



## Whatcom County Domestic Violence Protection Order Safety and Accountability Audit

**April 2011**

*This project was supported by Grant No. 2005-WE-AX-0080 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.*

# BWCCADV

**Bellingham - Whatcom County  
Commission Against Domestic Violence**



1407 Commercial Street, Bellingham, WA 98225  
360.312.5700 | [www.dvcommission.org](http://www.dvcommission.org)

## Acknowledgments

The Whatcom County Domestic Violence Protection Order Safety and Accountability Audit has many people to recognize and thank for their participation and support. This includes the Audit Team, the project partners, or audited agencies, and the leadership of the Bellingham-Whatcom County Commission Against Domestic Violence. Praxis International provided technical assistance as needed throughout this project.

### ***Safety Audit Team:***

The Safety Audit Team contributed countless hours of time and expertise coming together to meet, learn, interview, observe, and analyze the findings.

**Karen Burke**, Executive Director, Domestic Violence and Sexual Assault Services

**Randall Carroll**, Consultant, Profectus, LLC

**Bern Haggerty**, Staff Attorney, Lummi Victims of Crime

**Mary Holton**, Legal Assistant, Northwest Justice Project

**Sue Howell**, Detective/Patrol Officer, Bellingham Police Department

**Michelle Hull**, Staff Attorney, Lummi Victims of Crime

**Evan Jones**, Deputy Prosecuting Attorney, Whatcom County Prosecutor's Office

**Jo Justesen**, Legal Support Coordinator, Womenscare Shelter

**Ronaye Tylor**, Police Support Services Lead, Ferndale Police Department

*Safety Audit Coordinator and Principle Report Author:*

**Sue Parrott**, Program Supervisor

*Bellingham-Whatcom County Commission Against Domestic Violence*

### **Project Partners:**

*Key agency heads and staff contributed to and supported the project through their time, access to records, personnel and facilities.*

***Bellingham Police Department***

***Domestic Violence and Sexual Assault Services***

***Ferndale Police Department***

***Whatcom County District Court***

***Whatcom County Sheriff's Office***

***Whatcom County Superior Court***

***Womenscare Shelter***

This project was supported by Grant No. 2005-WE-AX-0080 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

## Contents

<b>Executive Summary .....</b>	<b>5</b>
<b>Introduction .....</b>	<b>15</b>
The Question .....	15
Findings and Recommendations .....	20
Caveats and Cautions .....	24
<b>Gap #1 Courthouse and courtroom procedures make it possible for respondents (batterers) to contact and intimidate petitioner (victims), resulting in safety concerns for petitioners (victims). .....</b>	<b>25</b>
What contributes to the gap? .....	25
What will help address this gap? .....	29
<b>Gap #2: Although the domestic violence protection order process is pro se, it is complex and not all petitioners receive the assistance and support necessary to understand the process and make fully informed decisions. ....</b>	<b>32</b>
What contributes to the gap? .....	32
What will help address this gap? .....	40
<b>Gap #3: Petitioners seeking protection orders face procedures and responses across and within agencies that are inconsistent and sometimes not fully grounded in an understanding of the law and dynamics of battering. ....</b>	<b>42</b>
What contributes to the gap? .....	43
What will help address this gap? .....	51
<b>Gap #4: Standard and consistent responses to reducing respondent access to firearms (and dangerous weapons) in the protection order process are lacking, despite petitioner safety concerns and practitioner knowledge of the dangers of domestic violence and firearms. ....</b>	<b>53</b>
What contributes to the gap? .....	54
What will help address this gap? .....	57
<b>Gap #5: Multiple practices and procedures around service and process of protection orders place victims at risk at a time when the need for safety is actually heightened. ....</b>	<b>59</b>
What contributes to the gap? .....	59
What will help address this gap? .....	65
<b>Gap #6: Assessment of the context, severity and impact of violence and implications for risk, danger and safety for the petitioner is not consistently addressed throughout the protection order process. ....</b>	<b>68</b>
What contributes to the gap? .....	68
What will help address this gap? .....	77
<b>Gap #7: Some petitioners experience multiple barriers in accessing the protection order process, increasing the difficulty and impacting the courage it takes to initiate and follow through with the process. ....</b>	<b>79</b>
What contributes to the gap? .....	79
What will help address this gap? .....	82
<b>More Audit Trails, More Questions: .....</b>	<b>85</b>

Centralized Domestic Violence Protection Order Court .....	85
Civil Stand-By or Assistance in Obtaining Possession of Certain Items.....	86
Custody and Parenting Issues.....	87
Economic Justice.....	89
<b>Next Steps:.....</b>	<b>91</b>
<b>Appendix A.....</b>	<b>93</b>
Safety Audit Methodology.....	93
<b>Appendices B-E.....</b>	<b>96</b>
<b>Appendix B: All Recommendations .....</b>	<b>97</b>
<b>APPENDIX C: Recommendations for Courts (Whatcom County District Court and Whatcom County Superior Court).....</b>	<b>106</b>
<b>APPENDIX D: Recommendations for Domestic Violence Agencies (Domestic Violence &amp; Sexual Assault Services and Womenscare Shelter) .....</b>	<b>114</b>
<b>APPENDIX E: Recommendations for Law Enforcement (Bellingham Police Department, Ferndale Police Department, and Whatcom County Sheriff's Office) .....</b>	<b>118</b>

## Executive Summary

The Bellingham-Whatcom County Commission Against Domestic Violence has worked throughout Whatcom County to recommend and implement many systemic improvements to the criminal legal system response to domestic violence. A few years ago the Domestic Violence Commission proposed to examine an important civil remedy available to domestic violence victims: domestic violence orders for protection. As this process is petitioner driven, it is an important step towards safety and autonomy for victims. (A petitioner is the person petitioning, or applying, for an order for protection. The respondent is the person the petitioner is seeking protection from.) As a community, the Domestic Violence Commission wanted to know how this process was working, particularly for petitioners. How accessible is the process? Who uses it? And is the process organized in a way that is most responsive to the safety needs of petitioners?

Utilizing the Safety Audit methodology (see Appendix A), the Bellingham-Whatcom County Commission Against Domestic Violence decided to explore the following question:

*How is victim safety and access built into the community domestic violence order for protection process?*

A Safety and Accountability Audit is designed to identify practices that impede safety for victims and accountability for batterers. Its focus is therefore on discovering and articulating problems. A successful Safety Audit requires a certain foundation of relationships and trust and the process of discovering problematic practices also reveals community strengths. The Bellingham-Whatcom County Commission Against Domestic Violence has led the community through three successful Safety Audits. Seven agencies agreed to participate in this fourth Safety Audit. This speaks to the connection, dedication, and strengths of the community and the agencies involved. It is critical to recognize this strong foundation; a community without this base and commitment does not bother to ask how things are working for victims of battering.

This Audit focused on the following aspects of the domestic violence order for protection process:

- Petitioner initiated applications either through a community based domestic violence agency or through the courts.
- The processing of the order in the courts including ex parte orders, hearings, and paperwork generated and distributed.
- The process of service of orders involving courts and law enforcement agencies, including data entry.

Criminal enforcement of protection order violations was not included in the scope of this Audit, although aspects of order processing and service impact enforcement.

With this Audit scope, the following agencies agreed to participate in the Audit, and are referred to in this report as project partners:

- Bellingham Police Department
- Domestic Violence and Sexual Assault Services

- Ferndale Police Department
- Whatcom County District Court
- Whatcom County Sheriff's Office
- Whatcom County Superior Court
- Womenscare Shelter

A trained local Audit team gathered and analyzed information from the 7 project partners between August 2010 and February 2011. The information included focus groups with advocates and protection order petitioners, 43 individual interviews with practitioners involved in the protection order process, 31 observations of many of these same practitioners, and an analysis of 50 random protection order files in Superior and District Court.

The Audit team learned firsthand that domestic violence protection orders are not “just” civil orders. They are a lifeline to safety for many victims and require a collaborative and interagency approach in order to strengthen and improve the community response. The team recognizes the constrained resources public and private agencies are now facing. These constraints were considered in making recommendations; however, ultimately the team believed it was their responsibility to list all the recommendations that reflected our obligation to take the protection order process as seriously as petitioners do.

Seven primary gaps were identified by the Audit Team. The full report includes a detailed look at these gaps, how they were identified through evidence, and how they can be addressed. The gaps are listed in general order of priority; however, each gap stands alone in its importance. It is important to remember that that an identified gap is not necessarily exclusive to one agency, or to Whatcom County. Because of the uniform ways that the United States’ legal system is structured, there is potential that many other communities would identify similar gaps and evidence.

This Executive Summary includes a brief overview of each of the seven gaps. It is a bold step for any agency to examine its own work and publicly share the results with others. It is with this courage that the seven project partners agreed to participate in this Safety Audit, and it speaks to their commitment to improving the community response to domestic violence. The Bellingham-Whatcom County Commission Against Domestic Violence will do all it can to support the discussions, problem solving and implementation of the Safety Audit recommendations.

*Gap #1: Courthouse and courtroom procedures make it possible for respondents (batterers) to contact and intimidate petitioners (victims), resulting in safety concerns for petitioners (victims).*

Risks for violence and intimate partner homicide increase at times of separation. Reducing opportunities for the respondent to either use violence or harass and intimidate the petitioner in the courthouse or courtroom will increase safety for everyone, and increase the likelihood that petitioners will initiate and follow through with the protection order process.

Team members found that petitioners must wait in the same elevator lobby and courtroom hallway as the respondent prior to a protection order hearing. One of the protection order courtrooms is very small and requires parties to sit in close proximity. The team observed that courthouse deputies are present in Superior Court protection order hearings, but not in District Court hearings. Team members also noticed that judicial officers had different practices in the handling of evidence and testimony. In one court, the respondent cross examined the petitioner directly, whereas in another court, all questions and statements between the parties went through the judicial officer. Team members observed petitioners who were clearly afraid and walked into a courtroom unsure of where to sit or how to avoid the respondent. Agitated and irritated respondents were also noted by team members. Petitioners who had the benefit of being accompanied by an advocate were provided with many safety tips and cues, as well as a physical barrier by the presence of the advocate.

The Audit team made some of the following recommendations to address this gap:

- ☐ District and Superior Courts and the Whatcom County Sheriff's Office discuss a standard practice to ensure that a courthouse deputy is present at all protection order hearings.
- ☐ District and Superior Courts, along with community based domestic violence agencies, discuss with Whatcom County Courthouse Facilities the need for secure waiting areas for petitioners.
- ☐ All project partners (courts, law enforcement, and domestic violence agencies) collectively review existing security procedures in courthouse/courtrooms and make and implement any additional recommendations to enhance safety.
- ☐ District and Superior Courts and domestic violence agencies develop a "universal" handout for petitioners detailing safety tips within the courthouse and courtroom, to be distributed by court personnel, advocates, and others as relevant.

*Gap #2: Although the domestic violence protection order process is pro se, it is complex and not all petitioners receive the assistance and support necessary to understand the process and make fully informed decisions.*

The Washington State Legislature wisely created a pro se civil protection order process for victims of domestic violence. Tools are available to assist petitioners in the process, but despite this fact, the Audit team found that the process is not easy to navigate. Deciding to obtain an order takes courage and the paperwork and filing should be the least of the difficulties, yet the team found they are not. Fully educated petitioners can provide the court with better information on which to make decisions.

Focus group participants informed the team that an advocate was essential in helping them with the paperwork and prepare for court. The team found that many victims petition for an order with the assistance of an advocate, but around 25% of petitioners go through the petition process alone, or with other support. In interviews with judicial officers, team members learned that petitions are more clearly written when advocates provide assistance to petitioners. Judicial officers stated that those petitioners appear more comfortable in the courtroom and better prepared. The team found that there were

handouts on the protection order process, but no readily available handouts to prepare a petitioner for the hearing.

The loss of Assigned Counsel services to District Court petitioners in May 2010 was of significant concern to the team. Through observations, interviews and case file review the team learned that individuals who petition in District Court receive minimal assistance from court staff. If they are not accompanied by an advocate they must fill out the paperwork and navigate the process on their own. Through a review of case files, the team discovered that since the loss of Assigned Counsel, District Court petitioner statements are not as clear and comprehensive, more petitioners go through the process without an advocate, more petitions are denied by District Court, and fewer petitioners follow through with the process.

The Audit Team made some of the following recommendations to address this gap:

- ☐ Superior and District Courts work together to secure the resources to restore staffing at Assigned Counsel in order that District Court domestic violence protection order petitioners, at minimum, can receive assistance from the Office of Assigned Counsel again.
- ☐ Community based domestic violence agencies consider finding ways to offer services to petitioners who have not reached out for advocacy services. This might include co-locating services in the courthouse or reaching out more pro-actively to unaccompanied petitioners in hearings. As per the WA State Fatality Review <sup>1</sup>recommendation:  
“All courts issuing civil Protection Orders should have domestic violence advocates available on-site to meet with victims when they first petition for a Domestic Violence Protection Order.”
- ☐ Superior and District Courts and domestic violence agencies work together to develop a standard set of informational handouts for petitioners that can be used by other community agencies and law enforcement. This should include a review of current handouts and resource cards to ensure accuracy.
- ☐ Law enforcement officers, as part of a referral to the protection order process, regularly suggest that a victim seek out services of a domestic violence agency for assistance in filing for a domestic violence protection order.

*Gap #3: Petitioners seeking protection orders face procedures and responses across and within agencies that are inconsistent and sometimes not fully grounded in an understanding of the law and dynamics of battering.*

Victims of domestic violence who come forward to utilize the protection order process are putting their faith and trust in the system. When responses are not consistent, or not grounded in full understanding

---

<sup>1</sup> *Now That We Know: Findings and Recommendations from the WA State Domestic Violence Fatality Review*, December 2008, WA State Coalition Against Domestic Violence



of the laws and dynamics of battering, system responses may inadvertently put victims at increased risk. Consistent policies and procedures increase the integrity and reliability of systems.

The team learned that project partners cited WA State RCW 26.50 in answer to many audit questions, as the RCW provides direction on the protection order process to courts and law enforcement. However, the team found only limited examples of written policies and procedures guiding agency practices, with the exception of the domestic violence agencies. Although the team observed many good practices by individual practitioners, there was little documentation to ensure that these practices would be used by others.

Team members found that among practitioners involved in the protection order process, there is confusion and lack of comprehensive information about the process and the role of practitioners at each step. Through interviews the team determined that most practitioners received on-the-job training in specific duties related to the protection order process they were responsible for. It was very unusual for most of the practitioners, especially those in law enforcement and court staff, to have received any specialized training in domestic violence and the protection order process.

The Audit Team made some of the following recommendations to address this gap:

- ☐ Courts, law enforcement and domestic violence agencies develop protocols guiding all practitioners involved in the protection order process, with safety of victims as the overarching goal. Regular and appropriate supervision should be built in to ensure the protocols and procedures are followed.
- ☐ Courts, law enforcement, and domestic violence agencies as needed, build in systemic training and an understanding on the overall domestic violence protection order process for all key practitioners.
- ☐ Courts, law enforcement and domestic violence agencies conduct an annual review of RCW 26.50 to ensure compliance with all aspects of the law, including the use of current state pattern forms.
- ☐ District and Superior Courts explore the possibility of creating a centralized domestic violence protection order “court”. In this model, all domestic violence protection order petitions would be heard in Superior Court. (See further discussion in More Audit Trails, More Questions)

*Gap #4: Standard and consistent responses to reducing respondent access to firearms (and dangerous weapons) in the protection order process are lacking, despite petitioner safety concerns and practitioner knowledge of the dangers of domestic violence and firearms.*

Petitioners for domestic violence protection orders are seeking safety and relief through the civil and criminal legal system. Specifically for those victims who articulated in their petition that the respondent possessed firearms and/or has used firearms to threaten or harm them, they expect the system will understand their level of danger. When the protection order process lacks practices and responses that ensure firearms are surrendered when allowable, victims of domestic violence may believe that they remain at risk, their abuser is not being held accountable, and the system has failed to recognize their

level of risk. Not only is the victim placed at risk, law enforcement, as well as the victim's children, family and support network, are also put in harm's way.

In a review of 50 Superior and District Court case files, team members found 20 examples where petitioners cited respondent access to firearms. The team learned that the WA State Administrative Office of the Courts developed two pattern forms related to the surrender of weapons. One is a Petition for Surrender of Weapon and the other is an Order to Surrender Weapon. Through interviews, the team found that advocates, and even some judicial officers, were not aware of these forms. Team members observed hearings where petitioners specifically asked the judicial officer if they could do something about the respondent's firearms. Although the federal firearms prohibitions are read to respondents in qualifying protection orders in one of the courts, the team found there is no mechanism in place to ensure compliance by the courts or law enforcement.

Confusion and lack of understanding about authority, compliance and follow up with firearms restrictions with both federal and state laws were strongly evident from team member interviews with advocates, judicial officers, records staff and law enforcement. There was no evidence of any written guidance.

The Audit Team made some of the following recommendations to address this gap:

- ☐ Whatcom County establish a Domestic Violence Protection Order and Firearms work group to develop preferred practices for all relevant practitioners, to include the development of any forms related to compliance that puts responsibility on the respondent. The work group should consult with the many resources available through the National Center on Full Faith and Credit and the National Council on Juvenile and Family Court Judges, Family Violence Department. The second phase should include implementation of the preferred practices by all relevant practitioners.
- ☐ District and Superior Court judicial officers receive ongoing judicial education on statutory authority related to firearms surrender. If new practices are developed, judicial officers are encouraged to review these with law enforcement, prosecution, and defense.
- ☐ Domestic violence advocates receive ongoing training and a full understanding on the forms for firearms surrender and the authority of the court. Advocates should proactively explore petitioner's determination as to whether or not to file a Petition for Surrender of Weapon.
- ☐ Whatcom County law enforcement agencies develop written guidelines for firearms surrender (voluntary and/or mandatory) for qualifying domestic violence civil protection orders.
- ☐ District and Superior Court judicial officers, and law enforcement, only allow third party transfers of firearms under limited conditions and after vetting of the party receiving the firearms. Model practices should be explored to see how other jurisdictions handle this matter, which could include a practice of requiring the third party to sign an affidavit of receipt for third-party transfers.

*Gap #5: Multiple practices and procedures around service and process of protection orders place victims at risk at a time when the need for safety is actually heightened.*

Although the scope of this Audit did not cover enforcement of domestic violence protection orders, effective enforcement cannot occur without proper service and entry of protection orders in local and national databases. For this reason, this Audit reviewed the court and law enforcement procedures for processing of temporary and permanent protection orders. Law enforcement agencies promote victim safety by ensuring that protection orders are served promptly and that victims are notified of service. Law enforcement relies on the courts to provide them with completed paperwork in a timely manner. By working together to both prioritize and streamline this process, petitioners, respondents and all practitioners will know what to expect and safety will be enhanced.

Despite many good practices and a prioritization among the courts and law enforcement, the team identified multiple gaps that undermined the ability of the criminal and civil justice system to effectively serve and enforce domestic violence protection orders. Petitioners in the focus group informed the team that they wanted assurances of safety during the process of service, and that they feel vulnerable and exposed especially throughout the first weeks after filing. The team found that there were occasional delays in law enforcement receiving orders from the courts due to a variety of factors. Law enforcement agencies prioritized service, but did not always prioritize notifying the petitioner upon service or documenting service and service attempts. The team learned that only one law enforcement agency has 24 hour records, resulting in delays of service notice in national and statewide databases for the agencies without 24 hour records. Literature for a free statewide telephone service that notifies petitioners of service of orders, SAVIN Protective Orders, was not found in either court, and was found in only one of the audited law enforcement agencies.

The Audit Team made some of the following recommendations to address this gap:

- ☐ District and Superior Courts and law enforcement agencies review the checklists developed for law enforcement and the courts in the 2010 King County, WA Domestic Violence Initiative Protective Order Model Guidelines. These checklists can be especially helpful with service issues.
- ☐ District and Superior Courts, and domestic violence advocates, facilitate better completion of the confidential Law Enforcement Information forms.
- ☐ Law enforcement agencies make available and distribute SAVIN Protective Order brochures, and ensure that any petitioner who brings protection order paperwork for service receives a brochure.
- ☐ Law enforcement agencies develop written procedures for service of protection orders using the Ferndale Police Department procedures or the King County, WA checklists noted above for examples. The procedures should consider the inclusion of the items below:
  - Check histories on both parties
  - Contact petitioner if able
  - Read documents to understand risk

- Read documents to determine what action may need to be taken (vacate residence, civil standby, confiscation of weapons)
- Verify respondent and serve
- Review contents of order with respondent and take any action as required by order
- Document response of respondent and file a report on the service
- Contact records that service has been made
- Contact petitioner that service has been made
- Complete the Return of Service form
- If service was not accomplished, document service attempt and forward to court

*Gap #6: Assessment of the context, severity and impact of violence and implications for risk, danger and safety for the petitioner is not consistently addressed throughout the protection order process.*

The Audit team concurs with the following passage from the Introduction in *The Blueprint for Safety*<sup>2</sup>: “Our challenge is to make visible all that we can possibly know about the full scope of abuse occurring in a relationship. Interveners must be able to see the scope and severity of the offender’s violence, how often and under what circumstances it is occurring, and the pattern of the abuse: is it escalating, deescalating, potentially lethal, or unpredictable?” The team saw evidence that practitioners do take into account the context and history of violence in many instances; there is a good foundation. However, the team also found evidence that practitioners are not fully educated about some aspects of risk and danger, have differing concepts about how to take into account history and context in decision making and in assisting petitioners with protection orders, and do not utilize standard tools to assess risk and danger. The team identified gaps in five topic areas: history and context of violence, stalking, sexual assault, the time between the temporary (or no temporary) order and the hearing for unaccompanied petitioners, and compliance reviews.

