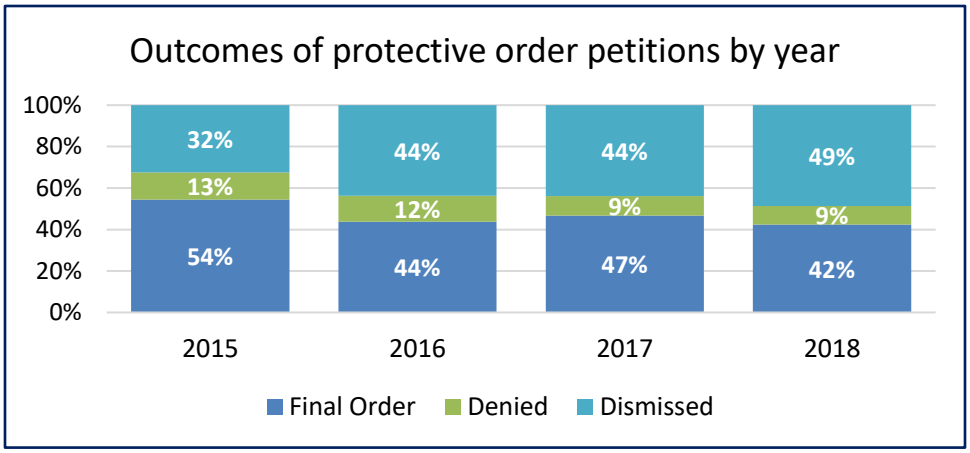

Chart 1. Decrease of final orders and increase of dismissed petitions since 2015

Denials of Protective Order Petitions

From 2015 to 2018, Court Watch observed 324 hearings in which judges denied petitions. On average, 11% of orders were denied. Among all the judges, nearly half of all cases which were denied were denied at temporary order hearings (44%).

There is no perfect denial rate – not every petition warrants a protective order, temporary or otherwise, and judicial independence is an important aspect of our court system. Although there will always be variation between individual judge's case outcomes, the outcome at court for a victim should not vary drastically by which judge they happen to see on the scheduled day of their hearing. Court Watch data showing wide variations in denial rates between judges raise concerns about equal treatment under the law for victims.

Interim orders

Protective orders that began as interim orders accounted for 54% of all denials and 59% of all dismissals. Petitioners whose cases began at a Commissioner Station were slightly less likely to obtain a final protective order (45% compared to 50% of victims who began their cases at a District Courthouse or the Family Justice Center) and more likely to drop their case (45% to 39%).

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One cause of the higher dismissal rate among those with interim orders may be the lack of victim services at Commissioner Stations. At a courthouse or at the Family Justice Center (which has a video link to court for temporary protective order hearings) victim assistants are available who provide emotional support, answer victims' questions as they write their petitions and explain the process. No such support is available at the County's three Commissioner Stations.

Burden of legal knowledge falls on petitioners

Domestic violence victims who come to court without a lawyer may find it very difficult to find information on what it takes to get an order and what kind of proof is needed. Not knowing exactly what types of evidence to bring to court can lead to legitimate petitions being denied.

To be awarded a temporary protective order by a judge in Maryland, the petitioner must show "reasonable grounds" that they have been abused in one of the ways listed in the law. The Maryland's People's Law Library website has extensive information on protective orders but does not provide a definition of "reasonable grounds." For a final order, a petitioner who is alone during a hearing must convince a judge that a "preponderance of evidence" shows that they have been abused and that the abuse is likely to occur again. Again, they do not define the term. However, the website does provide a list of steps to take in prepare proof to use in court when filing for a protective order:

- Take pictures of any visible bruises.
- Get copies of any police reports.
- Determine whether anyone saw the abuse and ask that person to testify on your behalf.
- If you have not already done so, talk to the police about filing criminal charges.

- If you are seeking financial relief (also known as Emergency Family Maintenance), get copies of your most recent pay stubs, living expenses (mortgage, lease, utilities, car insurance, car payment, daycare, etc.) and any income (pay stubs) or bank information you may have regarding the abuser.[2]

It is far more difficult than it should be for victims to find specific examples of the type of "proof" they need to provide to successfully received a protective order.

Variation between judges in the denial of petitions

Judges varied dramatically in how often they denied protective orders. Two-thirds of judges denied less than 10% of the cases they heard. However, one judge denied 19% of his cases – approximately twice as often as his peers. Although the temporary order stage is where many petitions that clearly do not meet the legal standard are "weeded out," the legal standard is also substantially lower.