In a review of 50 random protection order files, the team found many examples of stalking and sexual assault, as well as descriptions of respondent behaviors that indicated a potential for high risk of causing serious injury. The team found that information on stalking behaviors was missing in certain petitions filed in Superior Court as the Office of Assigned Counsel was not using the current state pattern form. There were inconsistent practices among judicial officers in the two courts on accessing the history of the parties during a protection order hearing. Team members noted that petitioners who petitioned for protection orders without advocates often did not provide a full description of the history of the abuse, which could help to explain their current level of fear. Team members learned through interviews that neither District nor Superior Court conducts any type of compliance review, which is a mechanism that can be used to check to see if the respondent is complying with the conditions of a protection order, such as attendance at domestic violence perpetrator treatment or surrender of firearms.

---

<sup>2</sup> *The Blueprint for Safety: An Interagency Response to Domestic Violence Crimes*, Adapted from the Saint Paul Blueprint for Safety, 2009, Praxis International

The Audit Team made some of the following recommendations to address this gap:

- ☐ Domestic violence advocates thoroughly explore risk factors with petitioners, especially stalking and sexual assault, and assist petitioners in documenting the history, context and severity of violence over time in the petition if relevant and if safe for petitioners.
- ☐ District and Superior Courts explore options for compliance review and civil contempt hearings and initiate some form of review if able and appropriate.
- ☐ District and Superior Court staff provide petitioners with referrals to domestic violence advocacy services when petitioners are unaccompanied and/or do not receive a temporary protection order. This should happen both at the time of petitioning for a protection order as well as at any protection order hearings.
- ☐ Law enforcement agencies develop written procedures for service of protection orders that ensure risk factors are reviewed and taken into account.

*Gap #7: Some petitioners experience multiple barriers in accessing the protection order process, increasing the difficulty and impacting the courage it takes to initiate and follow through with the process.*

Throughout the Audit the team was reminded to look for ways in which access for victims was built into the protection order process. Access can mean a wide range of things, including physical access, language access, cultural and lifestyle access, access to information, a sense of safety and security, and a welcoming, consistent and competent response from practitioners. Team members were challenged to think about walking through the protection order process from the point of view of a non-English speaking victim, as a victim with limited reading and writing abilities, as a victim in a same-sex intimate relationship, as a teen victim, or as a victim who is so terrified she does not want to be in the same room as her abuser. The team recognizes that barriers are often not intentional, but are created when we are remiss in recognizing our biases and the diverse needs and experiences of victims.

The team observed only two hearings where interpreters were used in the courtroom and they found only one handout where protection order information was in a language other than English. Very little helpful written information was available to a petitioner filing for a protection order on their own, and the team found there was no way to file an order electronically. Although provided for by state law, the team learned that telephonic hearings were rarely used in protection order hearings and were discouraged by some judicial officers. The presence of children in the courtroom was discouraged as evidenced by statements on the part of judicial officers.

The Audit Team made some of the following recommendations to address this gap:

- ☐ District and Superior Courts check with each petitioner prior to filing of the petition to determine if interpreter services are needed and/or if assistance is needed with reading and writing.

- ☐ District and Superior Courts develop a more user-friendly web site on protection orders, with the recommendation to link to the Northwest Justice Project, Washington LawHelp Domestic Violence Order for Protection – Interactive Interview application packet.  
([www.washingtonlawhelp.org/WA/index.cfm](http://www.washingtonlawhelp.org/WA/index.cfm))
- ☐ Domestic violence agencies conduct a survey or focus group with victims who have chosen not to file for a protection order, to help assess the barriers for those victims. This information should be shared with any relevant agencies. Domestic violence agencies should develop an implementation plan as related to the findings.
- ☐ Courts, domestic violence and law enforcement agencies seek feedback from members of diverse community groups to help identify any barriers to access to the protection order process.

# Introduction

## The Question

### *How is victim safety and access built into the community domestic violence order for protection process?*

In 2010, 223 petitions for domestic violence orders for protection were filed in Whatcom County Superior Court. During this same time period, 76 petitions for domestic violence orders for protection were filed in Whatcom County District Court.<sup>3</sup> A domestic violence protection order is a civil remedy made available nearly 30 years ago by the Washington State Legislature. Based upon a finding that domestic violence has occurred<sup>4</sup>, the court can issue a temporary and/or permanent order outlining certain provisions of protection for the petitioner. These can include restraining the respondent from causing any harm or from coming near the petitioner's home or workplace, as well as temporary parenting and custody provisions. The civil domestic violence order for protection process is initiated by a petitioner and is provided at no cost.

After focusing on recommending and implementing many systemic improvements to the criminal legal system response to domestic violence, the Bellingham-Whatcom County Commission Against Domestic Violence proposed to examine an important civil remedy available to domestic violence victims. As this process is petitioner driven, it is an important step towards safety and autonomy for victims. As a community, we wanted to know how this process was working, particularly for petitioners. How accessible is the process? Who uses it? And is the process organized in a way that is most responsive to the safety needs of petitioners? We wanted to know how and whether safety and access for victims were built into the process.

Here are a few examples of statements from petitioners who sought domestic violence protection orders in Whatcom County over the past year<sup>5</sup>:

*"He continually calls me to find out where I am 10 – 15 times a day wanting to know where I am and what I am doing and when I will be home. He has begun to call me through my g-mail accounts as many as 12 times in one day." "Guns are easily accessible to him; his family has guns."*

---

<sup>3</sup> Of the 223 petitions filed in Superior Court, 184 temporary orders and 104 permanent orders were granted. Of the 76 petitions filed in District Court, 32 temporary orders and 17 permanent orders were granted.

<sup>4</sup> WA State RCW 26.50.010 (1) Domestic violence means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm bodily injury or assault between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.010 of one family or household member by another family or household member.

<sup>5</sup> Any material used from actual protection order petitions has been changed to protect identity, including names and dates. Pseudonyms are used in all cases.

*“Right now I am really scared that when he gets this paper he will be really mad. When I did this the first time I didn’t sleep at home. I left to my relative’s house. I’m scared that he will hurt me and my children.” (After describing 2 pages of incidents involving assaults such as “kicked me in my chest with his leg really hard”, “he went and grabbed my neck and started pushing me”, “he grabbed my head and started shaking it really hard and pushing it side to side.”)*

*“In June Bruce slammed me into the wall of our house, spitting in my face, grabbing my arms and leaving bruises on my legs, arms, and torso.”*

Protection orders intersect both the civil and criminal legal systems. Initiated as a civil process by the petitioner, it can evolve into a criminal process when there are certain violations. Findings of domestic violence in protection orders may also be used to establish domestic violence in certain future legal matters. As the statements above show, and as the Audit team learned, petitioners seeking protection orders face real dangers. It is this reality that compelled this Audit and helped frame the findings and recommendations.

### *Recognizing a Strong Foundation*

*The fact that seven project partners decided to step into this Audit process speaks to the connection, dedication, and strengths of the community and the agencies involved. It is critical to recognize this strong foundation. A community without this base and commitment does not bother to ask how things are working for victims of battering.*

A Safety and Accountability Audit is designed to identify practices that impede safety for victims and accountability for batterers. Its focus is therefore on discovering and articulating problems. A successful Safety Audit requires a certain foundation of relationships and trust, however, and the process of discovering problematic practices also reveals community strengths.

The City of Bellingham and Whatcom County have been very willing to ask, ‘how are we doing?’

In 2002, under the guidance of the Bellingham-Whatcom County Commission Against Domestic

Violence, the communities completed a Safety Audit of their response to domestic violence cases from the point of a 911 call to law

enforcement response and jail booking and release. Then in January 2007, the Domestic Violence Commission completed a second Safety Audit, examining the response of prosecution and probation in the City of Bellingham and Whatcom County. Less than one year later, a third Safety Audit was completed that examined the response of police, prosecution, probation and the courts in the City of Blaine. All reports were made widely available within the community and the state.<sup>6</sup>

<sup>6</sup> A Report from the 2002 Domestic Violence Safety and Accountability Audit, Domestic Violence Safety and Accountability Audit: Findings and Recommendations for Prosecution and Probation Responses, January 2007, and Domestic Violence Safety and Accountability Audit: Findings and Recommendations for the City of Blaine, October 2007 are available at <http://www.dvcommission.org/>.



Most victims of battering in Whatcom County encounter a community response that emphasizes victim support, a commitment to safety, and an understanding of why many victims may be reluctant to be drawn into the legal system. There is also a reliable community framework of attention to systemic change, such as the work of the Bellingham-Whatcom County Commission Against Domestic Violence, the former Coordinated Judicial Response to Domestic Violence Subcommittee of the Whatcom County Law and Justice Council, and Whatcom County Triple Play. Many dedicated work groups developed protocols such as the Whatcom County Coordinated Response Protocol, the Plan to Disarm Domestic Violence Defendants in Whatcom County, and the Whatcom County Judicial Guidelines for Domestic Violence Matters. These organizations and committees work together with local domestic violence agencies, community members, and criminal and civil justice system personnel to implement systemic and policy changes to increase victim safety and offender accountability.

The fact that seven project partners<sup>7</sup> decided to step into this Audit process speaks to the connection, dedication, and strengths of the community and the agencies involved. It is critical to recognize this strong foundation. A community without this base and commitment does not bother to ask how things are working for victims of battering.

### *Audit Question, Scope and Data Collection*

The Whatcom County Domestic Violence Protection Order Safety and Accountability Audit explored this question:

*How is victim safety and access built into the community domestic violence order for protection process?*

The Audit focused on the following aspects of the protection order process:

- Petitioner initiated applications either through a community based domestic violence agency or through the courts.
- The processing of the order in the courts including ex parte orders, hearings, and paperwork generated and distributed.
- The process of service of orders involving courts and law enforcement agencies, including data entry.
- The Audit had intended to review the law enforcement civil stand-by process, however, logistics did not allow for a full exploration of civil stand-bys.

Criminal enforcement of protection order violations was not included in the scope of this Audit, although aspects of order processing and service impact enforcement.

---

<sup>7</sup> Bellingham Police Department, Domestic Violence & Sexual Assault Services, Ferndale Police Department, Whatcom County District Court, Whatcom County Sheriff's Office, Whatcom County Superior Court, Womenscare Shelter.

With this Audit scope, the following agencies were selected for the Audit, and are referred to in this report as project partners:

- Bellingham Police Department
- Domestic Violence and Sexual Assault Services
- Ferndale Police Department
- Whatcom County District Court
- Whatcom County Sheriff's Office
- Whatcom County Superior Court
- Womenscare Shelter

An outline of the Domestic Violence Safety and Accountability Audit methodology, as developed by Dr. Ellen Pence of Praxis International, can be found in Appendix A. Using this methodology, the Audit team's findings are based on information gathered over a period of seven months from August 2010 through February 2011. They included the following activities:

- ✓ 2 focus groups with 16 participants, including 7 survivors of domestic violence who had petitioned for a domestic violence protection order, and 9 community and prosecution based advocates who had worked with petitioners involved in the protection order process.
- ✓ 43 individual interviews including: judges, commissioners, court clerks, court administrators, law enforcement records staff, law enforcement warrant officers, law enforcement supervisors, law enforcement patrol, dispatch supervisor, jail staff, private party servers, and directors, advocates, and volunteers from two local community based domestic violence agencies.
- ✓ 31 observations including: protection order hearings, petitioner application process in the Assigned Counsel Office and District Court Office, protection order service by law enforcement, advocacy services with petitioner during application preparation and court hearings, and law enforcement ride-alongs. Scheduling interviews to observe petitioners applying for protection orders was challenging. First, confidentiality and consent had to be secured from the petitioner. Second, a team member had to be available without delay. For this reason, observations of community-based domestic violence agencies and Assigned Counsel assisting petitioners with the protection order process were limited, and may lack a full scope of findings. Likewise, scheduling an observation of law enforcement service of civil domestic violence protection orders was also problematic. Again, the analysis may be lacking a full scope of findings.
- ✓ Text analysis of 50 protection order files, 25 from Superior Court and 25 from District Court. The majority of files reviewed were 2010 cases, with a small sample of 2009 cases in Superior Court. Text analysis was conducted on any written policies and procedures in place, training manuals, legislation, and forms used and relevant to the protection order process by the seven project partners.
- ✓ Mapping the processes and steps involved in protection order related actions in all the systems under review.

## Cues from Focus Group Participants

*It is important to wonder about the experiences of petitioners who entered the process with possibly very little support and knowledge about what to expect.*

Focus groups are an essential data gathering tool for a Safety Audit process. It is essential to hear the complexity and variations on how battering and violence has impacted the lives of victims, and to compare their needs for safety to the ways in which our institutions and agencies have been organized to respond.

Focus group findings offer a limited perspective as it cannot be assumed that focus group participants represent the full range of petitioners. Although the outreach for focus group participation was broad, individuals who chose to participate in the focus group were individuals who had utilized a prosecution based advocate or domestic violence program. It is unfortunate that the voices of petitioners who went through the protection order process “alone” are not part of this report. It is important to wonder about the experiences of petitioners who entered the process with possibly very little support and knowledge about what to expect.

The two focus groups conducted for this Safety Audit revealed the following themes:

### Petitioners:

- Petitioners want an understanding of the protection order process, its limitations, and where the information goes.
- Petitioners appreciate technical assistance and support (including advocacy) throughout the process.
- Petitioners want safety assurances in the courtroom, at the courthouse, and in the process of service of the order.
- Petitioners value the messages judicial officers give to the respondent, both in terms of conditions of the order, as well as defining and “confronting” abusive and intimidating behaviors in court.
- Petitioners are devastated when they feel judged and not acknowledged.
- Even with the support of an advocate or other support persons, petitioners feel exposed and vulnerable during the process.

### Advocates:

The following needs were expressed by advocates who supported petitioners through the domestic violence order for protection process:

- Timely judicial review, service, and processing.
- Access to information on all aspects of protection order process, including decision making and service.
- Technical assistance and support throughout.
- Safety assurances (courtroom, courthouse, civil stand-by).
- Predictability.
- Clear messages to respondent from judicial officer.
- Acknowledgment and not judgment.

## ***Findings and Recommendations***

Each Audit team member had several opportunities to participate in framing the findings and to review and comment on this report. The goal was to produce an account of evidence, gaps and changes that the team agreed on, while making note of questions that required further inquiry or fell outside of the immediate scope of the Audit. This report sums up the Safety Audit and identifies gaps to address in the ongoing intervention in domestic violence in Whatcom County. The report includes recommendations for how to close the gaps. Prior to discussing the gaps, findings, and recommendation, a few overarching themes and definitions follow.

### ***Definitions and Terms***

Protection Order: Throughout this report, unless otherwise specified, the protection order process refers to the Domestic Violence Order for Protection process as defined by WA State RCW 26.50.

Petitioner: The petitioner is the person petitioning for a protection order, and once a finding of domestic violence has been made, is assumed to be a victim of domestic violence. The words petitioner and victim will be used interchangeably in this report.

Respondent: The respondent is the person responding to the petition, and once a finding of domestic violence has been made, is assumed to be an individual who has committed domestic violence. The words respondent, offender, and batterer will be used interchangeably in this report.

Domestic Violence: Domestic violence is a broad category that has come to include many kinds of violence and behaviors within relationships between intimate partners and, in most states, relationships between family and other household members. It jumbles together actions as different as scratching someone's face and strangulation; throwing a box of cereal against a wall and head-butting. The term domestic violence tends to focus attention on acts of physical violence and obscure attention to ongoing coercion, intimidation, and emotional harm. More recent attention to stalking, for example, has been in part a reaction to the limitations of equating domestic violence with physical violence.<sup>8</sup> This report uses the term domestic violence in describing the violence that is generally relevant to practitioners involved in the protection order process. (See footnote #4 for legal definition of domestic violence per RCW 26.50.)

Battering: Battering is an ongoing use of intimidation, coercion, violence, and other tactics intended to control and dominate an intimate partner. It involves patterns of physical, sexual, and emotional abuse. In severity it ranges from intimidation by pushing, shoving, and restraining, to stalking over a period of many years; to making a victim live in constant fear of harm to herself, her children, or her family; to the extreme domination and physical violence of "intimate terrorism" (Johnson); and to killing her or her children or other family members or friends. Battering is distinctive for the variety of coercive tactics,

---

<sup>8</sup> *Engage to Protect: Foundations for Supervised Visitation and Exchange, Recognizing and Understanding Battering*, Ellen Pence, Ph.D. and Jane Sadusky, 2009, Praxis International

the level of fear it produces for adult victims and their children, and its potential lethality.<sup>9</sup> This report will use battering when it is important to convey the larger context in which acts of domestic violence are occurring, especially at it relates to risk assessment and safety planning.

She/he: Although both men and women can be victims of domestic violence, the majority of victims of abuse and coercive control are women whose partners are men. Therefore, this report uses gendered terms<sup>10</sup>, with “she” as the petitioner/victim and “he” as the respondent/batterer. However, the findings and recommendations would apply equally where the victim is male. Domestic violence occurs in both heterosexual and same-sex relationships.

Advocate: The term advocate will be used throughout this report to refer to staff or volunteers from community-based domestic violence agencies. According to Washington Administrative Code 388-61A-0220, an advocate’s role is defined as “primary focus of safety planning, empowerment, and education of the client through reinforcement of the client's autonomy and self-determination. Advocacy also means speaking and acting for change or justice with, or on behalf of, another person or cause. Advocacy is survivor-centered and uses non-victim blaming methods.” Prosecution based advocates may also assist petitioners through the protection order process, specifically when the petitioner is a victim in a concurrent criminal case. The scope of services prosecution-based advocates offer to victims of domestic violence is limited; therefore the emphasis in this report is on community-based advocates. This is not meant to minimize the important role of prosecution-based advocates in supporting victims. Any recommendations for advocates are intended to apply to prosecution-based advocates when appropriate.

### *Domestic Violence Protection Orders are not “just” Civil Orders*

*A protection order is a civil order with criminal consequences. It is a lifeline to safety for many victims. If enforced properly, communities can hold batterers accountable for their violence. As a petitioner driven process, it is essential we recognize our responsibility to take the protection order process as seriously as petitioners do.*

The *Kentucky Civil Protection Order Study*<sup>11</sup> is a comprehensive study that examined the effectiveness of protection orders, enforcement, and cost effectiveness. One of its findings was that “for most women, protective orders reduce violence and save the state millions of dollars of avoided costs. However, results of this study also show that there are significant and unrecognized barriers for women in accessing protective orders. ...Further, there was limited key informant [criminal justice and victim service representatives] awareness of many of the factors women must overcome in asking for help from the court to address this very personal issue. There especially seemed to be a lack of recognition of how embarrassing, fear provoking, disheartening, and frustrating the process can be for victims.....This study did not provide any

<sup>9</sup> Ibid

<sup>10</sup> *Civil Protection Orders: A Guide for Improving Practice*, National Council of Juvenile and Family Court Judges, Family Violence Department, 2010

<sup>11</sup> *The Civil Protection Order Study*, TK Logan, Ph.D., Robert Walker, M.S.W., L.C.S.W., William Hoyt, Ph.D., Teri Faragher, M.S.W., National Institute of Justice, September 2009

evidence that victims seek protective orders for ‘revenge’ or to ‘gain the upper hand’ as many key informant respondents indicated.”

Many Audit team members commented on how little they had known or understood about the protection order process. Most importantly, team members noted they had no idea how essential, yet challenging, this process appeared to be for most petitioners. Team members observed petitioners crying in the courtroom, shaking or sobbing with relief after the hearing, or jittery with fear prior to the hearing. A review of petitioner statements demonstrated that petitioners have been experiencing violence, stalking, sexual violence, and intimidation for a period of time prior to filing the order. One single event usually did not precipitate a petition for an order. And as one advocate stated, “It has taken this victim six months to get to the point where she has the courage to file this petition.”

The majority of practitioners involved in the protection order process recognize the serious nature of domestic violence and battering and respond to domestic violence protection orders as a priority. They see the importance of a protection order as one strategy in a victim’s ongoing struggle to increase safety and autonomy in her life. However, team members did hear comments about protection orders such as “they are just a piece of paper”, “petitioners use the protection order process just to get a jump up on child custody”, “victims who really need these orders don’t get them”, and “we can’t help, why don’t you just go file a protection order?”.

A protection order is a civil order with criminal consequences. It is a lifeline to safety for many victims. If enforced properly, communities can hold batterers accountable for their violence. As a petitioner driven process, it is essential we recognize our responsibility to take the protection order process as seriously as petitioners do.

### *Collaboration and an Interagency Approach to Protection Orders Strengthens Safety and Accountability*

A victim who petitions and receives a domestic violence protection order enters a civil legal system by choice. In the process, she may be instructed to file a parenting plan and/or dissolution to resolve other issues in the relationship. As separation has been found to be a time of increased risks for victims of battering, she may need to be hyper-vigilant and add extra security to her residence. If the respondent violates the protection order, the victim will be drawn into a criminal domestic violence proceeding. Meanwhile, she may be juggling a job, child care, and a tight budget, and perhaps attempting to address medical and mental health needs for herself and her children. This victim will be required to navigate all these systems. When these systems share a common understanding of domestic violence and battering, as well as shared goals, this victim will be more successful in her ability to address her needs for safety and autonomy.

Likewise, agencies and organizations responding to petitioners and respondents involved in the domestic violence protection order process will be more successful if they are coordinated, consistent and integrated. A victim needs and deserves to have confidence that everyone in the civil protection

order system is working together to keep her safe.<sup>12</sup> When systems collaborate, they are more likely to help hold each other accountable for systemic gaps, and to work to address those gaps. The clearer all systems are in messages, actions and expectations of safety and accountability, the more chance we have of interrupting the actions that create and sustain battering.

### *Recognizing Constrained Resources*

The Audit team fully recognizes that in these times of constrained resources and budget shortfalls, service delivery is strained, and sometimes reduced. Personnel may be overworked and priorities shift. The team learned that resource constraints are a factor in some of the gaps identified. The team considered these constraints in making recommendations. However, despite the fact that some recommendations may require resources that are currently unavailable, the team believed it was their responsibility to make those recommendations as a vision for the future.

### *Discovering Gaps*

As defined in Appendix A, Methodology, a Safety Audit examines how work is organized and coordinated for practitioners in their response to domestic violence. As such, it is not an examination of individual practitioners, but rather the tools, text, rules, directives and concepts that guide their work.

Seven primary gaps were identified by the Audit Team. The report includes a detailed look at these gaps, how they were identified through evidence, and how they can be addressed. The purpose in highlighting the evidence is to assist the project partners in improving and strengthening practices. The gaps are listed in general order of priority; however, each gap stands alone in its importance. Readers will note that there are themes, issues, findings, and recommendations that cross among and between the gaps.

The team structured this report by gap rather than by project partners, or the audited agencies. This choice was made in order to emphasize that an effective and safety driven protection order process requires coordination, shared knowledge, systems of communication, and possibly, an adoption of common best practices across agencies. With a few exceptions, the findings and recommendations for each gap involve all the project partners.

The format of this report will make it more difficult for the project partners to identify specific areas where gaps were identified within their respective organizations. Instead, this report will require a full reading and understanding of the ways in which all partners must work together to improve efforts to enhance safety for victims and accountability for batterers.

---

<sup>12</sup> *Civil Protection Orders: A Guide for Improving Practice*, National Council of Juvenile and Family Court Judges, Family Violence Department, 2010

## **Caveats and Cautions**

### **Caveats and Cautions**

Exploring the community domestic violence protection order process is a tall order. The Audit team had much ground to cover and many paths that it took and could have taken. The team defined its own inquiry and followed certain trails that caught its attention. It is important in reading this report to not assume that an identified gap is necessarily exclusive to one agency, or to Whatcom County. Because of the uniform ways that the United States' legal system is structured, there is potential for considerable cross-over and similarity in the gaps that the Audit team discovered. Readers are encouraged to consider how any one gap might also be present in their own agency or jurisdiction practices.

Readers are also cautioned to remember that the gaps identified are not the only paths that could be pursued in examining the community response to battering and domestic violence. A Safety and Accountability Audit raises as many questions as it answers. It is meant to be a dynamic process. It is as much an ongoing way of looking at and asking questions about how we intervene, as it is a time-limited, defined inquiry.

Lastly, readers are reminded that the focus of this report is not to document what is working well, but how institutional practices can be retooled to better serve the goal of victim safety. Evidence is provided to demonstrate how the team identified gaps, with the goal to improve and strengthen agency practices.



## Gap #1 Courthouse and courtroom procedures make it possible for respondents (batterers) to contact and intimidate petitioner (victims), resulting in safety concerns for petitioners (victims).

*A petitioner is not only asking for a physical separation, she is writing a statement that will be read by the respondent and discussed in a public courtroom hearing. If a victim has been told there will be consequences if she talks openly about the violence, petitioning for a protection order comes with great fear and trepidation.*

When a victim petitions for a domestic violence protection order, she is letting her abuser know that she wants the violence to end, and in order to do that, is asking for no contact and a physical separation. As stated in the National Council of Juvenile and Family Court Judge's *Civil Protection Orders: A Guide to Improving Practice* (2010):

"The risk of experiencing violence increases significantly both during and after separation.<sup>13</sup> Because a victim's move to separate signals an impending loss of control, a perpetrator often escalates tactics to exert abusive power and control and may punish the victim through threats, other acts of violence,

or child abduction. Not only are victims who separate from perpetrators of domestic violence significantly more likely to be abused,<sup>14</sup> they are also at an increased risk for intimate partner homicide."<sup>15</sup>

A petitioner is not only asking for a physical separation, she is writing a statement that will be read by the respondent and discussed in a public courtroom hearing. If a victim has been told there will be consequences if she talks openly about the violence, petitioning for a protection order comes with great fear and trepidation. Not only are victims at risk in a courthouse, public employees and the public are put at risk as well. Reducing opportunities for the respondent to either use violence or harass and intimidate the victim in the courthouse and courtroom will increase safety for all, as well as increase the likelihood that victims will initiate, and follow through, with the protection order process.

### **What contributes to the gap?**

#### Overall Security Measures:

Whatcom County residents petition for domestic violence protection orders at the Whatcom County Courthouse, either through Superior or District Court. (Orders can also be filed in Lummi and Nooksack Tribal Courts for tribal members. These orders can then be filed in Superior Court as an additional step

---

<sup>13</sup> Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 Am. J. Pub. Health 1089, 1092 (2003).

<sup>14</sup> Patricia Tjaden & Nancy Thoennes, Nat'l Inst. of Justice, *Extent, Nature, and Consequences of Intimate Partner Violence: Findings From the National Violence Against Women Survey 42* (2000) (finding that "married women who lived apart from their husbands were nearly four times more likely to report that their husbands had raped, physically assaulted, and/or stalked them than were women who lived with their husbands").

<sup>15</sup> Campbell et al., *supra* note 13

to ensure Full Faith and Credit.) Petitioning for a protection order does not involve contact with the respondent; however, the hearing to determine whether or not the court will issue a permanent order does involve a hearing with both petitioner and respondent. As of October 2005, the Whatcom County Courthouse installed a metal detector with security guards in the downstairs lobby. Any person wishing to enter the courthouse beyond the ground floor must pass through the metal detector and screening.

A Whatcom County Sheriff's Office (WCSO) Courthouse Deputy is available to provide additional security throughout the courthouse. Until January 2011, this was a full time position that roved the courthouse as needed. Generally, the courthouse deputy was observed by the team to be present at Superior Court protection order hearings, but not at the District Court protection order calendar. Based on a memo dated June 2006, Superior Court requested the presence of the courthouse deputy on a regular basis for the protection order calendar. A number of courthouse deputies were interviewed, and there did not appear to be consistency in their understanding that the protection order calendar was a priority. Due to limited resources, as of January 2011 the courthouse deputy is now also assigned to cover the station desk at the Whatcom County Sheriff's Office. Through interviews, the team learned that the domestic violence calendar will continue to be a priority for the courthouse deputy and they will cover the Superior Court calendar unless called away. An email system, panic button, and cell phone are in place so that any courtroom can contact the courthouse deputy in the event a deputy's presence is immediately needed.

#### Pre-Hearing Safety Concerns:

Team members observed there are no safety measures in place to ensure that petitioners do not come in contact with the respondent prior to the hearing. Once the petitioner passes through security, they must wait for an elevator. The respondent may be waiting for the same elevator.

The protection order hearing rooms are locked until the court clerk opens the room. Petitioners and respondents must wait outside the courtroom until it is open. A petitioner was observed asking if this was the right courtroom and where she should go to wait. She was looking nervously around her.

Another petitioner stated: *"Being in the same place as my abuser was hard and it was especially difficult waiting outside together."*

Petitioners who requested accompaniment from a domestic violence advocate are met by their advocate in a public location about 30 minutes before the hearing. In interviews, advocates informed the team that they specifically work to buffer the petitioner from any contact with the respondent.

Advocates shared stories about petitioners who were afraid to come to the courthouse alone, as they believed the respondent would be waiting outside ready to harass or intimidate them. Advocates have on occasion contacted a courthouse deputy to provide accompaniment for the petitioner from just outside the courthouse to the courtroom.

For Superior Court protection orders, petitioners file paperwork in the Office of Assigned Counsel. This office also provides indigence screening for individuals seeking representation by public defenders. Team members were concerned that a petitioner could inadvertently meet her abuser in this setting as there can be a concurrent criminal domestic violence case.

#### Protection Order Hearing Safety Concerns:

Petitioners who entered the courtroom without an advocate were observed to be uncertain as to where to sit. When a petitioner came to court with an advocate, the advocate encouraged the petitioner to sit as far as possible from the respondent, and usually behind the respondent.

The Superior Court courtroom is fairly large and allows for separation of parties. The District Court courtroom is much smaller, and depending on the following calendar, the seats may become full. The District Court Commissioner instructs people in the courtroom to slide towards the wall and sit closer to allow for everyone to have a seat. Team members expressed concern that a petitioner without support or an advocate might be forced to sit in proximity to the respondent.

The Superior Court protection order calendar is a dedicated calendar. No other parties are in the courtroom except those involved in a protection order hearing. On the other hand, District Court hears many anti-harassment orders at the same time as it hears protection orders. In fact, District Court processes three to four times as many anti-harassment orders as protection orders. Consequently, the courtroom may have many other parties who are not in a similar situation as a domestic violence victim. In addition, unlike Superior Court, the District Court protection order calendar is on occasion directly followed by a criminal calendar and at those times is limited in duration to 30 minutes. Team members observed how participants for the 9:00 a.m. criminal calendar began entering the courtroom during a protection order proceeding. The team wondered how this affected the petitioner in terms of her ability to speak about the violence, and her fears and needs.

The 30 minute protection order calendar in District Court was also found to have other safety concerns. First, in one case the hearing could not be resolved in the time frame and had to be rescheduled over three hearings. This required both parties to return to court, but it also meant the petitioner was publicly sharing her story, and in this case, the petitioner did not have a temporary protection order in place. As people entered the courtroom for the criminal calendar, one team member noted that the judicial officer was in the process of summarizing the order and reading the conditions to the respondent and petitioner. The team member wondered how well the parties could hear. District Court has reported that this tight schedule is a result of caseloads and the re-assignment of one courtroom to Superior Court.

Team members noted the difference between a fairly consistent presence of courthouse deputies in the Superior Court courtroom contrasted to the lack of a deputy in the District Court courtroom. There is only one day a week when the two courts hear protection orders at the same time. District Court does not routinely request the presence of a deputy. The Commissioner stated that it is up to the petitioner to make a request. In Superior Court the Commissioner acknowledges the presence of the deputy and on occasion will ask the deputy to escort the petitioner out of the courtroom.

Both courtrooms have access to a panic button, cell phone, and email to the courthouse deputy in the event an emergency occurs.

Team members noticed differences in the handling of evidence, testimony and questioning during the hearing. When judicial officers of the two courts were asked what rules they applied to protection order hearings, the common theme was due process and hearing of the evidence/allegations. The *Domestic Violence Manual for Judges* from the Washington State Administrative Office of the Courts states: “In response to a request by the Superior Court and District Court Judges’ Associations, the Supreme Court amended the Rules of Evidence to make them permissive rather than mandatory in all protection order proceedings under RCW 26.50 or RCW 10.14. ...In *Gourley* the court concluded that there was no due process violation in not requiring testimony or cross-examination at the hearing for protection order...”<sup>16</sup>

Focus group petitioners described their fear of seeing their abuser in the courtroom, and of having to speak directly to him. In both courts the petitioner and respondent each sit at a separate table facing a judicial officer. An advocate or attorney may sit at the table with the petitioner or respondent. One judicial officer tells the parties that all questions must come through him; he will not allow any direct questioning between the parties. This same judicial officer does not generally ask the petitioner to re-state their case, but rather will ask if the petitioner is still requesting the protection order.

A different judicial officer stated that prior to allowing parties to question each other, he will ask about the content and purpose of the questions, before allowing direct questioning. A third judicial officer allows direct questioning of one party by the other. If an advocate is present with the petitioner, the petitioner is asked to sit in the witness stand to present her case while the advocate remains at the table. This judicial officer tells the petitioner they should assume he has not read their statement; therefore, they need to present the evidence so that he can determine whether there is a finding of domestic violence. Advocates indicated this requires more preparation with the petitioner as they must be able to present their case alone. When advocates work with a petitioner ahead of time, they can help them get ready for the courtroom hearing and process, but petitioners who enter the process without that information may fear for their safety during the hearing when they are asked to interact directly with the respondent and publicly repeat all the facts of their statement.

Team members observed judicial officers calling respondents on behavior that was intimidating or threatening to the petitioner and courtroom security. One judicial officer stated that he does not pay much attention to intimidating behaviors by the respondent while the petitioner is testifying (unless it is overt), whereas another judicial officer stated that he is very attentive to the ways in which a respondent might attempt to intimidate the petitioner in the courtroom. To restate the focus group findings: Petitioners value the messages judicial officers give to the respondent, both in terms of conditions of the order, as well as defining and “confronting” abusive and intimidating behaviors in the courtroom. One team member made the following observation at a protection order hearing. “The respondent was very agitated and argued with the Judge after the order was granted. He asked if he

---

<sup>16</sup> *Domestic Violence Manual for Judges*, 2006, Washington State Gender and Justice Commission, WA State Administrative Office of the Courts

could appeal the order and was swearing under his breath. He was still muttering and looking around in a hostile manner as he left the courtroom approximately 15-20 minutes after the victim.”

As one focus group participant stated: *“For the first time someone had my back. She didn’t take none of his crap.”* (Referring to the judicial officer who challenged and confronted the respondent’s abusive behavior in the courtroom.)

Team members noted that the use of telephonic hearings seemed minimal, considering that RCW26.60.050 allows for telephonic hearings in “exceptional circumstances to protect a petitioner from further acts of domestic violence.” Two telephonic hearings were observed, one requested by the respondent who was out of the state, and the other by the petitioner who was in hiding. As further discussed in Gap #3 and Gap #7, team members found inconsistent practices and lack of information for petitioners on the option for telephonic hearings when safety risks were high.

Interviews with advocates demonstrated that they do many things to help the victim feel as safe as possible in the courtroom. Many of these examples will be noted in Gap #2. However, once again, team members were concerned for those petitioners who were not accompanied by an advocate or legal representation.

#### Post Hearing Safety Concerns;

Both District and Superior Court judicial officers recognize the importance of directing the parties to leave the courtroom separately in order to avoid any possibility that the order will be violated. In District Court one party follows the clerk to receive a certified copy of the order. The clerk then returns to the courtroom and provides the other party with a certified copy. Although in the past Superior Court was able to provide certified copies while the parties were still present (at one time there was a copy machine in the courtroom and at another time copies were made in the Commissioner’s chambers), the current practice is to tell the petitioner and respondent that they must return to the Superior Court clerk’s office sometime after 11 am to pick up their orders. The judicial officer specifically determines which party needs to leave the courtroom first, and then asks the other party to stay for an additional 20 minutes. Team members were concerned that both parties must return to receive their certified copies of the order. This is an added step for each party, as well as an opportunity for possible contact. Based on interviews, it was not clear if this gap was caused by lack of resources, or was simply a chosen practice.

#### ***What will help address this gap?***

Victims of domestic violence seek protection orders because they are not safe in their own home or in their dating relationship. At the least, their experience with the legal system should provide as much safety as possible, considering that the victim’s attempt to separate can be a time of high risk. Precautions to ensure safety send messages to the victim that her fears are understood and that we

*Victims of domestic violence seek protection orders because they are not safe in their own home or in their dating relationship. At the least, their experience with the legal system should provide as much safety as possible, considering the victim's attempt to separate can be a time of high risk.*

recognize abusers will use a variety of techniques to intimidate and threaten a victim, even within the walls of the courthouse.

The Audit team recognizes resources are needed to address some of the safety concerns noted above. Lack of courtroom space, lack of separate and secure waiting areas, and comprehensive coverage by courthouse deputies all require significant resources. However, a lapse in security may result in unforeseen risks of civil liability for the county if someone is injured in a domestic violence proceeding. The recommendations below are made with all due respect for the current resource limitations.

The Audit Team recommends that:

- ☐ Superior Court considers a way to provide certified copies of the protection order to both parties during the hearing process.
- ☐ All personnel, especially court personnel, involved in the protection order process receive training on domestic violence, with an emphasis on tactics of intimidation and coercive control, and separation violence.
- ☐ District and Superior Courts and the Whatcom County Sheriff's Office discuss a standard practice to ensure that a courthouse deputy is present at all protection order hearings.
- ☐ Whatcom County Sheriff's Office develops a written procedure for courthouse deputies that articulates the priority of attending protection order hearings.
- ☐ District and Superior Courts, along with community based domestic violence agencies, discuss with Whatcom County Courthouse Facilities the need for secure waiting areas for petitioners.
- ☐ All project partners (courts, law enforcement, and domestic violence agencies) collectively review existing security procedures in courthouse/courtrooms and make and implement any additional recommendations to enhance safety.
- ☐ Superior and District Court judicial officers review the *Domestic Violence Manual for Judges*<sup>17</sup> Chapters 8 and 13 and consider adoption of the preferred practices in order to minimize the respondent's ability to intimidate or threaten the petitioner during the hearing. The manual provides discussion on rules of evidence, security and conduct of hearings. For example: "The courtroom should be set up to ensure the parties and their witnesses do not have to have direct contact with the other party and his or her witnesses, and that the parties are sufficiently kept separate so that one party is not able to talk or signal to the other party before or after the hearing. A support person should be allowed to stand with a party before the bench to provide physical separation between the parties and some sense of security."

---

<sup>17</sup> *Domestic Violence Manual for Judges*, 2006, Washington State Gender and Justice Commission, WA State Administrative Office of the Courts

- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.
- ☐ District and Superior Courts and domestic violence agencies develop a "universal" handout for petitioners detailing safety tips within the courthouse and courtroom, to be distributed by court personnel, advocates, and others as relevant.
- ☐ District Court explores remedies for seating arrangements within the courtroom to provide a greater sense of safety for victims, as well as explore alternative scheduling for protection order hearings, including the possibility of a dedicated domestic violence protection order calendar.
- ☐ District and Superior Courts discuss and develop written guidelines on telephonic hearings and provide petitioners with information on their availability.
- ☐ District and Superior Courts explore the possibility of creating a centralized domestic violence protection order "court". In this model all domestic violence protection order petitions would be heard in Superior Court. (See further discussion in More Audit Trails, More Questions)

## **Gap #2: Although the domestic violence protection order process is pro se, it is complex and not all petitioners receive the assistance and support necessary to understand the process and make fully informed decisions.**

*Making a decision to apply for a protection order is one possible strategy in a victim's safety plan. A protection order is not appropriate for every victim.*

Victims of battering are assessing and evaluating safety at all times, for themselves and their children. Making a decision to apply for a protection order is one possible strategy in a victim's safety plan. A protection order is not appropriate for every victim. Filing can increase risks for some victims, whereas other victims are not ready to take that step. It is risky for victims to speak openly about what they are experiencing with their abuser. Victims deserve to make

informed decisions about whether or not to file for a protection order. Petitioners who are fully informed and supported are more likely to provide comprehensive information to the court for decision making, and to law enforcement for effective service. This increases the community's ability to hold the abuser accountable.

An application for a protection order may be the first time a victim has reached out for help. It is an opportunity to link the petitioner with other community resources. Besides the protection order, it is very likely that each petitioner needs a wide variety of support services in order to effectively plan for her safety. The petitioner needs the legal system to contain the abuser, and she needs the community support system to address other barriers.

The Washington State Legislature was wise to create a pro se civil protection order process for victims of domestic violence. There are tools to assist petitioners with this process, however, as the team discovered, there are still many gaps. Despite the fact that this process can be conducted pro se and at no cost to the petitioner, the team learned it is not simple to navigate. Deciding to obtain an order takes courage and the paperwork and filing should be the least of the difficulties, yet, they are not.

### **What contributes to the gap?**

This section will be divided into two parts. The first part is "overall" evidence of the gap. The second part is specific to a recent decision to reduce the services of the Superior Court Office of Assigned Counsel, and the impact that has had on certain petitioners.

Team members observed and learned about the Superior Court Office of Assigned Counsel. This office was originally chartered to do indigence screening for individuals seeking representation by public defenders for Superior and District Courts. Noticing a bottleneck at the Superior Court Clerk's office for people seeking assistance in filing protection orders, Assigned Counsel was given the added responsibility to provide assistance with filing protection orders for both District and Superior Courts.



Assigned Counsel's role is to facilitate the processing of protection orders. Assigned Counsel helps sort through which type of order may be relevant (domestic violence, sexual assault or anti-harassment) and which court it should be filed in. They provide overall direction to petitioners on how to fill out the petitioner's statement. Referrals are generally made to a local domestic violence agency, with the explanation that advocates can provide ongoing support and court accompaniment throughout the protection order process, safety planning and referrals. It is not the role of Assigned Counsel to provide these advocacy services.

Until May of 2010, Assigned Counsel compiled all the court forms necessary for the petition. For those District Court cases, the petitioner was told to take the paperwork to the District Court Clerks' Office. For Superior Court cases, Assigned Counsel asked a Commissioner to review the petition, and once a determination was made on whether or not to issue a temporary order, the final paperwork was compiled, forwarded to law enforcement, and passed on to another clerk in Superior Court for the next phase of processing. Effective mid-May 2010, Assigned Counsel services are no longer provided to petitioners filing in District Court. This change was due to budget reductions in Superior Court and the loss of one position in the Assigned Counsel office. The role of Assigned Counsel continues to be the same for Superior Court petitioners. The impact of this decision on District Court petitioners is noted in the second section below.

#### Overall Evidence:

Although it was impossible to verify, through interviews, team members determined that somewhere between 30 – 40% of petitioners who come to the courthouse to petition for a protection order come without legal representation or a domestic violence advocate. The remaining petitioners come to the courthouse to file paperwork after working off-site with a domestic violent advocate at one of three community-based domestic violence agencies. For those petitioners who start the process alone, and especially those who file in Superior Court, a number do end up seeking services of a domestic violence advocate for court accompaniment and other support services. Based on interviews with judicial officers and observations at court hearings, approximately 20-25% of petitioners who come to protection order hearings do not have either legal representation or an advocate.

Petitioners who participated in the focus group had this to say:

*"I was well prepared by my advocate so I felt like I knew what to expect."*

*"Without an advocate it would have taken me a lot longer to fill out the paperwork."*

While observing a domestic violence advocate assist a petitioner with the paperwork, the petitioner expressed confusion over the volume of paperwork and forms. The advocate worked through the forms one by one, explained each to the petitioner and helped pace the process.