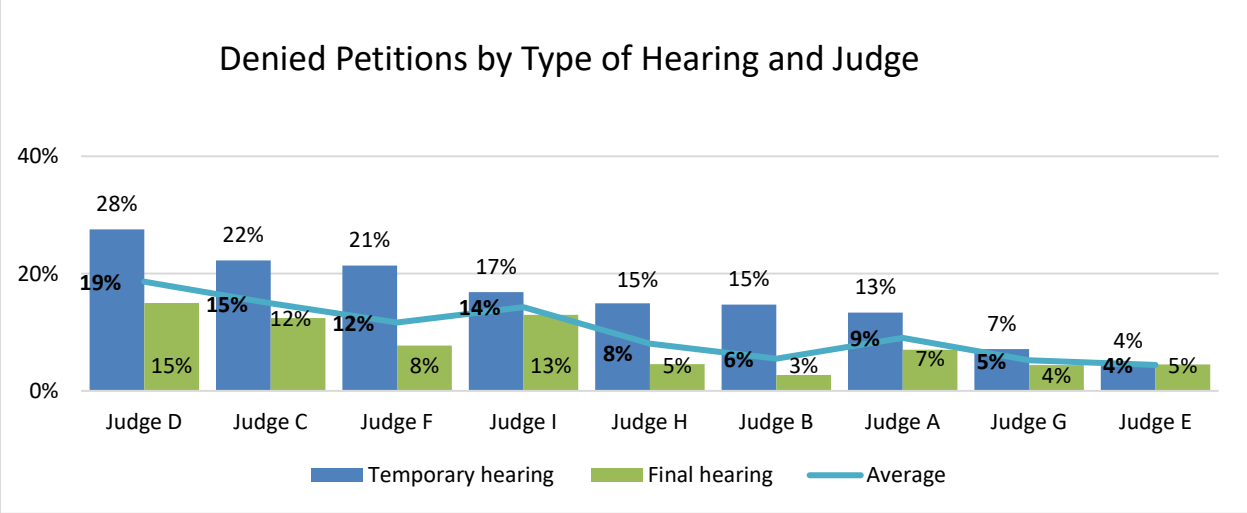

Chart 2. This chart shows a high degree of variability between judges when denying protective order petitions.

Severity of Harm in Denied Petitions

The petitions and testimony in many cases that resulted in denials described severe abuse, current criminal cases, past protective orders and more, all of which indicate a petitioner in great need of protection. Among all petition outcomes, strangulation was mentioned in testimony 15% of the time, bodily harm 66%, bodily threats 87%, and use of any weapon 11%. Of course, not all allegations are true; but we should pay attention to how frequently allegations of harm are mentioned in testimony when petitions are denied. There is cause for concern when looking at the seriousness of allegations within the

denied cases. For example, among cases that were denied at a temporary hearing, nearly 80% mentioned threats of bodily harm in testimony, 40% mentioned actual bodily harm, and 4% mentioned strangulation.