Based on interviews with the domestic violence agencies, team members learned that petitioners are given an opportunity to fully explore whether a protection order is the appropriate step. Focus group participants had this to say:

*"It was hard to quantify my experiences. I got nervous about submitting it and had to think about it for a while before I went forward."*

*"It is hard for me to keep the children away from him, but this is what I need to do. I don't want to hurt him; I want him to get help."*

Advocates discuss overall safety planning with the petitioner and assist as able with other needs. Advocates offer to accompany the petitioner to any protection order hearings and will help prepare the petitioner for court.

The team learned that current protection order forms as prepared by the WA State Administrative Office of the Court were not being utilized by Assigned Counsel. Changes in protection order provisions as of July 2010 resulted in a new statewide pattern form (Petition, Temporary Order, and Permanent Order). Assigned Counsel uses an automated pleadings generator software application to prepare and print paperwork while petitioners wait. Due to the loss of software application-trained staff, the court did not have readily available resources and expertise to a timely reprogram of the software to include the new changes to the form.

Petitioners who filed protection orders with assistance from Domestic Violence and Sexual Assault Services (DVSAS) advocates had the benefit of working from the most current petitioner's statement, as DVSAS had been using the current state pattern form. The new petition includes the question "Describe any stalking behavior by respondent, including use of telephonic, audiovisual or electronic means to harass or monitor." The new pattern form for the order includes a provision to restrain the respondent from harassing, following, keeping under physical or electronic surveillance, cyber stalking, etc. Having an advocate, in this case from DVSAS, ensured these petitioners were aware of the new provisions in the petition and protection order. Womenscare was relying on forms generated by Assigned Counsel, and therefore was not using the current pattern form.

Team members observed, and judicial officers noted, that it is more likely for the respondent to come to the hearing with legal representation than the petitioner. However, the majority of respondents do not come with legal representation. Team members did not observe any hearings where the petitioner had legal representation. One petitioner in the focus group remarked that she came to the hearing alone and the respondent had an attorney. The attorney approached her and asked if she would be willing to mediate. She did not know what to do.

When asked what was one improvement he would like to see in the protection order process, one judicial officer was quoted as saying the first priority was for each petitioner to have an advocate. He was unsure why that was not in place.

Advocates who are in attendance at protection order hearings state that if they observe a petitioner without an advocate, on a case by case basis, they will approach the petitioner and offer a card. DVSAS's Executive Director stated that the agency's practice has been to provide services to individuals who request them; therefore, if a petitioner has not requested the services of the advocate, DVSAS does not automatically provide them. This practice and philosophy is generally shared by community-based domestic violence agencies, including Womenscare Shelter. Advocates only come to protection order hearings when they are requested to accompany and support a petitioner.

A team member observed a Superior Court judicial officer telling different petitioners that the advocate could assist her with how to file for a parenting plan, how to access supervised visitation, or how to help expedite service of the protection order. These were all issues that the judge asked the petitioner to address after the hearing.

There is a resource table with information for respondents and petitioners in Superior Court. The judicial officer in Superior Court did not direct either party to the table; however, the judicial officer did mention some of the agencies. The District Court courtroom does not have any resource information, but the Clerks' Office does have a resource handout next to the protection order petitions.

Both Womenscare and DVSAS give petitioners a handout on the protection order process as well as a sheet on how to prepare for court. The Office of Assigned Counsel gives all petitioners a two page handout titled Information for Petitioners on the Civil Domestic Violence Protection Order Process. The Superior Court Administrator/County Clerk gave a team member a business card listing three websites that provide forms and instructions on protection orders; however, the clerk at Assigned Counsel, who interacts with petitioners, was not aware of the card.

Both in petitioners' statements, and in interviews with Assigned Counsel and advocates, team members heard and read about situations in which law enforcement, in particular, suggested to a victim that they "just go and get a protection order". These usually appeared to be incidents where law enforcement had responded to a call for service. Although other law enforcement officers who were interviewed stated they explained the protection order process to petitioners, it was evident that some petitioners start the protection order process with very little knowledge about what is involved.

Numerous judicial officers stated in interviews that petitioners who are either represented by attorneys, or accompanied by advocates, appear to be more comfortable in the courtroom and are generally better prepared. "I definitely see a difference in the quality of Petitions when they are drafted with the help of attorneys or advocates and I am much more likely to grant a Petition that is clearly written and states the correct legal basis for relief."

A team member made the following observation of an advocate in the courtroom with a petitioner: "Advocates in Superior Court hearings clearly choreograph their clients' movements to help them feel secure and to avoid contact with the respondents. For example, advocates intentionally sat with their clients in the back so they could see the respondents, both of whom were already in the room and sitting in the front row. Also, during earlier hearings an advocate reviewed with her client what was happening and explained how the hearing was being conducted. An advocate coached her client to

“remember to breathe” and other tips for the hearing. Advocates carefully sat to position themselves between the petitioner and respondent at the tables and walked to the tables to avoid encountering the other party. Advocates helped the petitioner practice how to describe choking and present the other facts in support of the petition.”

For those petitioners who are unfamiliar with legal proceedings, team members observed there are many aspects of the process that are complex and nuanced. Even though petitioners may receive information, it does not mean they understand or will remember what to do.

One petitioner, who had not received a temporary order for protection, but was granted a hearing, told the judicial officer, *“I didn’t know I had to serve the papers”*, when the judge stated that the hearing needed to be continued as the respondent had not been served.

Another petitioner, who started the process with an advocate and then decided to go finish on her own, stated: *“It has been harder and longer than I expected. Harder and longer. I didn’t know that I would have to prove that I had been abused.”*

Team members learned that pro se petitioners have no idea how to prepare for a hearing. No handouts are available to help prepare petitioners, except for handouts that are used by advocates at Womenscare and DVSAS. Although they have experienced domestic violence and battering, petitioners do not necessarily understand what information is important for the court to hear in order to make decisions. Advocates explained that preparation for the court hearing is essential. Many petitioners want to see the courtroom ahead of time and practice giving their statements.

#### District Court Petitions:

The District Court Administrator explained that the loss of Assigned Counsel services has had a significant impact on court staff. Budget reductions had already impacted staffing levels and workload. In addition to processing 70-80 petitions for domestic violence protection orders annually, District Court also processes over 250 petitions for anti-harassment protection orders. In what was described as a decision within a fairly short timeline, District Court had to move swiftly to respond to petitioners who were now coming directly to the court office to ask how to petition for an order without knowledge of the types of orders. Since this change in May 2010, the Superior Court Administrator/County Clerk stated that he tried to secure funding to restore additional staffing to the Office of Assigned Counsel, but the request for additional funding was denied. Both Administrators recognize this change has had a negative impact on service to petitioners and expressed a strong desire to have it restored.

Unlike the Office of Assigned Counsel, District Court Clerks have been instructed that they cannot give advice or assistance to the public regarding filing for protection orders. Petitioners asking to file are directed to a rack of three forms: Anti Harassment Orders, Domestic Violence Protection Orders, and Sexual Assault Protection Orders. There is a separate sheet of paper next to these forms that lists legal and domestic violence service resources. On the table is a binder with instructions for each type of

order. It states clearly: Do Not Remove. Through observations, team members noted that some petitioners were told about the resource sheet, and others were not. The packet for Domestic Violence Protection Orders does not include any instructions. It only includes the paperwork for the petition. There are many forms on the WA State Courts website, including instructions and informational handouts on domestic violence protection orders, which can be downloaded. (<http://www.courts.wa.gov/forms/index.cfm>)

The stand alone resource sheet starts with this statement: “Legal Advice: District Court Staff is not permitted by law to give legal advice. The staff cannot help you complete your paperwork. Please consult with one of the community resources noted below or an attorney for assistance.”

RCW 26.50.030 (3) states: “All court clerks’ offices shall make available the standardized forms, instruction, and information brochures as required by RCW 26.50.035 and shall fill in and keep current specific program names and telephone numbers for community resources. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.”

In multiple interviews Audit team members were told the reason District Court clerks could not provide any assistance to petitioners was to avoid “unauthorized practice of law”. General Rule 24 (Definition of the Practice of Law) (b) states, “Whether or not they constitute the practice of law, the following are permitted....(6) providing assistance to another to complete a form provided by a court for protection under RCW chapters 26.50 when no fee is charged to do so.” When the Presiding Judge was asked how General Rule 24 and RCW 26.50.030 (3) were considered in giving direction to the clerks, he stated that the clerks were not trained sufficiently to provide assistance with protection orders. In addition, he stated District Court does not have the resources for one trained staff person to provide this service, even if it was determined by the District Court Judges that it was not an unauthorized practice of law.

There is an informational Kiosk at the ground floor of the Whatcom County Courthouse. One important function of the Kiosk is to assist individuals in getting to the right county department to receive the services they need. One primary person staffs the Kiosk, with others serving as back up for breaks and vacations. When Assigned Counsel processed all protection order petitions, Kiosk staff could direct all inquiries to that office. Based on an email notification from Superior Court, the Kiosk learned about the change in Assigned Counsel. After some clarification, a quick reference guide was created so that any person working at the Kiosk could check this reference to see whether someone should be directed to District Court or Assigned Counsel. This requires the Kiosk to ask a petitioner a few questions about their personal situation, in a very public arena, in order to establish where to make the referral. Despite the quick reference guide, one Audit team member asked at the Kiosk about a domestic violence protection order, and without further question, was told to go to Assigned Counsel.

Team members observed a petitioner sitting outside the District Court office with paperwork strewn around her. She was on the phone with her father stating that she was confused and did not know how to fill out the paperwork. When she left, the petitioner left the copy of the community resource sheet.

One Audit team member went directly to the District Court clerk and stated she wanted to fill out a domestic violence protection order. She was directed to the forms. When she picked up the forms and reviewed them, she stated she had no idea how to proceed. She did not notice the resource sheet.

Many years ago, through the Whatcom County Coordinated Judicial Response to Domestic Violence work group, two forms were developed for use by the courts and other agencies: Information to Respondent on the Civil Protection Order Process and Information to Petitioner on the Civil Protection Order Process. The information sheet for petitioners is not included in the petitioner packet at District Court. The Information for Respondent is not included in the packet sent from District Court to law enforcement when a Temporary Order for Protection needs service.

A review of District Court case filed before and after the change with Assigned Counsel showed that domestic violence advocates are involved in half as many cases now as compared to when Assigned Counsel assisted with District Court petitions.

In an interview with the Executive Director of DVSAS, the Director expressed concern that many petitioners are missing referrals to agency help and/or deterred from applying. "The loss of one-stop access to the courts could be too much for some petitioners to cope with at an emotionally challenging time in their lives."

Audit team members reviewed 30 random District Court domestic violence protection orders. A comprehensive review was conducted of 12 cases filed prior to May 2010 (Group 1) and 13 cases filed after July 2010 (Group 2) when Assigned Counsel was no longer providing assistance. The following was identified through text analysis:

- Group 1: 12 of 12 petitions filed stayed in District Court,  
Group 2: 3 of 13 petitions filed were transferred to Superior Court as the petitioner and respondent had children in common.
- Group 1: 8 of 12 petitions were granted a Temporary Order, and 4 of 12 a Permanent Order  
Group 2: 3 of 10 petitions were granted a Temporary Order, and 2 of 10 a Permanent Order
- Group 2 had more dismissals than Group 1, meaning the temporary order was denied and no hearing was scheduled.
- Group 2 petitioners were less likely to come to the permanent hearing and more likely to not pursue service of the Notice of Hearing when the temporary order was not granted.
- Petitioner statements in Group 2 were generally shorter and lacking in detail and specificity.

In contrast, in review of 25 Superior Court case files, 20 of 25 petitions were granted a temporary order for protection, and 14 of 25 were granted a permanent order. More petitioners followed up and came to the hearing.

The team concluded that Group 1 petitioners in District Court, which were filed with assistance by Assigned Counsel, as well as with a greater likelihood of support from an advocate, provided the court with better information. Better information meant that fewer cases were transferred, more petitions were found to meet the criteria for a temporary order for protection, and more petitioners followed through with the process. The lack of assistance provided to Group 2 petitioners in District Court (due to loss of Assigned Counsel and instructions to District Court staff to not provide assistance to petitioners) appeared to negatively impact the ability of those petitioners to receive the protection they requested.

Team members learned that a case is transferred from District Court to Superior Court if District Court does not have jurisdiction. Sometimes District Court will take action and issue a temporary order and then transfer the case, but it appears in most cases the case is transferred without action. The petitioner must walk the paperwork from District Court to Assigned Counsel. In one case review, the order was filed on a Friday, and needed to be transferred. The petitioner was not able to transfer her petition until Monday, when Superior Court issued a temporary order.

When a temporary order is not granted, the judicial officer can either dismiss the case or set a hearing in two weeks. In the latter case, the respondent must receive a notice of hearing and a copy of the petition. However, because there is no temporary order, law enforcement does not provide service when there is only a notice of hearing. (Further discussion in Gap # 5) Petitioners are responsible for service and if they return to District Court to pick up the paperwork, they receive a half page instruction sheet on service. Upon case file review and through interviews with advocates, many petitioners who do not receive a temporary order become discouraged and decide to drop the petition. They do not want the respondent served with a notice of hearing without any protection. If they are not working with an advocate, it is also likely that they did not understand why their order was denied and left without any safety planning. (Further discussion in Gap #3)

Based on two interviews with District Court judicial officers, both have noticed an increase in the number of petitions filed where information is lacking. "The petitions are less specific than before the elimination of the services from the Office of Assigned Counsel. Petitioners are now making cursory allegations like 'he keeps assaulting me' or 'harassing me' without any concrete facts and dates."

A team member observed a protection order hearing in District Court in which a mother sought an order on behalf of her 17 year old daughter, and the other children in her home, from the daughter's boyfriend. The mother had assumed all her children could be covered, and was upset to learn she would have to file a separate order for the children, and that her daughter would need to get her own order when she turned 18. The team member felt that with assistance, this mother would have filed the proper paperwork and hopefully received the protection she was seeking for her family.

The District Court Civil Clerk stated that some petitions are now coming in with incomplete information, including the confidential Law Enforcement Information forms which are used to assist in service by law enforcement. District Court personnel have been instructed not to call the petitioner back to tell them

the information is incomplete. A judicial officer stated this information is important as it helps show whether or not the parties are residing together, and therefore whether or not which court has jurisdiction.

Through interviews, District court judicial officers and administrators indicated they wish they could provide better instructional information to petitioners via their web page. Efforts have either been unsuccessful, or time has not been available due to staff cutbacks.

### **What will help address this gap?**

*Battered women have often been isolated from friends and family, and are not familiar with advocacy services that may be available to them. They may be unaware of the process and consequences of petitioning for a protection order, much less where to file...Yet all petitioners deserve the opportunity to have quick and direct access to the services and information that will allow them to make an informed decision. Consequently, this should improve the ability of the courts to make fully informed decisions.*

Battered women have often been isolated from friends and family, and are not familiar with advocacy services that may be available to them. They may be unaware of the process and consequences of petitioning for a protection order, much less where to file. As cited previously, filing for a protection order can be a time of heightened safety risks for victims. Whatcom County has helped address this gap through the Office of Assigned Counsel, which has now seen reductions in its staff and its scope of service. There are several community based domestic violence agencies that are able to provide advocacy for victims. There are handouts and instructions developed by the Washington State Administrative Office of the Courts, and there is an excellent web based interactive tool developed by Northwest Justice Project (Washington LawHelp: [www.washingtonlawhelp.org/WA/index.cfm](http://www.washingtonlawhelp.org/WA/index.cfm)). Some petitioners may choose to go through the protection order process on their own, or with friends and family. Yet all petitioners deserve the opportunity to have quick and direct

access to the services and information that will allow them to make an informed decision.

Consequently, this should improve the ability of the courts to make fully informed decisions.

The Audit Team recommends that:

- ☐ Superior and District Courts work together to secure the resources to restore staffing at Assigned Counsel in order that District Court domestic violence protection order petitioners, at minimum, can receive assistance from the Office of Assigned Counsel again.
- ☐ Community based domestic violence agencies meet with Assigned Counsel staff and the District Court Administrator to ensure that referrals and linkages are made at every opportunity possible.



- ☐ Community based domestic violence agencies consider finding ways to offer services to petitioners who have not reached out for advocacy services. This might include co-locating services in the courthouse or reaching out more pro-actively to unaccompanied petitioners in hearings. As per the WA State Fatality Review <sup>18</sup> recommendation:

“All courts issuing civil Protection Orders should have domestic violence advocates available on-site to meet with victims when they first petition for a Domestic Violence Protection Order.”

- ☐ District Court develops additional informational and instructional material on the protection order process for petitioners, both written and on-line. Written material should be available for petitioners to keep.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims’ access to information about and linkages to domestic violence advocacy services.
- ☐ Superior and District Courts and domestic violence agencies work together to develop a standard set of informational handouts for petitioners that can be used by other community agencies and law enforcement. This should include a review of current handouts and resource cards to ensure accuracy.
- ☐ Law enforcement officers receive additional training and information to gain a fuller understanding of the protection order process. This training should help inform how referrals for protection orders are made to domestic violence victims.
- ☐ Law enforcement officers, as part of a referral to the protection order process, regularly suggest that a victim seek out services of a domestic violence agency for assistance in filing for a domestic violence protection order.
- ☐ District Court reviews RCW 26.50.030 (3) and General Rule 24 and considers if court staff could provide assistance to domestic violence protection order petitioners. At minimum, District Court should consider if a designated clerk could follow up with petitioners when applications are incomplete, such as the confidential Law Enforcement Information forms.
- ☐ District and Superior Courts explore the possibility of creating a centralized domestic violence protection order “court”. In this model, all domestic violence protection order petitions would be heard in Superior Court. (See further discussion in More Audit Trails, More Questions)
- ☐ District and Superior Courts regularly ensure that the staff reference material at the Courthouse Kiosk regarding referrals for domestic violence protection order process is current and accurate.
- ☐ All project partners work together so that there is no wrong door for petitioners seeking a domestic violence protection order.

---

<sup>18</sup> *Now That We Know: Findings and Recommendations from the WA State Domestic Violence Fatality Review*, December 2008, WA State Coalition Against Domestic Violence

### Gap #3: Petitioners seeking protection orders face procedures and responses across and within agencies that are inconsistent and sometimes not fully grounded in an understanding of the law and dynamics of battering.

*Victims of domestic violence who come forward to utilize the protection order process are putting their faith and trust in the system.*

*When our responses are not consistent, or not grounded in full understanding of the laws and dynamics of battering, we may inadvertently put victims at increased risk. Although the development of policies and procedures is a time consuming process, it increases the integrity and reliability of our systems.*

The newly released *Civil Protection Orders: A Guide for Improving Practice* provides both a guiding framework and a set of specific strategies for all disciplines involved in the domestic violence protection order process. Eight values, referred to as Common Ground, are discussed in the guidebook. Two of these values are reliability and competence. The first strategy for reliability is noted below:

“Develop policies that establish and maintain specific strategies to guide each discipline’s practice around civil protection orders. Standardized policies increase consistency, predictability, accountability and safe and effective interventions. Professionals should use policies and protocols as vehicles for building the skills and culture necessary for collaborative work and improving outcomes for victims.”<sup>19</sup>

A universal strategy to achieve the value of competence states:

“Expand expertise by receiving ongoing trainings in the dynamics of domestic violence, firearms restrictions, full faith and credit, and other issues related to protection order issuance and enforcement.”<sup>20</sup>

Victims of domestic violence who come forward to utilize the protection order process are putting their faith and trust in the system. When our responses are not consistent, or not grounded in full understanding of the laws and the dynamics of battering, we may inadvertently put victims at increased risk. Although the development of policies and procedures is a time consuming process, it increases the integrity and reliability of our systems.

The following section is divided into two parts: policies/procedures and training.

---

<sup>19</sup> *Civil Protection Orders: A Guide for Improving Practice*, National Council of Juvenile and Family Court Judges, Family Violence Department, 2010, page 15

<sup>20</sup> *Ibid*, page 13

## ***What contributes to the gap?***

### Policies/Procedures:

Overall, the team learned that project partners cited WA State RCW 26.50 in answer to audit questions. The RCW is very specific to many issues related to the protection order process for both the court and law enforcement. With the exception of the domestic violence agencies, the team found only limited examples of written policies and procedures guiding agency practices.

#### *Bellingham Police Department:*

The Domestic Violence section of the Bellingham Police Department (BPD) Policy Manual provides direction on service issues related to protection orders, primarily in documentation of Return of Service. It does not include any specific language on civil stand-by or on steps to prepare for service, how to provide service to a respondent, and whether or not the petitioner should be contacted, etc.

The Bellingham Police Department has a position of Warrant Officer, whose primary responsibility is to serve orders, subpoenas and warrants. Team members were told that the service of protection orders is of highest priority for this position; however, the team found no documentation to support this. The Warrant Officer position was created many years ago and was primarily focused on warrant service. It was newly re-created a few years ago to increase effectiveness in serving orders and warrants. The person in the position has developed their own working practices over time; however, there are no written procedures in place. Although most orders are served by the Warrant Officer, patrol serves orders as needed and directed. Interviews with different patrol personnel found that practices and priorities for order service vary and are not consistent. For example, when orders were not served by the Warrant Officer, petitioners were not contacted before or after service on a few occasions.

Records staff, which are key in entering protection orders into WACIC/NCIC (Washington Crime Information Center and National Crime Information Center) and LongArm, are to some extent, guided by mandatory procedures and forms required by WACIC. Entering protection orders into databases are a priority for records staff; however, nothing in writing was identified by the team.

#### *Whatcom County Sheriff's Office:*

The Whatcom County Sheriff's Office has an operational procedure on responding to civil stand-bys. The team was informed that the Domestic Violence Policy is currently under review and near completion. The policies currently in existence (written in 1995) were reviewed. These policies do include a section on service of protection orders and provide deputies with some direction, specifically around checking the history and risk factors of the respondent, reading the contents of the conditions to the respondent, and requiring documentation. The team did not have an opportunity to review the content of the new policy in its draft form; however, during the final editing of this report the team learned that WCSO personnel are currently receiving training on the new Domestic Violence Policies.

Within the Whatcom County Sheriff's Office, a Civil Deputy is responsible for service of orders, evictions, and subpoenas. This position is rotated every two years. Team members learned that training is

provided by the outgoing civil deputy to the incoming civil deputy, but otherwise there are no written procedures that provide the Civil Deputy direction on service of domestic violence protection orders. Team members were told by supervisors that service of protection orders is a priority; however, in practice, the Civil Deputy stated that orders were served by priority of court date.

As noted previously, the Whatcom County Sheriff's Office also provides security coverage for the Courthouse. In interviews with two courthouse deputies, there was not a consistent response as to whether presence at domestic violence protection order hearings was a priority. With the added responsibilities to the Courthouse Deputy effective January 2011, the team was told presence at Superior Court hearings was still a priority. However, the team did not see anything in writing that would clarify and provide that direction to the deputies.

Although most orders are served by the Civil Deputy, other deputies will serve orders as needed. Interviews with different deputies found that practices for order service vary, "depend" on the situation, and are not consistent.

The Warrants and Order Specialist at the Whatcom County Sheriff's Office appears to play a role in helping District and Superior Courts determine which law enforcement agencies should receive orders for service and entry. (This is discussed further in Gap #5). This "informal" arrangement is essential to timely delivery of orders to the correct law enforcement agency. There did not appear to be anything in writing that stated this was part of the duties of the Warrants and Order Specialist. As with the BPD Records staff, mandatory data entry requirements for WACIC/NCIC guide much of the order entry and validation management procedures for the Warrants and Order Specialist.

#### *Ferndale Police Department:*

At the beginning of the Audit, the Ferndale Police Department did not have any written policies or procedures for patrol regarding service of orders or civil stand-by. The records staff did have a summary of steps for processing orders into WACIC/NCIC, based on auditing requirements as noted with other law enforcement records staff. After the day-long training for the Audit team, the team member from the Ferndale Police Department asked the department to develop written procedures for patrol and records. These new procedures were adopted in July 2010. As the procedures state, "Some items were identified that could improve the safety of the victim and the officers serving the papers...This procedure is a proactive step to address some of the areas of concern that have been identified."

During an interview with records staff, a team member observed a protection order that had been returned to records, but was missing the Return of Service and the accompanying report, as required by new procedures. The records staff had to contact a supervisor to ensure the report was submitted, and entry of notice of service was slightly delayed.

#### *Whatcom County District Court:*

Team members did not find any written procedures for the District Court Civil Clerk, who has responsibility for processing protection orders. Via interviews, team members were told that processing and responding to domestic violence protection orders were considered a priority for the Civil Clerk.

Team members learned that safety protocols for the courtroom are in place, although nothing is in writing. With the change in Assigned Counsel services, other District Court Clerks now interface with protection order petitioners. Team members were told that the clerks have received verbal instructions on how to respond, with frequent review at staff and work group meetings. A lead is often working near the front counter and is there to help ensure clerks are providing the correct information. However, the team found there were no written instructions for clerks. The following observations were made in District Court:

An Audit team member happened to observe the following interactions. One petitioner filing for a domestic violence protection order was asked for a \$73 filing fee by the District Court Clerk. The petitioner did not have the funds and said she would return in a week. When she returned, another clerk informed her that there was no charge for filing a domestic violence protection order.

In court, a petitioner was told the hearing needed to be continued as the respondent had not been served. The petitioner asked the judge if she could attempt service by mail. The judge responded that the court must follow the rules, and advised her to talk with the clerk. The petitioner waited for 30 minutes at the clerk's office for the paperwork and information on service by mail. The Clerk did not know how to go forward with service by mail, and could not provide any paperwork. The clerk stated "maybe you have to draft it."

#### *Whatcom County Superior Court:*

The Superior Court Administrator/County Clerk stated there is no comprehensive set of procedures in place, however there are policies, memos and emails over the years that provide direction. The Deputy Clerk with primary responsibility for the protection order calendar provided the team with an "Action Plan on DV Days", which she created for other clerks who covered the domestic violence protection order calendar. It provides general direction on preparation before, during and after the hearing. This Deputy Clerk is no longer employed at Superior Court and it is not known if this document was retained.

Assigned Counsel staff indicated they have been working on developing a procedure manual, as time allows, over the past few years. The team was told this document had not been reviewed or requested by a supervisor, but was created to help provide direction for the person in the position, as well as for others who filled in during her absence.

The Superior Court Administrator/County Clerk indicated there was a Superior Court policy on telephonic hearings as allowed by RCW 26.50.050, but it was not found. A clerk had informed a team member that telephonic hearings were not encouraged, and a Superior Court judicial officer confirmed that the use of telephonic hearings are strongly discouraged. He stated he will consider a telephonic hearing when requested by the respondent, but will not allow it when requested by a petitioner. Due to the fact that the issuance of a protection order creates substantial restrictions on freedom of movement for a respondent, and can lead to criminal sanctions if violated, this same judicial officer expressed concern about the respondent's right to confrontation if the petitioner was not physically present at the hearing. He stated that telephonic hearings limit his ability to "read" the parties and therefore gauge

their credibility in order to make a finding. This judicial officer understands hearings can be very difficult for petitioners and stated he relied on advocates to inform the court if there were any heightened safety concerns, and that he would do what he could to help ensure safety.

The *Domestic Violence Manual for Judges*<sup>21</sup> states, “All courts should use the approved Washington State forms as those forms have been drafted to meet all state and federal requirements regarding domestic violence cases.” As stated in Gap #2, Assigned Counsel had not been using the current WA State Court protection order pattern forms, which changed in July 2010. (The new forms were being used as of mid-February 2011.) The Superior Court Administrator/County Clerk stated that when there are changes in the law or forms, this information is provided to the personnel using the forms and they are expected to incorporate the new forms. No follow up is made. Assigned Counsel uses an automated pleadings generator software application to prepare and print paperwork while petitioners wait. Due to the loss of software application-trained staff, the court did not have readily available resources and technical expertise to a timely reprogram of the software to include the new changes to the form.

#### *Domestic Violence and Sexual Assault Services:*

Volunteers are a key aspect of service delivery for DVSAS. Although specific staff are designated as legal advocates, volunteers assist with individuals who walk-in for assistance with protection orders. It has not been as common for volunteers to attend protection order hearings, but team members learned that this may be changing. In the near future an intensive protection order training will be held for volunteers to improve their skill level is assisting petitioners at all phases of the protection order process, to include court accompaniment. DVSAS has seen increase in victims seeking assistance with protection orders, and in order to respond to that demand, they want to ensure volunteers are fully trained in order to provide victims with the advocacy and support they need. DVSAS has a Protective Order Resource Binder that provides direction to volunteers (and staff) on steps to assist victims with protection orders. On each protection order packet given to petitioners, there is a short memo to remind volunteers to make sure a staff member reviews the statement before finalizing the paperwork.

#### *Womencare Shelter:*

Womencare Shelter also relies on volunteers for victim services, and starting January 2011, a few primary individuals are assigned to do the majority of legal advocacy work. (Up until January 2011 one legal advocate had filled this role.) However, all staff and volunteers must have a general understanding of the civil protection order process, and must be available in the event the legal advocate is not present. A Protection Order Training Manual is available with information on protection orders, procedures for assisting petitioners, as well as accompanying petitioners to court.

---

<sup>21</sup> *Domestic Violence Manual for Judges*, 2006, Washington State Gender and Justice Commission, WA State Administrative Office of the Courts

### *Superior and District Court Jurisdictional Issues:*

RCW 26.50.020 provides that Superior and District Courts can issue protection orders. District Court cannot issue protection orders when a) Superior Court has exercised or is exercising jurisdiction over a proceeding under RCW 26 or RCW 13.34 involving the parties; or b) the petition for relief presents issues of residential schedule of and contact with children of the parties; or c) the petition for relief under RCW 26.50 requests the court to exclude a party from the dwelling which the parties share. Administrators and judicial officers cited this statute to explain the history by which certain petitions are filed in Superior versus District Court.

Audit team members learned from interviews with multiple practitioners that although there is general agreement, there is not 100% clarity on which cases go to District and which to Superior Court. It is a consensus that when children are involved, the case goes to Superior Court. However, it is not as clear when the petitioner is under 18 or when the petitioner and respondent have lived together in the past. Although the majority of cases seem to end up in the appropriate court, the change in Assigned Counsel services has created an added area of confusion for petitioners, as was noted in Gap #2. Team members could not find anything in writing between the two courts that clarified and specified jurisdictional venues.

When asked, both courts stated there had been some discussion in the past on the possibility of Superior Court handling all domestic violence protection orders. Lack of resources was provided as the reason for not pursuing this possibility. Although the team learned there are a number of issues to explore, both courts indicated this was a strategy that held the potential to address some of the current gaps and safety concerns in the protection order process. (See discussion in More Audit Trails, More Questions)

### *Superior and District Court Courtroom Procedures:*

No written courtroom procedures were found in either Superior or District Courts; however, judicial officers indicated they have referenced Chapter 8 on Civil Protection Orders in the *Domestic Violence Manual for Judges*.<sup>22</sup> Judicial officers have discretion and authority to conduct courtroom procedures and processes as they deem appropriate to the case, circumstances and court rules. With this understanding, the team identified four areas of concern related to courtroom proceedings.

**Seating:** Gap #1 provided evidence of seating arrangements and lack of a law enforcement presence in District Court that raised safety concerns for petitioners and team members.

**Questioning of Petitioner/Respondent:** Gap #1 discussed differences in judicial officer practices related to the presentation of evidence, testimony and cross examination. Based on interviews with advocates, court observations, and feedback from focus groups, the practice to allow cross examination between the respondent and petitioner was of concern to the team. In Chapter 13 of the *Domestic Violence Manual for Judges*, Commissioner William G. Knebes provides an outline for conduct of hearings. In that

---

<sup>22</sup> *Domestic Violence Manual for Judges*, 2006, Washington State Gender and Justice Commission, WA State Administrative Office of the Courts

section he states: “Some courts allow pro se parties to conduct cross-examination. ER611 and ER 614 vest the judge with considerable discretion and control of the mode, order, and interrogation of witnesses. Rather than allowing traditional cross-examination, the judge may consider asking, ‘Are there any areas of inquiry you wish the other side to address or explain further?’ Thus the examiner poses the question or issue to the judge and the judge may reframe the question.”<sup>23</sup>

Gap #1 referenced material in the *Domestic Violence Manual for Judges* that allows for permissive application of the Rules of Evidence in protection order proceedings. “In Gourley the court concluded that there was no due process violation in not requiring testimony or cross-examination at the hearing for protection order...”<sup>24</sup>

Two information sheets created by the courts, Information for Respondent and Information for Petitioners in Civil Domestic Violence Cases, include the following language: “The Court may ask questions of parties and witnesses and the parties may ask questions through the judge regarding the other party’s testimony.” The team observed that this practice was generally occurring in Superior Court, but not always in District Court. Team members were concerned that petitioners may be unprepared for direct questioning from the respondent if they had read the above information sheet.

**Ex-Parte Orders:** Both Superior and District Courts have processes in place for a judicial officer to review a petition for a protection order within one judicial day, and usually within the day if submitted by early afternoon. The judicial officer reviews the petition and either issues a Temporary Order for Protection, or completes a form titled Denial Order. RCW 26.50.070 (3) states “The court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day.” Based on an interview with staff from the Gender and Justice Commission of the WA State Administrative Office of the Courts, the intent of this legislation is to provide quick access to a temporary order for those petitioners who meet the legal requirements.

RCW 26.50.070 (6) states, “If the court declines to issue an ex parte temporary order for protection the court shall state the particular reasons for the court’s denial. The court’s denial of a motion for an ex parte order of protection shall be filed with the court.” The Denial Order is a checklist from which the judicial officer can indicate a variety of reasons for denial. In Superior Court, as evidenced earlier, it is less likely for petitions to be denied a temporary order. For those denied, through text review it was noted that the judicial officer often uses the option of “Other” and provides information on what was insufficient in the order. Prior to making a decision, the judicial officer in Superior Court will on occasion ask a question of the petitioner through Assigned Counsel, or provide feedback for the petitioner if they are still waiting in the Assigned Counsel office. The petitioner is able to re-submit the petition, or add to it. The judicial officer then makes a determination based on the re-submitted petition.

---

<sup>23</sup> *Domestic Violence Manual for Judges*, 2006, Washington State Gender and Justice Commission, WA State Administrative Office of the Courts, page 13-9

<sup>24</sup> *Domestic Violence Manual for Judges*, 2006, Washington State Gender and Justice Commission, WA State Administrative Office of the Courts, page 8-22



A review of District Court files showed a higher rate of denials, as stated in Gap #2. Judicial officers in District Court were less likely to provide information to the petitioner about insufficiencies in the order. They were more likely to check “The Petition does not list a specific incident and approximate date of domestic violence.” In an interview with one judicial officer in District Court, he stated he was concerned that providing feedback would be inappropriate for his role. He stated he was willing to meet with the petitioner in the courtroom, on the record, and explain his decision. If the petitioner wanted to re-submit, he would review the new petition. He stated that he did not know if most petitioners knew they had the option to hear this feedback, and he stated he did this on one occasion when a petitioner wanted to know why her petition was denied.

Rule 2.9 Ex Parte Communications (Code of Judicial Conduct) allows for a judge to initiate, permit, or consider ex parte communications when expressly authorized by law to do so. RCW 26.50.070(3) does allow for ex parte hearings as part of a petition for a domestic violence protection order.

Team members were concerned that petitioners, especially those in District Court and those that are not accompanied by an advocate, were left without full information about why their petition was denied. In some instances, their case was dismissed, in others a hearing was set even though no temporary order was signed. It was noted through a review of District Court files that the majority of petitioners who were denied temporary orders did not come to their hearing. Advocates stated that petitioners who do not have a temporary order are even more fearful of consequences of serving the Notice of Hearing and petition to the respondent, as they have no protection without a temporary order. The team identified this group of petitioners as at high risk, especially due to the lack of assistance available to petitioners in District Court.

Commissioner William G. Knebe, in the *Domestic Violence Manual for Judges* cited above, has this to say in Chapter 13 of the manual: “Many victims of domestic violence may not be adept at expressing themselves in writing due to lack of education or stress, so it is recommended that such victims be seen and heard by the court if their written papers appear lacking.” In other words, holding an ex parte hearing could be particularly appropriate for petitioners who lack reading and writing skills.

### **Completion of Protection Order Forms:**

Upon review of 50 Superior and District Court case files, it appeared that Protection Orders forms were generally completed thoroughly with a few exceptions. With the exception of 2 cases out of 50, neither court entered information on the front of the temporary or permanent order regarding firearms, specifically, the line listed “Caution: Access to weapons yes no unknown.” This will be discussed further in Gap #4.

Advocates reported that occasionally an order will lack a signature, or a certain box will not have been checked. As stated earlier, for 7 months Superior Court was not using the most current temporary and permanent protection order forms. The forms in use did not provide for two new conditions, one related to protection of pets, and the other restraining the respondent from harassing, following, cyber stalking, and keeping the petitioner under physical or electronic surveillance. However, the judicial officer was allowing and addressing these conditions in the orders when requested. Yet, if the

petitioner did not know about the option because it was not on the form, they might not have asked for that specific relief.

Superior Court orders had numerous examples where the check box under Court Order Summary did not include a check for “Additional provisions are listed on the following pages,” despite the fact that there were additional conditions ordered. This is important to check as law enforcement may review this face sheet of the order to see if there are any additional provisions they need to check for, either in service or enforcement.

#### Training:

Team members found that among practitioners involved in the protection order process, there is confusion and lack of comprehensive information about the process and the role of practitioners at each step. In interviews practitioners expressed confusion between civil orders and no contact orders, some practitioners assumed an advocate was always involved with petitioners, and others were confused about which court had jurisdiction over which orders. A clerk assumed law enforcement removed firearms from anyone that had a permanent protection order, a judicial officer did not know electronic surveillance could be ordered as part of a protection order, and another judicial officer did not know what kind of assistance petitioners were offered by the clerk. Advocates reported instances where law enforcement did not serve the respondent with the petitioner’s statement and where the law enforcement officer did not understand the process for Return of Service. A few practitioners assumed an order was valid as soon as the court signed it, others understood that it was not likely to be enforceable until served.

Through interviews the team determined that most practitioners received on-the-job training in the specific duties related to the protection order process they were responsible for. It was very unusual for practitioners in the courts, except for judicial officers, to receive any specialized training in domestic violence. Law enforcement records staff have some training in protection orders due to their work with data entry into WACIC/NCIC. Specialized training in domestic violence varies and is limited. Law enforcement officers vary in their training, with the Bellingham Police Department as the only organization with a stated policy on the provision of regular domestic violence training. Both the Warrant Officer at BPD and the Civil Deputy at WCSO indicated they had not received specialized training in domestic violence.

Not surprisingly, the agencies that do offer specialized training are the two domestic violence agencies, DVSAS and Womenscare Shelter. Both agencies offer a specific training on protection orders as part of their comprehensive volunteer training. However, both agencies did state that it is very challenging to train a group of volunteers to fully understand the protection order process. DVSAS has added steps to ensure that when volunteers are assisting petitioners, staff review the paperwork.

## ***What will help address this gap?***

Due to the small volume of protection orders filed in the two courts and served by local law enforcement agencies, the team learned there are virtually no practitioners whose sole job is to work with domestic violence protection orders. Most practitioners are working with protection orders as part of an overall position. The team recognizes this has most likely impacted the two findings that few written policies and procedures are in place, as well as the fact that few practitioners have received specialized training in domestic violence.

In April 2010 King County, WA developed the Domestic Violence Initiative Protective Order Model Guideline. The tools developed to address the barriers to effective protection order issuance and service were a series of checklists for court staff, judicial officers and law enforcement. The checklists developed by King County should be reviewed by the courts and law enforcement as a possible tool in developing procedures to increase consistent practices.

The Audit Team recommends that:

- ☐ Courts, law enforcement and domestic violence agencies develop protocols guiding all practitioners involved in the protection order process, with safety of victims as the overarching goal. Regular and appropriate supervision should be built in to ensure the protocols and procedures are followed.
- ☐ Courts, law enforcement and domestic violence agencies consider standard protocols across all systems, for example, standard protocols for service or protection orders for all Whatcom County law enforcement agencies.
- ☐ District and Superior Courts and law enforcement strengthen practitioners' knowledge on the dynamics of domestic violence and battering by conducting training relevant to the practitioners' position and work setting.
- ☐ Courts, law enforcement, and domestic violence agencies as needed, build in systemic training and an understanding on the overall domestic violence protection order process for all key practitioners.
- ☐ Courts, law enforcement and domestic violence agencies conduct an annual review of RCW 26.50 to ensure compliance with all aspects of the law, including the use of current state pattern forms.
- ☐ Superior and District Courts use current state pattern forms.
- ☐ Superior and District Courts create and utilize a checklist to ensure orders are completed. (See King County, WA checklist for courts.)
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.

- ☐ District and Superior Court judicial officers continue to find opportunities to conduct courtroom procedures in a manner that minimizes intimidation of petitioners, and conveys messages of safety and access for petitioners and accountability for respondents.
- ☐ District and Superior Courts review process for ex parte hearings and consider ways to increase information to petitioners, if appropriate, when temporary orders are denied.
- ☐ District and Superior Courts explore the possibility of creating a centralized domestic violence protection order “court”. In this model, all domestic violence protection order petitions would be heard in Superior Court. (See further discussion in More Audit Trails, More Questions)

**Gap #4: Standard and consistent responses to reducing respondent access to firearms (and dangerous weapons) in the protection order process are lacking, despite petitioner safety concerns and practitioner knowledge of the dangers of domestic violence and firearms.**

*Specifically for those victims who articulated in their petition that the respondent possessed firearms and/or has used firearms to threaten or harm them, they expect the system will understand their level of danger.*

The introduction in *Enforcing Domestic Violence Firearm Prohibitions: A Report on Promising Practices*<sup>25</sup> states:

“Firearms are the weapon of choice among abusers who kill their intimate partners and children. Multiple studies have found that intimate partners are more likely to be murdered with a firearm than by all other means combined. In fact, the mere presence of a firearm makes it six times more likely that a batterer will commit lethal abuse. Women who have been previously threatened or assaulted with a firearm or other

weapon are 20 times more likely than other women to be murdered by their abusers. ...when a firearm is kept in a home with an abuser, nearly two-thirds of the victims report that it is used by the abuser to scare, threaten, or harm them.”

According to the 2008 Washington State Domestic Violence Fatality Review<sup>26</sup>, since 1997, abusers used firearms to kill 54% (n=232) of domestic violence homicide victims in Washington State. Between January 2009 and December 2010, there were 5 domestic violence homicide cases in Whatcom County resulting in 8 deaths (6 homicide victims and 2 abuser suicides). Three of the 5 homicide cases involved firearms.

Petitioners for domestic violence protection orders are seeking safety and relief through the civil and criminal legal system. They expect a certain level of safety and accountability will be provided. Specifically for those victims who articulated in their petition that the respondent possessed firearms and/or has used firearms to threaten or harm them, they expect the system will understand their level of danger. When the protection order process lacks practices and responses that ensure firearms are surrendered when allowable, victims of domestic violence may believe that they remain at risk, their abuser is not being held accountable, and the system has failed to recognize their level of risk.