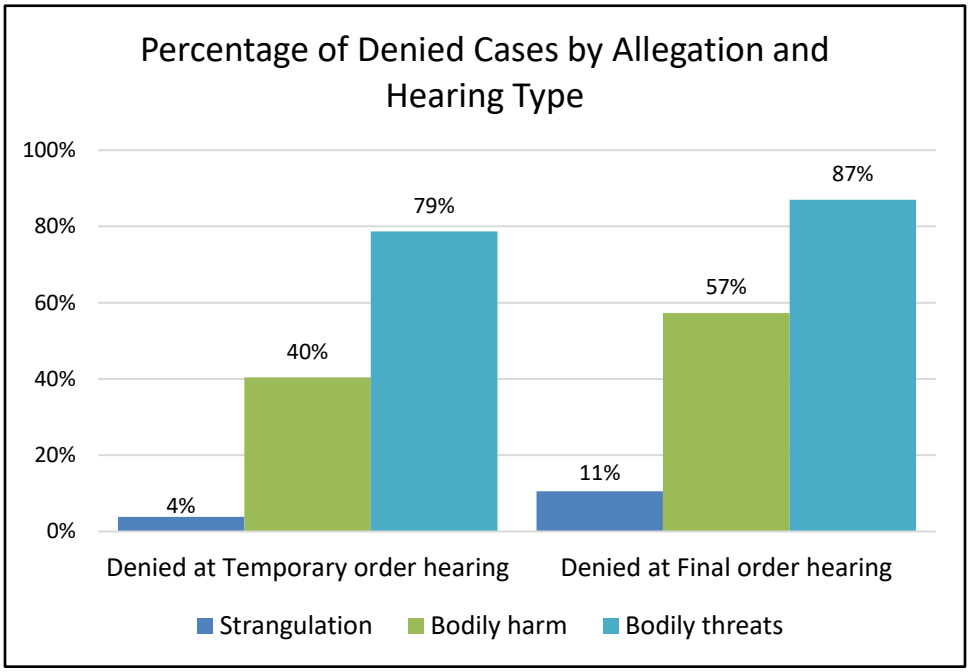

Chart 3. Denied petitions still contain a high occurrence of allegation of harm and threats of harm.

The presence of the respondent

Another significant factor linked to the denial of orders is the presence of the respondent; petitions were twice as likely to be denied when the respondent was present versus absent (13% versus 6%, respectively). There was a drastic difference between temporary and final order hearings. The percentage of denied petitions was nearly the same for temporary order hearings, regardless of respondent presence (15% versus 17%, respectively). However, there is a drastic difference at final order hearings: petitions were denied 12% of the time when the respondent was present, compared to only 2% of the time when the respondent was absent. **Petitioners were 6 times less likely to receive a final order of protection if the respondent was present.**

Out of all the orders denied by judges, respondents were present for 68% of temporary order hearings and 94% of final order hearings.

Case One
In testimony, the petitioner stated that the respondent became sexually aggressive and she pushed him off. The respondent then grabbed her arm and left a bruise. The respondent stated he was trying to make things right, he never grabbed her, and was gentle with her. Police were called and respondent did not get bond because of how he acted upon arrest.

(This petition for a protective order was denied. Fortunately, this petitioner re-filed two months later and received a final protective order.)

Case Two
The petitioner stated that the respondent threw her off the couch, held her down, and tried to kiss her; she was not able to breathe. The respondent also shut her in the bathroom, and she could not get out or call police because the respondent had taken her cell phone. The petitioner had photographic evidence of bruises on her arm. The respondent stated that during the altercation, the petitioner grabbed a knife and that she was angry, out of control, and he was trying to calm her down. The respondent has a concealed weapon permit, as he does security work.

(The petition was denied at the temporary order hearing.)

Case Three
The petitioner stated that she and the respondent had a verbal fight and the respondent tried to strangle her. She also stated that the respondent has been very threatening and made comments about revenge, and that the respondent threw objects at her. The petitioner said that the respondent is jealous because she thinks the petitioner has sex with men. The respondent denied inflicting any physical harm.

(This was a same-sex couple. The petition was denied at the temporary order hearing.)

A Closer Look at Dismissed Protective Order Petitions

Dismissed Petitions and Judicial Best Practices

A petitioner may drop their case either by explicitly asking the judge or by simply failing to appear at a hearing. When a petitioner requests a dismissal in person, it is a best practice for the judge to:

- ask if the petitioner has been coerced into dropping the order;
- reassure the petitioner that they can come back to court in the future; and
- ask if the petitioner feels safe.

As Chart 4 shows, there is little consistency in the implementation of these important practices. The decline in judges' use of all three questions to ascertain victim safety is very concerning, especially as dismissals rise.