When we fail to recognize this threat, not only is the victim placed at risk, law enforcement, as well as the victim’s children, family and support network are also put in harm’s way.

<sup>25</sup> *Enforcing Domestic Violence Firearm Prohibitions: A Report on Promising Practices*, Office on Violence Against Women, National Center on Full Faith and Credit, September 2006

<sup>26</sup> *Now That We Know: Findings and Recommendations from the WA State Domestic Violence Fatality Review*, December 2008, WA State Coalition Against Domestic Violence

## What contributes to the gap?

With a qualifying domestic violence civil protection order, as per 18 U.S.C. §922(g) (8), respondents are not allowed to possess a firearm or ammunition for as long as the final protection order is in effect. The specific language regarding this federal law is included in both a Temporary Order for Protection, as a warning, and in a Permanent Order for Protection. The WA State Administrative Office of the Courts developed pattern forms that comply with the federal language. In addition, under WA State RCW 9.41.800, the courts do have authority to order surrender of firearms under certain provisions. However, there is no language under Washington state law that specifies that the issuance of a domestic violence order for protection *alone* will automatically trigger a requirement to surrender firearms.

In a review of 25 Superior Court protection orders petitions, 14 petitioners specifically cited the respondents' access to firearms and other dangerous weapons in response to the question on the form, "Does the respondent own or possess firearms? Does the respondent use firearms, weapons or objects to threaten or harm you?" In a similar review of 25 District Court petitions, 6 petitioners cited respondent access to firearms. Here are a few examples from both courts:

*"He has a shotgun in the bathroom and possibly others."*

*"He has a handgun under his pillow pointed at my head."*

*"When I came home from the hospital and was living with my sister, he asked me where I had hid his gun. I was very scared to have a gun in the house and had called the cops and they took it."*

*"On a consistent basis he would pull knives out of his knife collection and talk about how he could use them if he needed to."*

*"He said he will shoot himself with his handgun that he is hiding in his garage."*

The WA State Administrative Office of the Courts provides pattern forms that Courts "shall" use in the protection order process. The standard temporary and permanent protection order pattern forms do not provide for a specific check box provision pursuant to RCW 9.41.800 and the surrender of weapons. However, these same pattern forms do provide for any catch all provisions under box #9, "Other". The Administrative Office of the Courts has developed for use by the courts two separate forms related to firearms. One is titled Petition for Surrender of Weapon, Notice of Hearing and Order (for petitioner) and the other is titled Order to Surrender Weapon, for use by the court. At the team's request Superior Court ran a query for a 3 year period and found only one instance where a Petition to Surrender was submitted and no cases where an Order to Surrender was issued. In the review of 25 District Court cases, no examples were found.

The Order to Surrender Weapon form allows for the court to issue an order based on the following: “By a preponderance of the evidence that the possession of a firearm or other dangerous weapon by the nonmoving party presents a serious and imminent threat to public health or safety, or to the health or safety of any individual.” It provides a place for the court to indicate which law enforcement agency the party should surrender the firearm. The authority to order surrender of firearms is given to the courts in RCW 26.50.060 (k) and RCW 26.50.070(f).

The *Domestic Violence Manual for Judges* notes that the courts can also order law enforcement to assist in the removal of the perpetrator’s weapons.<sup>27</sup>

Through interviews, advocates stated that they were not aware of these forms until recently, and had never used them with a petitioner. Advocates discuss firearms with each petitioner due to the question on the petitioner’s statement. Team members observed three hearings where a petitioner specifically asked if her respondent’s firearms would be removed. On one occasion the judicial officer stated that they did not think the court could require it at this time. In another case, the judicial officer declined to take any specific action. In the third case, the respondent stated he did have guns and the judicial officer recommended the defendant give the firearms to either a relative or law enforcement, but no specific written order was issued.

Based on a few observations of Assigned Counsel providing assistance to petitioners, no emphasis was made on the question about firearms in the petition. In a case where the petitioner was especially concerned about firearms and brought it up, Assigned Counsel did not mention the option of the using the Petition for Surrender of Weapon.

Confusion and lack of understanding about authority, compliance and follow up with firearms restrictions with both federal and state laws were strongly evident from team member interviews with advocates, clerks, judicial officers, records staff and law enforcement. There was no evidence of any written guidance or procedures.

One court clerk stated they assumed law enforcement removed firearms from respondents based on federal prohibitions. Another clerk stated she had no idea what was in place regarding compliance for any conditions, but was especially concerned about the firearms prohibitions and the fact that no compliance seemed to be in place. Petitioner frustration was expressed through interviews with advocates, who could not understand why no one would remove the weapons.

Judicial officers had a variety of responses regarding the authority to issue a specific order to surrender firearms. One judicial officer regularly reads the federal firearms prohibitions when issuing an order, and may even tell the respondent to surrender the firearm right now. However, no specific date or instructions are given to the respondent. Nor is the respondent asked to inform the court when they have complied. Another judicial officer does not read the federal firearms prohibitions. A number of judicial officers stated that they assume the petitioner will bring it up if it is a concern, and would only rarely, if ever, order surrender. Another stated that they felt the federal prohibitions were enough, and

---

<sup>27</sup> *Domestic Violence Manual for Judges*, 2006, Washington State Gender and Justice Commission, WA State Administrative Office of the Courts, page 8-18

did not think adding a specific order would make much difference as there was no compliance in place, and one law enforcement agency has stated it does not have the resources to store surrendered firearms. Another judicial officer said he really doesn't know what is happening around firearms.

Interviews with law enforcement confirmed the team's finding that there is both an awareness of the dangers of firearms and a lack of policies and clarity in terms of their role with enforcing firearms provisions in protection orders. Both the BPD Warrant Officer and WCSO Civil Deputy noted that checking on presence of firearms was an important safety measure taken prior to service of an order. Other law enforcement supervisors reinforced this finding. The BPD Warrant Officer stated he reviewed the federal firearms prohibitions with the respondent upon service, but did not provide any direction to the respondent on how to surrender. The WCSO Civil Deputy stated they did not review the firearms prohibitions during service.

As noted in Gap #3, courts rarely fill in the section on the front page of the temporary and permanent order that indicates whether or not the respondent has access to firearms. Law enforcement indicated this information is important for their safety.

Interviews with law enforcement personnel demonstrated that there is inconsistency in whether or not firearms are removed when an order is served by patrol. Generally, the consensus was that due to lack of authority, rarely were weapons removed upon service of a protection order; however, some law enforcement personnel stated they may suggest or ask for a voluntary surrender. Again, the team found no written guidance. Law enforcement did state that respondents bring weapons in for surrender. Advocates told team members that petitioners have told them some respondents are turning weapons over to friends and family members. Team members expressed concern that guns in the hands of family members and relatives remain readily accessible to respondents.

The Whatcom County Sheriff's Office expressed concerns regarding their ability to absorb the extra duties and physical space required, within evidence storage area space limitations, to take on the added responsibility of storing surrendered firearms under the provisions of civil domestic violence protection orders. The WCSO's acknowledged that it was unclear how many firearms could potentially be involved if court practices were to change. The team learned the Sheriff's Office would be interested in alternative ways to store firearms, such as contracted storage with a certified firearms dealer.

The team learned that law enforcement is generally unlikely to enforce the federal firearms prohibitions of qualifying domestic violence protection orders. There does not seem to be any process or effort in place to file reports with the federal prosecutor or the federal Alcohol Tobacco and Firearms (ATF) office. The team was informed by one law enforcement agency that it was assumed the federal prosecutor would almost always decline to prosecute, minus exceptional circumstances. Because neither court had issued a specific order to surrender firearms or weapons, the team was not able to assess how and if law enforcement would enforce such a local court order to surrender weapons.



## ***What will help address this gap?***

A few years ago Whatcom County made some strides by developing recommended best practices for removing firearms from domestic violence defendants. The team learned that Whatcom County would now benefit from focusing on developing and recommending best practices for removing firearms, when appropriate, from respondents subject to civil domestic violence protection orders. The team fully understands that firearms prohibitions can only be applied when statutory provisions are met, yet it was surprised to learn that there seems to be a lack of focus and priority placed on this issue.

A full understanding of the interplay between the federal and state statutes as it relates to the role of the court and law enforcement response is complex and beyond the scope of this report. However, the complexities, coupled with the dangerousness of firearms, demand a fuller understanding of the law on the part of all practitioners. Everyone's safety will increase in the process.

The Audit Team recommends that:

- ☐ Whatcom County establish a Domestic Violence Protection Order and Firearms work group to develop preferred practices for all relevant practitioners, to include the development of any forms related to compliance that puts responsibility on the respondent. The work group should consult with the many resources available through the National Center on Full Faith and Credit and the National Council on Juvenile and Family Court Judges, Family Violence Department. The second phase should include implementation of the preferred practices by all relevant practitioners.
- ☐ District and Superior Court clerks and judicial officers receive relevant training and familiarity with protection order pattern forms for firearms surrender and use as appropriate.
- ☐ District and Superior Court judicial officers receive ongoing judicial education on statutory authority related to firearms surrender. If new practices are developed, judicial officers are encouraged to review these with law enforcement, prosecution, and defense.
- ☐ Domestic violence advocates receive ongoing training and a full understanding on the forms for firearms surrender and the authority of the court. Advocates should proactively explore petitioners' determination as to whether or not to file a Petition for Surrender of Weapon.
- ☐ Domestic violence advocates continue to explore safety planning regarding firearms, especially in those cases where the federal prohibitions do not apply and no other restrictions are placed on possession.
- ☐ District and Superior Court judicial officers complete the "Caution: Access for Firearms" check box on the front sheet of the temporary and permanent protection orders.
- ☐ Warrant Officer/Civil Deputy, and any law enforcement officer providing service, orally review the federal firearms prohibitions with respondent upon service, and in conjunction with the courts, develop and utilize an instruction sheet for respondents on how to surrender firearms.

- ☐ District and Superior Court judicial officers routinely read to the respondent the firearms restrictions when respondent is present at a hearing.
- ☐ Whatcom County law enforcement agencies develop written guidelines for firearms surrender (voluntary and/or mandatory) for qualifying domestic violence civil protection orders.
- ☐ Concurring with statewide recommendations from the 2008 WA State Domestic Violence Fatality Review, “The Administrative Office of the Courts should add a protection provision pursuant to RCW 9.41.800 to the “Petition for Order for Protection” and “Temporary Order for Protection and Notice of Hearing” forms. This provision would allow petitioners for a Temporary Protection Order to request that the court order the respondent to surrender firearms and prohibit the respondent from obtaining or possessing a firearm prior to the Protection Order hearing. The AOC should amend the instructions for Protection Order petitioners to inform them of their right under RCW 9.41.800 to request that the court order the respondent to surrender firearms and prohibit the respondent from obtaining or possessing firearms with both temporary and full Protection Orders, using the Petition for Surrender of Weapon.”<sup>28</sup>
- ☐ District and Superior Courts consider developing a mechanism by which respondents could demonstrate to the courts that they have complied with the order to surrender firearms. This could include the use of an instruction sheet for respondents developed in conjunction with law enforcement.
- ☐ District and Superior Court judicial officers, and law enforcement, only allow third party transfers of firearms under limited conditions and after vetting of the party receiving the firearms. Model practices should be explored to see how other jurisdictions handle this matter, which could include a practice of requiring the third party to sign an affidavit of receipt for third-party transfers.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims’ access to information about and linkages to domestic violence advocacy services.

---

<sup>28</sup> *Now That We Know: Findings and Recommendations from the WA State Domestic Violence Fatality Review*, December 2008, WA State Coalition Against Domestic Violence

## Gap #5: Multiple practices and procedures around service and process of protection orders place victims at risk at a time when the need for safety is actually heightened.

*“...Effective service requires more than a timely response; officers hold respondents accountable for their violence by informing respondents fully about the protection order process, detailing the consequences of violations, and confiscating firearms and other weapons.*

*Officers who fulfill these responsibilities send the message that domestic violence will not be tolerated and, in doing so, increase the safety not only of the victim, but also of the community as a whole.”*

Although the scope of this Audit does not cover enforcement of domestic violence protection orders, it is clear that effective enforcement cannot occur without proper service and entry of protection orders in local and national databases. For this reason, this Audit reviewed the court and law enforcement procedures for processing of temporary and permanent protection orders. Once law enforcement has received paperwork from the courts, their role is to enter the provisions of the order into a state, national (WACIC/NCIC) and local database, including a notation on whether or not service has been made. Full enforcement is not likely to occur without service of an order and entry into accessible databases.

*Civil Protection Orders: Guide for Effective Practice*<sup>29</sup> provides an excellent overview of the important role of law enforcement in service: “Officers promote victim safety by ensuring that protection orders are served promptly and that

victims are notified of service promptly. Effective service requires more than a timely response; officers hold respondents accountable for their violence by informing respondents fully about the protection order process, detailing the consequences of violations, and confiscating firearms and other weapons. Officers who fulfill these responsibilities send the message that domestic violence will not be tolerated and, in doing so, increase the safety not only of the victim, but also of the community as a whole.”

Law enforcement agencies rely on the courts to provide them with completed paperwork in a timely manner. By working together to both prioritize and streamline this process, petitioners, respondents and all practitioners will know what to expect.

### What contributes to the gap?

#### Courts:

Although no written guidelines were identified, court practices demonstrate that processing of domestic violence protection orders is a priority. RCW 26.50.100 requires the court to forward a copy of a protection order on or before the next judicial day to the appropriate law enforcement agency specified in the order.

---

<sup>29</sup> *Civil Protection Orders: A Guide for Improving Practice*, National Council of Juvenile and Family Court Judges, Family Violence Department, 2010

Team members heard from law enforcement that the confidential Law Enforcement Information forms are often not filled out completely. The team learned this can be a result of lack of information provided by the petitioner. Superior Court petitions are processed with assistance from Assigned Counsel staff, whereas, District Court petitions are not filed with any assistance. Incomplete forms have no opportunity to be corrected in District Court before filing (due to reasons cited in Gap #2); whereas Assigned Counsel can work with petitioners to ensure the form is completely filled out. When this confidential information form is not filled in completely, law enforcement is required to do additional work to verify the parties, risk factors, and jurisdiction.

Assigned Counsel and court clerks appear to lack the resources to consistently identify which law enforcement agency is responsible for service of the order, and which is responsible for entry. (Entry is based on the jurisdiction of the petitioner and service is based on the jurisdiction of where the respondent lives.) Clerks stated that when they were not sure on the exact jurisdiction, they called the WCSO Warrants and Order Specialist for assistance. When clerks are not able to reach the Specialist, they leave the order for pick-up by the Specialist, knowing the Specialist will identify the correct jurisdiction and forward it. Fortunately, this individual comes to court three to four times a day to pick up orders and is willing to serve as the “clarifier” for the courts.

District Court faxes temporary and permanent orders to law enforcement agencies when the clerk is sure about jurisdiction. Assigned Counsel faxes temporary orders to law enforcement when jurisdictional issues are clear. However, due to limitations on staff time, Superior Court mails permanent orders to law enforcement rather than fax. Superior Court has been asked to fax orders to certain local law enforcement agencies and the court stated it would work to find the resources if faxing was deemed to be a priority. In a conversation with a Superior Court clerk, the clerk did not appear to understand that law enforcement needs to enter the order in a database (WACIC/NCIC) other than JIS, which is the database Superior Court uses. Also, the team learned from one small local law enforcement agency, that mail pick up does not occur every day. Currently neither court scans and sends orders electronically for either service or entry. Any delay in receipt by law enforcement is a delay in either service or entry of the order, or both, and potentially, a delay in full protection for the petitioner.

A team member reported a recent situation where the order was sent to the wrong law enforcement agency for service. The order sat at the agency for a few days, and it was only due to a follow up call by the petitioner and her advocate, that the order was found, and then forwarded to the correct law enforcement agency for service.

Law enforcement agencies reported that on occasion the court did not notify them when an order was served by a private party or process server. It is essential that law enforcement receives this information as the order will show “not served” in WACIC/NCIC without documentation of return of service. This is not a frequent occurrence as most petitioners prefer to have law enforcement serve the protection order. However, this can happen when law enforcement is having difficulty serving an order and the petitioner believes private service by an acquaintance might be more successful.

In review of case files, the team found a few examples where a petitioner requested either a modification or termination of the order, and at the hearing, there was no mention that the respondent

had been served, and there was no copy of the Return of Service in the file. In one of the cases, the Order Modifying the Order for Protection had the following note written by the judicial officer: *No service required*. In this case the respondent did not appear at the hearing, it was not clear if he had been served, and the court ordered that service of the modification was not required. Two judicial officers stated that if the request for modification is less restrictive than the current order, they are not as concerned about service. This is the same for termination motions. However, if the respondent were to request modification or termination, both judicial officers stated that the petitioner must have proper notice before a hearing.

A Notice of Hearing is issued by the court when one of the parties files a motion for modification or termination. This standard form has the following printed at the bottom: "This document must be served on the other party, and proof of service must be in the court file prior to the hearing." RCW 26.50.130 states: "Upon application with notice to all parties and after a hearing, the court may modify the terms of an existing order for protection." The team understands the reason for the current practice cited above, however, in the case noted above, the petitioner wanted the respondent to have visitation with her children. Since he was not served with the notice, he did not know about the hearing, and it was assumed that he did not receive service of the modified order. He would have no way of knowing he could visit his children. Team members concluded that law enforcement would have an easier time with any enforcement issues if all parties were served with all notice of hearings and order modifications or terminations.

Team members were informed that Superior Court does not validate orders for law enforcement agencies; this was specifically noted as a concern for Bellingham Police Department records. WACIC/NCIC requires that an order be validated before it is removed from the data base if it has been flagged for expiration. (This does not apply to temporary protection orders which are purged from WACIC/NCIC on the day of expiration.) Records staff must find other ways to verify the status of an order (any order) before determining whether or not it can be removed from the system. The Superior Court Administrator/County Clerk stated that the court does not validate orders as law enforcement can look on-line to verify and validate the orders. The records staff provided an example of a case that could not be found on-line and she was concerned that this order was still in the system and being enforced.

The courts do not provide any information to petitioners about SAVIN Protective Order. This is a free telephone service that gives petitioners, once registered, access to information about the status of their protective orders. A brochure is available and distributed by the Washington Association of Sheriffs and Police Chiefs.

The form titled *Information to Petitioners in Civil Domestic Violence Cases*, which is used by one court as well as advocacy agencies, includes a series of confusing statements. "The police can enforce a Protection Order once it is signed by the Court. The Respondent cannot be held in violation of the PO unless it has been served.....Once the Order is signed by the Court is it effective immediately." The team was concerned that petitioners may not be clear about when their order is enforceable based on this language.

### Law Enforcement:

Within law enforcement, the general process is for records staff to receive protection order paperwork from court, verify whether service or entry is appropriate for the jurisdiction, and then enter information into state, national and local databases as appropriate. If the jurisdiction is responsible for service, records staff leaves the paperwork for the individual responsible for service. As noted previously, BPD and the WCSO have dedicated staff responsible for service of the majority of protection orders, while the Ferndale Police Department assigns this duty to patrol. Within BPD and the WCSO, patrol personnel are responsible for service when the Warrant Officer/Civil Deputy is either unavailable or unable to serve. As stated in Gap #3, the Ferndale Police Department has a written procedure outlining responsibilities and response for service of orders. The new WCSO DV Policies may include a written policy on service of protection orders, however, the team did not have an opportunity to review the new policies.

Per RCW 26.50.090 (3): “Service of an order issued under this chapter shall take precedence over the service of other documents unless they are of a similar emergency nature.” Although all agencies reported that service was a priority, there was no written guidance on this prioritization.

The team learned that the ideal situation is to have a dedicated staff assigned to service; however, this is not possible in smaller agencies. Dedicated staffing provides consistency and allows a thorough review of the paperwork, a check on history of the parties for risk assessment, and in the case of BPD, a conversation with the petitioner. The WCSO Civil Deputy does not generally contact the petitioner either before or after service, unless the petitioner has made a specific request to the Warrants and Order Specialist for follow up. The team learned that when other officers/deputies serve orders for the WCSO or BPD, practices are much less consistent and the petitioner is rarely contacted before or after service, as reported by advocates. The provisions of the order may or may not be reviewed with the respondent.

The team was concerned about the practice to contact respondents prior to service. As reported to team members, this is done to ensure the respondent will be available, to arrange a place for service, and to help determine how the respondent might react. It was reported as a more consistent practice by the BPD Warrant Officer. In the focus group, one petitioner stated that this caused her respondent to email and text her prior to being served with the order, asking why she was petitioning for an order. He had arranged to be served the following day, and during the time before service, she felt harassed and threatened by his messages. Team members were told that contacting the respondent ahead of time is helpful for the serving officer, and in some cases, addresses safety concerns. However, the team was troubled that safety for petitioners might be jeopardized in the process.

From advocates, the team learned of a few recent situations where petitioners were told the following by two different law enforcement officers who had served an order: “How do you expect he’d react – he was just told he can’t come home anymore.” “Why did you have to do this to your children, they weren’t harmed by him.” These petitioners told advocates that these responses from law enforcement caused them to feel “guilty” for asking for a protection order. The team does not have evidence to believe this is common practice; however, they were concerned that even a few comments like this are

counterproductive to all the other good faith efforts in this community to ensure safety for petitioners and their children.

There was variation among law enforcement agencies regarding documentation of service. Generally there was documentation of service, but not necessarily of the response on the part of the respondent. In one observation at the Ferndale Police Department, the records staff was reviewing paperwork on return of service on a protection order and noted that contrary to the agency procedures, the officer had not submitted a written report or the Return of Service.

Documentation of service attempts also varied. Team members learned through observations at court hearings that courts do not always have information on whether or not service was made, and if not, what attempts were made. The BPD Warrant Officer uses a Service Attempt Log to document every service attempt. This form is returned to the court if service was not successful. During a court observation a team member heard a petitioner read from a very detailed service attempt report from an out of state law enforcement jurisdiction. A court clerk mentioned impressive documentation efforts by another state law enforcement agency in tracking service attempts. This information helps the court determine whether or not service by mail or publication, as a next step, is allowed, or if the respondent is evading service.

Through interviews the team identified the court does not always receive copies of the Return of Service. An advocate observed a local law enforcement officer who did not know what needed to be returned to court, and another who did not understand what needed to be served on the respondent. In one court observation, the respondent had not received a copy of the petitioner's statement; however, he had received a copy of the Notice of Hearing. The judicial officer gave the respondent a copy of the petitioner's statement to review during the hearing. BPD has a section on Return of Service procedures in the Domestic Violence section of its policy manual.

Team members were told by advocates and petitioners about times when law enforcement expressed frustration with the petitioner because she could not identify the location of the respondent, or had left that information blank on the confidential Law Enforcement Information form. Petitioners told advocates that they felt like they were being accused of intentionally not providing full information. On the contrary, victims often do not know where the respondent is, and often, when the respondent hears about the petitioner's efforts to file a protection order, they attempt to evade service.

RCW 26.50.090 (4) states "If the sheriff or municipal peace officer cannot complete service upon the respondent within ten days, the sheriff or municipal peace officer shall notify the petitioner. The petitioner shall provide information sufficient to permit notification." Advocates told team members that they were not aware of this section of the statute, and were also not aware of many situations where law enforcement notified petitioners for more information when service was unsuccessful. This may be partly due to the fact that the BPD Warrant Officer and WCSO Civil Deputy have a fairly high success rate in service attempts. The team did learn that when a petitioner is working with an advocate and service is unsuccessful, the advocate is generally actively working with the petitioner and law enforcement to follow up and help with service efforts.

With the exception of a copy in the lobby of the Ferndale Police Department, team members saw no utilization of the SAVIN Protective Order brochure by law enforcement.

Corrections officers at Whatcom County Jail will serve protection orders for law enforcement. The Assigned Counsel clerk will also serve paperwork when the respondent is in jail. In these cases, the team learned that the contents of the order are not reviewed with the respondent.

Team members recognized the important role of records staff in entering information on service within state/national (WACIC/NCIC) and local databases. BPD is the only law enforcement agency with 24 hour records staff, which means that service of a protection order will be noted in the database as soon as the officer notifies records. However, other law enforcement agencies in Whatcom County do not have 24 hour records staff. Therefore, service will not be entered into WACIC/NCIC until records staff is available the next business day. For example, if an order is served on a Friday evening by the WCSO, and Monday is a holiday, service notification will not be in WACIC/NCIC until Tuesday morning.

The Training Coordinator at What-Comm Communications Center verified that it is not currently the role of dispatch to enter information on service into WASIC/NCIC. What-Comm believes this is the responsibility of each law enforcement agency. The team learned that within law enforcement agencies, there are other ways to verify service other than through checking WASIC/NCIC. For example, a supervisor could be contacted and they could find the paperwork for Return of Service. Or, if the officer providing service had filed a report, another officer in the same agency could review the report to verify that service had been made. The team was assured to learn these options are available; however, the lack of 24 hour records was identified as a significant gap in safety for victims.

Records staff shared that temporary orders entered into WACIC/NCIC are automatically “purged” at midnight on the date of expiration. Staff in various agencies expressed concern that when a temporary protection order expires, it may be purged from the system if law enforcement does not receive documentation for a permanent order from the courts in a timely matter. This can happen if the order is not sent to the correct law enforcement agency or if the order is signed on a Friday afternoon and not received by records staff until the following week, or if mailed rather than faxed.

As mentioned previously, when a temporary protection order is denied and a hearing is set, the petitioner, not law enforcement, is responsible for service of the Notice of Hearing and petition. Local law enforcement agencies have all stated to team members that they will not serve a Notice of Hearing when there is no accompanying order. The Bellingham Police Department has cited limited resources as a reason for not serving a Notice of Hearing only. The Whatcom County Sheriff’s Office will serve a Notice of Hearing only if there are mitigating circumstances, such as high danger, however this is not a common practice. Although a review of the RCW 26.50 indicates this may not be a violation of the statute, team members were concerned this leaves a group of petitioners in a difficult situation. (See discussion in Gap #3.) Some of these petitioners may choose to drop the protection order at this time, but others do not have the funds or resources to find a way to serve the respondent. The team learned that practices around the state vary on this. Some law enforcement agencies do provide service of the Notice of Hearing only. Court observations demonstrated that petitioners are confused about their role



in service of the Notice of Hearing and do not understand why it is their responsibility, even though they are instructed not to serve it themselves.

#### Advocates:

Team members found that advocates play an important role in helping petitioners understand the process of service. In court observations, it was not uncommon for one out of every 4 or 5 protection order hearings in Superior Court to be continued due to lack of service. Petitioners reported to the court that they either do not know where the respondent is, or they believe he is evading service. Petitioners in these situations are clearly frustrated.

Advocates told team members about situations where they worked with the petitioner to strategize other avenues of service, including carrying the protection order at all times to calling the law enforcement agency if the petitioner learned about the whereabouts of the respondent.

Advocates also advise petitioners about the option for service by mail or publication, per RCW.

Advocates appear to provide information on SAVIN to all petitioners.

The team discussed the difference between a valid order and an enforceable order. Although a signed order may be valid, it is generally not regarded as enforceable until served. Through interviews, the team learned that advocates understand this distinction and are careful to explain it to petitioners. In a review of material prepared by one of the advocacy organizations, language about this difference was not entirely clear.

#### ***What will help address this gap?***

*...filing for a protection order is a time of increased risks for victims of battering. Petitioners have chosen this time because something has triggered their fear.*

Despite many good faith efforts and practices among the courts and law enforcement, the team identified multiple gaps in practices that undermine the ability of the criminal and civil justice system to effectively serve and enforce domestic violence protection orders. As stated multiple times in this report, filing for a protection order is a time of increased risks for victims of battering. Petitioners have chosen this time because something has triggered their fear.

Petitioners in the focus group informed the team that they wanted assurances of safety during the process of service, and that they feel vulnerable and exposed especially throughout the first weeks after filing.

Law enforcement officers are also at risk during this time. The courts, law enforcement, petitioners and advocates can all work together to improve the service process for protection orders so that the practices are timely and driven by a goal to ensure the highest level of safety for all.

The Audit Team recommends that:

- ☐ District and Superior Courts and law enforcement agencies review the checklists developed for law enforcement and the courts in the 2010 King County, WA Domestic Violence Initiative Protective Order Model Guidelines. These checklists can be especially helpful with service issues.
- ☐ District and Superior Courts identify ways to increase their ability to identify which law enforcement agency should receive the order for service and entry.
- ☐ District and Superior Courts fax all orders, rather than mail, at minimum, and consider electronic transmissions to Whatcom County law enforcement agencies after discussion with law enforcement executives about this option.
- ☐ District and Superior Courts, and domestic violence advocates, facilitate better completion of the confidential Law Enforcement Information forms.
- ☐ District and Superior Courts ensure law enforcement receives copies of ROS (Return of Service) for entry into databases, when those are submitted directly to the court by private parties or process servers.
- ☐ District and Superior Courts distribute SAVIN Protective Order brochures to all protection order petitioners.
- ☐ District and Superior Courts ensure service of Notice of Hearings for modification and termination requests by petitioners, as well as service of orders of modifications and terminations.
- ☐ Superior Court Administrator/County Clerk and law enforcement records staff discuss the concern with validation issues and develop a back-up resource for records when needed.
- ☐ Law enforcement agencies make available and distribute SAVIN Protective Order brochures, and ensure that any petitioner who brings protection order paperwork for service receives a brochure.
- ☐ Courts, domestic violence agencies and law enforcement agencies review all written informational material on protection orders to ensure it is accurate regarding service and enforcement.
- ☐ Law enforcement agencies identify ways to increase round the clock data entry for service notation of orders in WACIC/NCIC.
- ☐ Law enforcement agencies review the practice of not serving notice of hearings without an order, and consider providing that service for domestic violence protection order hearings.
- ☐ Law enforcement agencies develop written procedures for service of protection orders using the Ferndale Police Department procedures or the King County, WA checklists noted above for examples. The procedures should consider the inclusion of the items below:

- Check histories on both parties
  - Contact petitioner if able
  - Read documents to understand risk
  - Read documents to determine what action may need to be taken (vacate residence, civil standby, confiscation of weapons)
  - Verify respondent and serve
  - Review contents of order with respondent and take any action as required by order
  - Document response of respondent and file a report on the service
  - Contact records that service has been made
  - Contact petitioner that service has been made
  - Complete the Return of Service form
  - If service was not accomplished, document service attempt and forward to court
- ☐ Whatcom County Jail corrections staff and Assigned Counsel staff follow the written procedures developed by law enforcement for service of orders per Safety Audit recommendations when serving domestic violence protection orders.
  - ☐ Law enforcement agencies carefully review contacting the respondent prior to service of an order, and limit this practice, if at all possible, to those situations where the petitioner has been contacted ahead of time for safety planning and risk assessment.
  - ☐ Safety of the victim should be considered the highest priority at all times.
  - ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.

## Gap #6: Assessment of the context, severity and impact of violence and implications for risk, danger and safety for the petitioner is not consistently addressed throughout the protection order process.

*Interveners must be able to see the scope and severity of the offender's violence, how often and under what circumstances it is occurring, and the pattern of abuse: is it escalating, deescalating, potentially lethal, or unpredictable?...Victim safety can be compromised when we miss cues and information on risk and danger.*

Domestic violence and battering, as described in the introduction, are a series of ongoing controlling, coercive and violent behaviors the batterer directs at the victim. This Audit team concurs with the following passage from the Introduction in *The Blueprint for Safety*<sup>30</sup>: "Our challenge is to make visible all that we can possibly know about the full scope of abuse occurring in a relationship. Interveners must be able to see the scope and severity of the offender's violence, how often and under what circumstances it is occurring, and the pattern of the abuse: is it escalating, deescalating, potentially lethal, or unpredictable? The Blueprint directs practitioners to gather information that illuminates both the pattern of abuse and the

specific acts being committed."

The presence of certain factors can indicate elevated risks for a victim. The absence of certain factors is not always evidence of the absence of risk of lethality or continued violence. The team saw evidence that practitioners do take into account the context and history of violence in many instances. However, the team also found evidence that practitioners are not fully educated about some aspects of risk and danger, have differing concepts about how to take into account history and context in decision making and in assisting petitioners with protection orders, and do not utilize standard tools to assess risk and danger. Victim safety can be compromised when we miss cues and information on risk and danger.

### What contributes to the gap?

The team identified gaps in five topic areas: history and context of violence, stalking, sexual assault, the time between the temporary (or no temporary) order and the hearing for unaccompanied petitioners, and compliance reviews.

#### History and Context of Violence:

In a review of 50 case files from Superior and District Court, the team read many examples that identified markers for risk of ongoing and serious violence:

*"During our relationship of 10 years there were many times Mark would get angry, grab my neck with one hand trying to make me pass out, he would sit on me on the bed not letting me breathe and begging for my life, when he felt he had punished me enough he would get off and laugh...Since we split up he has destroyed all my personal property."*

<sup>30</sup> *The Blueprint for Safety: An Interagency Response to Domestic Violence Crimes*, Adapted from the Saint Paul Blueprint for Safety, 2009, Praxis International

*"In the past he has slammed my fingers in a door, has pushed me making me fall over furniture and has thrown me across the room. His behavior is escalating and I am very afraid that he will go off the deep end and really hurt me or kill me and the kids. Since Wednesday he has been texting me and emailing me continually with highly inappropriate sexual content. The texts are graphic and disturbing."*

*"I was not allowed to go out with any friends; female friends would be allowed to come to our house."*

*"Gene's assaultive behavior began in July 2010 and has been escalating ever since (written December 2010). In July he strangled me, broke my glasses and beat my shins causing me to limp for several days. At the end of August he hit me in the face for the first time leaving marks. In September he pulled me by the hair and threw me around so hard, jerking me so badly by the neck that I went to the doctor and received x-rays... He destroyed 3 cell phones, my car stereo and console, my digital camera. Gene also tears clothes off my body, including undergarments."*

*Civil Protection Orders: A Guide for Improving Practice*<sup>31</sup> recommends that the courts and judiciary establish a process whereby risk is assessed<sup>32</sup> throughout the proceedings to ensure that the victim's safety is addressed. Judicial officers interviewed during the Audit process indicated they carefully review and take into account all the information written on the petitioner's statement. The standard form used for the petitioner's statement, in addition to asking about the most recent incident or threat of violence, asks for information on: past incidents, violence or threats towards children, stalking behavior by respondent, medical treatment received by petitioner, threats of suicide or suicidal behavior by respondent, possession and use of firearms by respondent, and whether alcohol and drugs are involved.

Team members observed that when petitioners receive assistance, especially by advocates, the statements are filled out more completely and provide judicial officers with a fuller picture on history and context of violence. Statements submitted to District Court since the loss of Assigned Counsel services, as noted previously, were lacking in history and context. Petitioners do not always understand their level of risk and benefit from assistance in articulating their experiences of violence, stalking, and threats.

Team members wondered if ex parte hearings could be used to prompt inarticulate petitioners for information relevant to risk assessment and domestic violence history. As stated earlier, not all

---

<sup>31</sup> *Civil Protection Orders: A Guide for Improving Practice*, National Council of Juvenile and Family Court Judges, Family Violence Department, 2010

<sup>32</sup> See, e.g., The Gender Fairness Implementation Committee of the Minnesota State Supreme Court, Domestic Violence Risk Assessment Bench Guide (2009), [http://www.wunrn.com/news/2010/03\\_10/03\\_29\\_10/032910\\_domestic.htm](http://www.wunrn.com/news/2010/03_10/03_29_10/032910_domestic.htm). See also Jacquelyn C. Campbell, Johns Hopkins University, School of Nursing, Danger Assessment (2004), <http://www.dangerassessment.org/WebApplication1/pages/da/>.

petitioners are given enough information or feedback from a judicial officer to understand why their petition was denied, and judicial officers are not always presented with petitioner statements that fully describe the risk for future violence.

RCW 26.50.070 (1) allows the court to issue an ex parte temporary order for protection when the application alleges that irreparable injury could result from domestic violence if an order were not issued immediately. RCW 26.50.070 (2) states, “Irreparable injury under this section includes but is not limited to situations in which the respondent has recently threatened petitioner with bodily injury or has engaged in acts of domestic violence against the petitioner.” The *Domestic Violence Manual for Judges* provides the court with other considerations in which to determine irreparable injury. Some of those items include history of violence, threats of suicide, respondent’s access to weapons, drug and alcohol abuse, and threats to attack or abduct the children.<sup>33</sup> The state pattern form for the petitioner’s statement is designed to include information on these factors, allowing the courts to take this information into account in making a determination on either a temporary or permanent order. Once again, petitioners completing a petition without assistance may not provide the courts with adequate information in which to make a determination of irreparable injury.

As Andrew Klein stated in *Practical Implications of Current Domestic Violence Research*<sup>34</sup>, “Although petitions focus on the most recent, discreet incident, the incident rarely fully reveals the nature of the abuse suffered by the petitioner and risk for future abuse. Post-separation abuse frequently involves stalking behavior, a risk factor for further abuse, even lethality. To obtain more information, judges need to further question victims and/or review respondents’ prior criminal and civil history.”

RCW 26.50.160 states, “To prevent the issuance of competing protection orders in different courts and to give courts needed information for issuance of orders, the judicial information system shall be available in each district, municipal and superior court...” Superior and District Courts have access to this system, although skills in navigating the systems vary by judicial officer.

The *Domestic Violence Manual for Judges*<sup>35</sup> states: “When a judge proposes to consider information from a domestic violence database, the judge shall disclose the information to each party present at the hearing. ....The judge has discretion not to disclose information that he or she does not propose to consider.” Practices on accessing history of the parties varies between the two Courts. In Superior Court the judicial officer has requested the clerk to conduct a review of criminal and civil cases on the parties and to provide that list prior to the hearing. This judicial officer reviews the history and will reference the cases if relevant during the hearing. Judicial officers interviewed in District Court stated they check for current and prior cases upon review of a petition for a temporary order for protection,

---

<sup>33</sup> *Domestic Violence Manual for Judges*, 2006, Washington State Gender and Justice Commission, WA State Administrative Office of the Courts, page 8-20

<sup>34</sup> *Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges*, Andrew Kline, 2009, Special NIJ Report, U.S. Department of Justice

<sup>35</sup> *Domestic Violence Manual for Judges*, 2006, Washington State Gender and Justice Commission, WA State Administrative Office of the Courts, page 8-23

partly to ensure that District Court has jurisdiction. The District Court Clerk does not provide a case history to the judicial officers before the hearing, and one judicial officer stated specifically that he is cautious about reviewing case histories before the hearing as he does not want that information to affect his decision making.

A Superior Court judicial officer stated that he is not able to access specific documents on District or Municipal Court cases, such as the probable cause statement. He does have summary information on JABS (Judicial Access Browser System); however, he wishes he had access to more specific information. Those documents are not accessible as they are not scanned into a shared database.

Earlier in the report it was noted that the Office of Assigned Counsel was not using the current state pattern forms for the petition and the temporary and permanent order. Missing from the petition was a question for petitioners on stalking behaviors, including the use of telephonic, audiovisual or electronic means to harass or monitor. Without the use of this form, the court was missing important information. Advocates from Womenscare Shelter stated they rely on Assigned Counsel for current forms, and therefore had also been using the old forms when working with petitioners. Womenscare Shelter, when alerted to this fact, began using the current forms early in 2011.

Petitioners are asked to provide information on any other civil and criminal cases involving the parties. Team members learned that many petitioners do not know the case number or even the types of cases they have been involved in. When petitioners file at Assigned Counsel, the clerk is sometimes able to check a database and assist petitioners with providing correct case file numbers. This can assist judicial officers in their review of the petition. Petitioners who file in District Court do not have any assistance in helping to identify case numbers. Advocates have access to a name search on Washingtoncourts.gov. Advocates told team members that this database provides limited information, and when petitioners are under a time pressure to submit their petition, there is not adequate time to call around to access and verify more detailed information on case histories. Advocates stated they assumed judicial officers were accessing detailed case information during the review of the petition or at the hearing.

Through interviews team members found that both the BPD Warrant Office and WCSO Civil Deputy do conduct a type of risk assessment prior to serving orders. Histories are reviewed as well as the petitioner's statement. However, in those situations where patrol serves orders, there does not seem to be any consistent practice of risk assessment prior to service, other than a review of history and whether or not firearms are present. Of course, this varies with the officer/deputy. Team members were concerned that once again, the lack of standard procedures can create gaps in safety through an inadvertent miss of possible risk factors.

Text review of 50 petitioner statements portrayed a group of respondents that carry potential for high risk of causing serious injury. It was common for petitioners to write that the respondent had threatened suicide, usually in response to the victim's request to end the relationship. Nearly two thirds of the petitions filed in Superior Court noted that the respondent used alcohol or drugs, although information on the amount and frequency were not provided. At least 25% of Superior Court

petitioners stated the respondent had forced them to have sex on many occasions. Some respondents had abused the children. Many noted stalking behaviors and verbal threats of killing the petitioner or children if the petitioner did not do as demanded. Here are some examples:

*“He has threatened to drive into a tree and kill himself. He used a lit cigarette to burn himself and threatened to burn me. He keeps a knife in his car in case he needs to stab someone if they piss him off.”*

*“Threatened to kill himself if he had a gun saying, ‘you make me want to kill myself’.”*

*“He tried to commit suicide by ingesting pills for me breaking up with him. During that incident he also cut his wrist and I was cut in the process.”*

*“On June 13, 2010 I told him I did not want to go out with him anymore. He told me ‘I might as well blow my head off’.”*

A recent study by Jordan, Pritchard, Duckett and Charnigo<sup>36</sup> revealed that the need for a future domestic violence protection order is associated most closely with prior acts of certain offenses, specifically, physical or sexual assault or harassment of the victim. Additionally, the researchers found that when these offenses are clustered together in time, they are more likely to result in the victim seeking a protection orders and are predictive of a victim’s risk of harm.

#### Stalking and Domestic Violence:

The Audit team found that not all practitioners give full recognition to the serious nature of stalking within intimate relationships. In a review of petitions, team members found many examples of stalking behavior, especially during the time after a victim has tried to separate. Some examples:

After documenting 12 phone calls from the respondent on her cell phone in the petition, the petitioner stated that the respondent finally left the following message: *“Hey, I know you are on the other line.....I hate you. I can’t wait to come to Washington and see your sorry a--,and there won’t be anybody in this world know I’m coming. I’m just gonna show up. G—I can’t wait to see you. F- you w- ---.”* The petitioner stated the respondent also called her house phone in between the 12 calls above. After this message, the respondent continued to try calling for another 3 hours.

---

<sup>36</sup> *Criminal Offending Among Respondents to Protective Orders: Crime Types and Patterns That Predict Victim Risk*, Jordan, Carol E., Pritchard, Adam J., Duckett, Danielle, Charnigo, Richard, *Violence Against Women*, 16 (12), 2010

---



*"This is one of 80 text messages that David has sent me since March 27<sup>th</sup> (petition submitted April 7<sup>th</sup>). I ended a dating relationship with David on March 8<sup>th</sup>....David has made several comments throughout the 3 months we have known each other which scare me and make me think he might kill me and my daughter. On March 29<sup>th</sup> he sent a text message stating 'I will raise up and take you all with me' and has said he has pills he would take and force me and my daughter to take in order to kill all 3 of us....Since March 8<sup>th</sup> he has sent hundreds of unwanted text messages."*

*"Daniel has been hiding his car and walking up to our house checking the mail box and watching my daughter. He has been texting me and calling me about vehicles in driveway. Baby sitter has witnessed him driving by numerous times and walking up to our home. Coming to my work and sitting in parking lot."*

In her comprehensive study on civil protection orders, T.K. Logan<sup>37</sup> found that stalking before a protection order was obtained was significantly associated with protection order violations. The report recommends that partner stalking needs a much more effective response. If order violations are more likely to occur with stalkers, then perhaps our protection order process should find ways to recognize stalking within the petition as a caution and red flag for law enforcement and advocates.