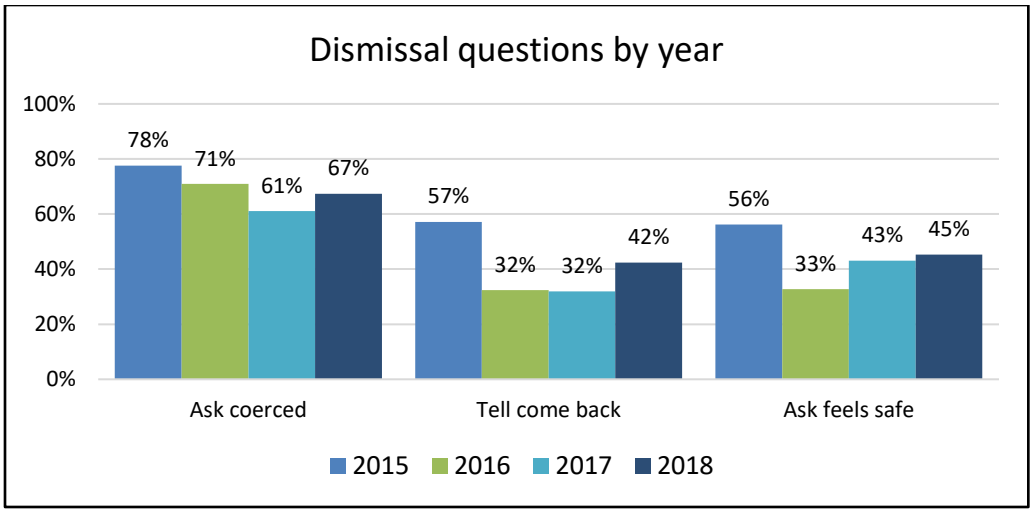

Chart 4. Although the use of best practices for dismissal requests increased slightly in 2018, they are still being implemented, on average, 20% less than often they were four years ago.

When petitioners fail to appear in court and the petition raises serious safety concerns, judges have the option of requesting a "welfare check." Judges simply ask the courtroom clerk or a Health and Human Services advocate to request that police make a non-emergency visit to the home. However, not all judges take the time to review the petition and take this extra step when it is warranted.

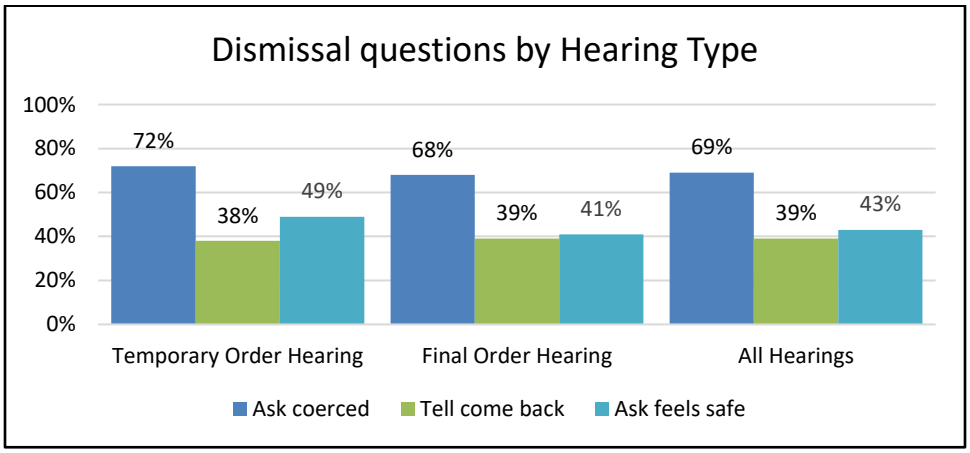

Chart 5. Petitioners face uncertainty and/or danger upon seeking a protective order, but this reality is not being adequately addressed by judges through best practices.

Could poor court implementation of staggered exits cause victims to drop their cases?

Court Watch's 2018 data shows that 10-minute staggered exits are only implemented in approximately half of all protective order cases (49%). Full 15-minute staggered exits (suggested by a national panel of judges and adopted as the local District Courts' policy), are only implemented an average of 16% of the time. Due to heavy use of Commissioner Stations, respondents are frequently served prior to the first hearing in court and as a result appear at 46% of temporary hearings. If victims are harassed or

assaulted outside the courthouse after their temporary hearing by their ex-partner, might they be more inclined to not return to the courthouse?

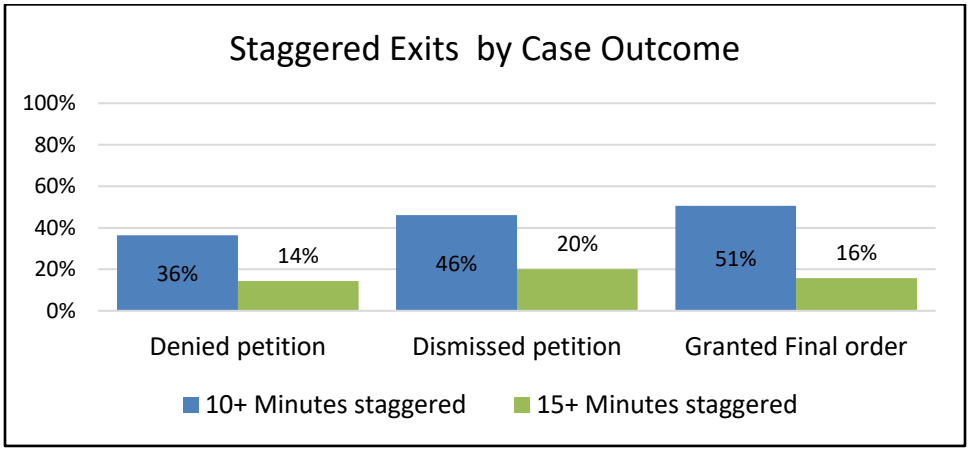

Chart 6. These percentages are based on cases where both parties were present.

Even when a petition is denied or dismissed, the courts should err on the side of caution and maintain staggered exits. Particularly after an order is denied, the respondent may be feeling empowered and seek to try to re-establish control over the victim.

Other Factors in Dismissed Petitions

Dismissed petitions varied according to the type of relationship between the petitioner and respondent. Among same-sex couples, 43% petitioners dismissed their petitions, compared to 30% of different-sex couples. Additionally, the degree of involvement between the parties was a factor. Petitioners who had a child in common with the respondent were over twice as likely to dismiss their petition than those without a child in common (22% versus 10%, respectively). As the degree of involvement between parties decreased, so did the percentage of dismissed petitions. Those who were married dismissed 23% of petitions, divorced or separated 18% of petitions, and those living together or who had dated dismissed 13% of their petitions. Intuitively, this trend makes sense; petitioners who are still married and/or have children in common may be more likely to be financially dependent on the respondent or may still feel more emotionally invested in the relationship.

Conclusion and Recommendations

Since 2015, dismissed petitions have consistently increased and now account for almost half of the hearings monitors observed. At the same time, the percentage of cases where judges utilized best practices aimed at keeping victims in the system decreased. Although there are reasons petitioners may drop their case that have nothing to do with the court system (such as a continued emotional attachment to the abuser or pressure from extended family), victims in Maryland would be far better served if judges actively engaged with petitioners who are considering dismissing their cases to ensure

they have not been pressured to drop their case, and to encourage them to return anytime they believe they are in danger.

Consistent implementation of best practices among judges can help foster an increased faith in our court system, which in turn, could increase the number of victims who take the big step of seeking legal protection. Victims of intimate partner violence should be able to know that the outcome of their protective order petitions does not depend on the luck of the draw when it comes to the amount of support they are offered while filing the petition or the judge assigned to their case.

Advocate services are clearly needed at the two main Commissioner Stations in Rockville and Silver Spring. Victims who use the stations come at varying hours on weeknights and throughout the weekends; paid or volunteer advocates could be on-call to reduce costs. Being greeted by a warm advocate who lets victims know that they are believed and that there are people who want to help them could significantly reduce dismissals; assistance with writing better petitions could reduce denials. Court and Commission Station-based advocate services are a central part of access to justice for victims of intimate partner violence.

Appendix A

Table 1. Potential Outcomes of Protective Order Petitions at each stage of the process.

Potential Outcomes	**Hearing Type: Interim**	**Hearing Type: Temporary**	**Hearing Type: Final**
Granted Interim Order	Commissioner finds reasonable grounds for order.	*	*
Denied	Commissioner does not find reasonable grounds for order.	Judge does not find reasonable grounds for order.	Judge does not find the necessary preponderance of evidence for a final order.
Dismissed	*	a. Petitioner fails to appear. b. Petitioner requests dismissal.	a. Petitioner fails to appear b. Petitioner requests dismissal c. Order expires after 6 months if Sheriff's Office has been unable to serve the respondent their court papers.
Granted Temporary Order	*	Judge finds reasonable grounds for order and either of the following are true: a. Respondent is absent b. Respondent is present but wants a week to prepare for the final order hearing.	Judge finds reasonable grounds for order, but respondent has not been served.
Granted Final Order	*	Judge finds reasonable grounds for order and: Both parties are present and agree to skip to the final order hearing.	Respondent has been served and the judge finds a preponderance of evidence for a final order.

Appendix B

References

1. Maryland Judiciary. (2016, October). *How to File for a Peace or Protective Order*. Retrieved from mdcourts.gov/courtforms/joint/ccdcdvpo001br.pdf

2. Hennen, A. E. (Ed.). (2019). *Protective Orders*. Retrieved from The Maryland People's Law Library: https://www.peoples-law.org/protective-orders