The relationship between stalking and its implications as a risk factor for danger and lethality have been made in the literature and is not the focus of this report. Still, the team found evidence that practitioners would benefit from further education and focus on stalking. Assigned Counsel not using the current state pattern form is one example, leaving the court without information on stalking behaviors by the respondent. It also left petitioners without knowledge they could specifically ask the court to restrain the respondent from harassing, following, keeping them under physical or electronic surveillance, cyber stalking, and using telephonic, audiovisual, or other electronic means to monitor their actions.

In an observation of a volunteer advocate assisting a petitioner with a protection order, the petitioner was not fully advised on how to give examples of current stalking behaviors. In this instance, it might have been helpful to the petitioner as the respondent had been out of the area and had just returned, and the petitioner stated the respondent was trying to contact her through a third party. Victims may minimize stalking behaviors, so it is important for those who assist petitioners with their statement to help the petitioner recognize behaviors that would qualify as stalking.

Stalking often comes after a separation and a history of violence, so it is important for judicial officers to be familiar with RCW 9A.46.110. One judicial officer stated that making a determination on a protection order when stalking is the most current incident is challenging; he consults the statute in those cases.

---

<sup>37</sup> *The Civil Protection Order Study*, TK Logan, Ph.D, Robert Walker, M.S.W., L.C.S.W., William Hoyt, Ph.D., Teri Faragher, M.S.W., National Institute of Justice, September 2009

Protection order violations often come in the form of stalking and can be charged as stalking. This, combined with T.K. Logan's findings, made it clear to the team that a fuller understanding and better documentation of stalking will enhance safety for protection order petitioners.

#### Sexual Assault:

Although there is a separate process for sexual assault protection orders, within the domestic violence protection order process the team noted that many petitioner statements referenced forced sex as part of their description of either current or previous violence. Some of these incidents occurred after the petitioner had tried to separate, and others occurred while the petitioner was in the relationship with the respondent.

Case file reviews revealed some of the following statements from petitioners, who described incidents of sexual assault as "secondary" to other examples of physical violence and threats:

*"Then that night he had taken my clothes off and put me on the floor and had sex with me. When I told him that I didn't want to. 9/2/10 (next day) when he had came home from work he was trying to pull my pants down to have sex even when I was telling him no but he still proceeded but I had pulled away and left the room and the sex didn't happen."*

*"All of a sudden the door opened. I tried to run. He smacked me. I fell down, got up, and told him to leave. He demanded sex, then pushed me on the ground. I was crying and told him not. He spit on me, said I wasn't worth it, and walked out."*

*"On April 8 he wanted to have sexual intercourse. I said no. He started to remove my clothes. I continued to tell him no. He has a mental health diagnosis and I am afraid of his anger as he has been violent before, so I felt forced to give in."*

*"He had moved out in November 2009 for a time. I allowed him to come home a few months later. When he came home he demanded sex every night. When I would say "NO" he would wait until I was asleep and I would wake up to him undressing me or....I would get angry and say "stop touching me". I would get up to try and leave and he would grab me by the arm and drag me back into the bed. He would often be so demanding that I would just give in to get him to leave me alone."*

The literature documents that forced sex or pressuring for sex even when separated is associated with risk and lethality.<sup>38</sup> Forced sex is one key risk marker in dangerousness and threat assessment tools such as ARTAMI<sup>39</sup> and Dr. Jacquelyn Campbell's Dangerousness Assessment Tool. Speaking about sexual assault in a court hearing can be a very difficult thing to do, much less putting it in writing in what will become a public document. Team members observed very few hearings where sexual assault within

---

<sup>38</sup> *The Blueprint for Safety: An Interagency Response to Domestic Violence Crimes*, Adapted from the Saint Paul Blueprint for Safety, 2009, Praxis International, Page 14

<sup>39</sup> ARTAMI, Alberta Relationship Threat Assessment and Management Initiative, Contact John Ratcliff, Edmonton Police Department, Alberta, Canada

domestic violence was mentioned. In one case, the judicial officer told the petitioner he did not believe her statement regarding an allegation of sexual assault. Although the team did not fully explore this issue and how it is handled in the protection order process, silence on the issue of sexual assault lead team members to wonder how well the risk factors for sexual assault within intimate relationships are understood and explored by advocates, the courts, and law enforcement.

#### Time Between Temporary Order and Permanent Order for Unaccompanied Petitioners:

In previous Gaps, the heightened risk of violence at times of separation was noted. And as Gap #2 documented, not all petitioners work with the support of a domestic violence advocate. Petitioners filing in Superior Court are generally referred to a domestic violence agency, whereas petitioners filing in District Court only learn about the services through a resource sheet. When petitioners appear in court without an advocate, the team noted the court did not advise the petitioner that services for safety planning and other resources are available in the community. The team was concerned that this group of petitioners are not benefitting from a full exploration of safety planning in relation to the particular risks they may be facing. This could include items such as respondent having access to firearms, how to strategize with their children's school and day care, safety in the workplace, etc.

Petitioner statements revealed what some victims experience when they attempt to leave their abuser.

*"He has never been able to let go of me and his anger towards me is so strong that he takes it out on my sons. He told me that 'I was not worth going to jail for 40 years and that I know how to kill you every day for the rest of my life.' I am certain that he is capable of killing me and my sons. I once asked him to let me go and live my life and he stated 'I can't.'"*

*"I have been scared to leave ever since October of 2003 when I tried to leave after a horrible argument we had. I got into my car and was beginning to turn on the ignition when he open the door and through a shoe or boot at the windshield so hard he shattered the front windshield so bad I couldn't drive it."*

*Now That We Know*, the WA State Domestic Violence Fatality Review of 2008<sup>40</sup>, found that five of eleven homicide victims in the two year period reviewed had filed for protection orders. Each of the five petitioners received a temporary order, however, none received a permanent order. Two were killed before the permanent hearing, one did not come to the hearing (she was not connected with an advocate), and one respondent could not be served. The hearing was continued four times while service attempts continued. On the fourth hearing the victim did not show. After leaving the state, obtaining a series of protection orders, and then returning to Washington, the fifth petitioner needed to get a new protection order. The court gave a temporary order, but did not issue a permanent order as the court determined that the physical violence took place a long time ago. (This necessity for recent physical violence has since been challenged in *Spence v. Kaminski*, 103 Wn. App. 325, 12 P.3d 1030 (2000).)

---

<sup>40</sup> *Now That We Know: Findings and Recommendations from the WA State Domestic Violence Fatality Review*, December 2008, WA State Coalition Against Domestic Violence

The team was concerned about another group of petitioners, those that do not receive a temporary order, but a hearing is set. Through text review, team members noted situations where there had been severe violence in the past, the respondent had left the area, and now the respondent was back. The petitioner expressed fear, but could not articulate a recent and specific incident. In most of these cases the temporary order was not granted. If the petitioner returned to court, the permanent order was usually granted, but team members noted that a significant number of these petitioners, especially in District Court, did not return for the hearing. After reading some of the statements, team members became very concerned about the safety of those petitioners.

These petitioners are in a position of having to decide if they want to serve the Notice of Hearing, and the petition, on the respondent without an order for protection in place. When these petitioners do not have an advocate or some other support person, they do not have the opportunity to fully explore whether going through with the order is the safest strategy. They are at increased risk and the team concluded that they may give up without linking with support services.

#### Compliance Reviews:

Team members learned that violations of protection orders can result in criminal penalties as well as contempt of court. Since the focus of this Audit is not enforcement of criminal violations, the team looked for ways in which the court enforces its orders through contempt of court proceedings or compliance reviews. Through interviews with court personnel and advocates, the team learned that neither court conducts any form of compliance review and that it is uncommon for petitioners to file contempt of court proceedings. Team members found a few examples of a respondent filing a contempt of court motion, but no examples of a petitioner filing a contempt of court motion. Advocates stated that petitioners express frustration that the respondent has no consequences for not complying with conditions such as attendance at domestic violence perpetrator treatment, visitation conditions, surrender of firearms, or mental health treatment.

The Order for Protection pattern form has a check box (#12) that states: "Parties shall return to court on \_\_\_\_." In text review no cases were found in either court where this had been completed. Judicial officers verified that they do not check this condition or ask for the respondent to return to court. Case reviews did show that courts do order domestic violence perpetrator treatment fairly frequently, and for Superior Court, there are very often specific conditions around visitation.

When asked about compliance reviews, Superior Court responded that resources are an issue as it would require time for an individual to check on the status of court ordered conditions, and then possibly additional court time if the court set a compliance review hearing. District Court expressed concern about its authority to conduct such hearings without one party initiating an action. However, in a letter to the Domestic Violence Commission regarding a possible grant opportunity, both courts stated that they are interested in making sure their orders are properly complied with, and in imposing appropriate sanctions for non-compliance.

*Civil Protection Orders: Guide for Improving Practice*<sup>41</sup> recommends the court and judiciary should conduct regular compliance review hearings. It also recommends the use of civil contempt proceedings where permitted by state law, to compel respondent compliance. The *Domestic Violence Manual for Judges*<sup>42</sup> includes a detailed discussion on civil enforcement of protection orders in Chapter 8. The section discusses types and procedures for imposing sanctions. As noted on page 35 of this section: “Where compliance with the court order is measured by a neutral source, i.e., attendance at a batterers’ treatment classes, the information can be directly obtained by ordering the treatment provider to file regular reports with the court. The victim may not otherwise know whether the batterer is in compliance or may be afraid to complain about non-attendance. The court’s *sua sponte* use of its review and enforcement mechanisms sends a powerful signal that domestic violence is not merely a private matter but one of concern to the public at large.”

A review of RCW 26.50 found that the courts are not given clear statutory guidance on how to proceed with compliance reviews.

The team learned that some courts around the country conduct regular compliance reviews. Other courts focus compliance reviews on only those cases where children are involved, or if there is a high risk factor for continued violence. Currently, it is up to one party to initiate a contempt of court motion, which places victims at continued risk if they are expected to “take on” the respondent. The team identified the courts’ lack of strategies to ensure compliance with certain conditions of the order as a gap in risk and safety for victims and their children.

### ***What will help address this gap?***

*All practitioners share the goal of preventing future and further harm. In order to achieve that goal, it will require a fuller exploration, understanding and response to indicators of dangerousness and lethality.*

Whatcom County has a solid history in taking domestic violence seriously. Risk assessments were integrated as a standard law enforcement practice as a result of the first Safety and Accountability Audit many years ago.

Practitioners have learned better tools for assessing risk, and for responding to each case individually. The Audit team found that there is a fairly good foundation for understanding the context of violence within the protection order process.

However, evidence demonstrated a need to strengthen that foundation. All practitioners share the goal of preventing future and further harm. In order to achieve that goal, it will require a fuller exploration, understanding and response to indicators of dangerousness and lethality.

---

<sup>41</sup> *Civil Protection Orders: A Guide for Improving Practice*, National Council of Juvenile and Family Court Judges, Family Violence Department, 2010

<sup>42</sup> *Domestic Violence Manual for Judges*, 2006, Washington State Gender and Justice Commission, WA State Administrative Office of the Courts, page 8-23

The Audi Team recommends that:

- ☐ District and Superior Court judicial officers receive ongoing judicial education to recognize the increased lethality risk represented by stalking, sexual assault, homicide and suicide threats by an abuser, as well as an overview on all risk factors associated with lethality and dangerousness.
- ☐ District and Superior Court judicial officers review risk assessment tools, such as the Gender Fairness Implementation Committee of the MN State Supreme Court, Domestic Violence Risk Assessment Bench Guide (2009) for use in the protection order process.
- ☐ Superior and District Courts work together to secure the resources to restore staffing at Assigned Counsel in order that District Court domestic violence protection order petitioners, at minimum, can receive assistance from the Office of Assigned Counsel again.
- ☐ District Court considers a practice to compile and review case histories of the parties prior to and during the protection order hearing, in order to have all needed information for decisions on issuance.
- ☐ Court staff, law enforcement and domestic violence agencies receive ongoing training on stalking and sexual assault within domestic violence and incorporate training into standard practices.
- ☐ Domestic violence advocates thoroughly explore risk factors with petitioners, especially stalking and sexual assault, and assist petitioners in documenting the history, context and severity of violence over time in the petition if relevant and if safe for petitioners.
- ☐ District and Superior Courts explore options for compliance review and civil contempt hearings and initiate some form of review if able and appropriate.
- ☐ District and Superior Court staff provide petitioners with referrals to domestic violence advocacy services when petitioners are unaccompanied and/or do not receive a temporary protection order. This should happen both at the time of petitioning for a protection order as well as at any protection order hearings.
- ☐ Law enforcement agencies develop written procedures for service of protection orders that ensure risk factors are reviewed and taken into account.
- ☐ Court staff, law enforcement and domestic violence agencies receive ongoing training on current research and findings on domestic violence risk and lethality factors, followed by incorporating the risk information into written practices and procedures.
- ☐ District and Superior Courts and domestic violence agencies use current state pattern forms.
- ☐ Assigned Counsel reviews with the petitioner all questions on the petitioner's statement and encourages petitioners to complete all, provided petitioners understand the information will be public.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.

## Gap #7: Some petitioners experience multiple barriers in accessing the protection order process, increasing the difficulty and impacting the courage it takes to initiate and follow through with the process.

*Access can mean a wide range of things, including physical access, language access, cultural and lifestyle access, access to information, a sense of safety and security, and a welcoming, consistent and competent response from practitioners. “An accessible system welcomes the victim, facilitates her participation, and enables her to obtain those services she needs and to which she is entitled. By contrast, barriers and gaps in services expose the victim to further risk of abuse.....The rule of law in a democratic society is defined by a justice system that is available and receptive to all members of the public”... barriers are often not intentional, but are created when we are remiss in recognizing our biases and the diverse needs and experiences of victims.*

Throughout the Audit the team was reminded to look for ways in which access for victims was built into the protection order process. Access can mean a wide range of things, including physical access, language access, cultural and lifestyle access, access to information, a sense of safety and security, and a welcoming, consistent and competent response from practitioners. “An accessible system welcomes the victim, facilitates her participation, and enables her to obtain those services she needs and to which she is entitled. By contrast, barriers and gaps in services expose the victim to further risk of abuse.....The rule of law in a democratic society is defined by a justice system that is available and receptive to all members of the public.”<sup>43</sup>

Gaps #1 – 6 all contribute in some manner to barriers to access, which is why this particular gap is placed as the final gap. In some ways it could be considered an overarching gap of highest priority because each preceding gap impacts how accessible the protection order process is for victims of domestic violence. Some evidence from Gaps #1 – 6 will be repeated in this section, however, the primary emphasis will be on new evidence. Team members were challenged to think about walking through the protection order process from the point of view of a non-English speaking victim, as a victim with limited reading and writing abilities, as a victim in a same-sex intimate relationship, as a teen victim, or as a

victim who is so terrified she does not want to be in the same room as her abuser. The team recognizes that barriers are often not intentional, but are created when we are remiss in recognizing our biases and the diverse needs and experiences of victims.

### What contributes to the gap?

Returning to the findings from petitioner and advocate focus groups cited in the Introduction of this report, petitioners expressed the need for the following:

---

<sup>43</sup> *Civil Protection Orders: A Guide for Improving Practice*, National Council of Juvenile and Family Court Judges, Family Violence Department, 2010, Page 8 Common Ground

*...very little information is known about victims who chose not to file for protection orders, and consequently, what barriers in the current process might have influenced their decision.*

- Timely judicial review, service, and processing
- Access to information on all aspects of protection order process, including decision making and service
- Technical assistance and support throughout
- Safety assurances (courtroom, courthouse, civil stand-by)
- Predictability
- Clear messages to respondent from judicial officer
- Acknowledgment and not judgment

The team concluded that when these needs are not met, victims may be less likely to follow through with the protection order process, or return for a second time. Findings previously mentioned such as lack of comprehensive safety measures in the court, gaps in petitioner access to full information and assistance, inconsistent practices among practitioners, gaps in notification to petitioners on service of orders, loss of Assigned Counsel services for District Court petitioners, and lack of civil compliance reviews by the courts, all may play a role in limiting access.

The team is keenly aware that very little information is known about victims who chose not to file for protection orders, and consequently, what barriers in the current process might have influenced their decision. Through interviews advocates informed team members that many victims are simply afraid to file because of possible consequences. Others chose not to apply as the victim determined that the protection order was not the right safety strategy at the time.

When asked about petitioners who do not speak English as their first language, team members were told that very few petitioners come to the courthouse who do not speak English. Some bring a friend or family member to help with interpretation, or are accompanied by an advocate who can assist with interpretation. In a review of 50 case files from Superior and District Court, there were only 3 instances where an interpreter was present at the hearing. In one of those cases the interpreter was for the respondent. In one court observation, a petitioner attended without an interpreter, however English was not her primary language. The judicial officer had difficulty understanding her and stated “I can’t understand what you are saying.” The petitioner was not asked if an interpreter was needed. Team members learned that requests for interpreters need to be made to the court prior to the hearing. For Superior Court cases, Assigned Counsel stated they are in a good position to be aware of the need and will make the request to the appropriate court staff. The District Court clerk stated that the need for an interpreter may not be evident until the hearing, and if that were to happen, the hearing would be re-scheduled so that an interpreter could be present.

Team members observed signs in different languages in both court offices, indicating that an interpreter can be made available to ensure meaningful access to the courts at no cost. No sign was found in the Assigned Counsel office. The protection order paperwork given to petitioners at Assigned Counsel and in District Court is only in English, however, team members are aware that forms and instructions are available in different languages on the WA State Courts website. Assigned Counsel indicated that they have not had a need to download forms in other languages and are aware of the availability. District



Court has not been presented with the situation and is aware of the forms in other languages on the WA State Courts website.

Team members wondered about petitioners who may be able to speak English, but are not proficient in reading and writing. Without an advocate or a support person, would they make their needs known? Team members are aware that many people are embarrassed to admit they have limited reading and writing abilities, even if English is their primary language.

Only one form is available in Spanish, which is the two-sided informational sheet for petitioners titled Information for Petitioners on the Civil Domestic Violence Order for Protection Process. This form was translated as part of a grant funded project of the Bellingham-Whatcom County Commission Against Domestic Violence and the translated copy was shared with Superior Court.

Bi-lingual and bi-cultural Spanish speaking advocates are available at two of the local domestic violence agencies. These advocates have assisted a number of Spanish speaking petitioners through the process. They stated that undocumented victims are very reluctant and fearful of utilizing the protection order process as they are concerned that their status will be revealed. In general, advocates informed the team that Spanish speaking victims enter the protection order process with great trepidation. Although this is not uncommon for many victims, cultural and language barriers create additional fears and risks for Spanish speaking victims, and other cultural and ethnic groups.

As reported earlier, team members found that very little helpful written material is available to a petitioner filing for a protection order on their own, especially in District Court. Team members found that it would be hard for a petitioner to know what to do by going to either the District or Superior Court website. From both Superior and District Court websites, a petitioner may end up linking to the WA State Courts website for forms and instructions on domestic violence protection orders. Even this very helpful page is filled with information and options. (<http://www.courts.wa.gov/forms/index.cfm>) A petitioner who is not computer proficient or has limited ability to read will have difficulty knowing what to do. For those victims who are in danger right now and need immediate protection, once again, the team found that access to an advocate is a critical link not always in place.

For those petitioners who are computer proficient, there is no way to file a protection order electronically. Team members were told that there has not been interest expressed in this idea, and it did not come up from the focus groups, however, there may be a group of petitioners who would find electronic filing a very accessible strategy. The team learned that in Pierce County there are multiple kiosks around the county in public facilities, where petitioners file protection orders online.

The finding on limited access to telephonic hearings was mentioned in Gaps #1 and #3. RCW 26.50.050 states: "The court may schedule a hearing by telephone pursuant to local court rule, to reasonably accommodate a disability, or in exceptional circumstances to protect a petitioner from further acts of domestic violence." Although advocates are familiar with this option, the team did not find any information for petitioners on this option. Team members observed a few telephonic hearings, one

case in which the respondent was in another state, and one case in which the petitioner was in another state and in hiding. Team members assumed that it came up when either a petitioner or respondent asked for it. Judicial officers in each court stated that from their perspective, the party using the telephone put themselves at a disadvantage in the court proceeding. One judicial officer stated that if a petitioner could not attend a hearing due to an illness, he would continue the hearing until the petitioner could attend, rather than schedule a telephonic hearing. Further information on reasons why telephonic hearings are generally not allowed by one Superior Court judicial officer is detailed in Gap #3.

Both in the focus group and in observations, team members heard from and saw petitioners who were literally sick with fear of the possibility they would have to face their abuser. The team recognizes that telephonic hearings should only be used as allowed by statute; however, it is a legal and important option for both parties to be aware of.

Team members observed problems with the presence of children in both courts. One judicial officer has made it known, and stated in an interview, that he does not believe it is appropriate for children to be in the courtroom and to hear the proceedings. Team members heard the following from two judicial officers during the hearing: “All children outside the courtroom”, “If the child makes one more sound I will ask you to leave.” “Please remove your child from the courtroom.” Advocates who are familiar with the judicial officer presiding over protection order hearings know in advance to warn petitioners that their children are not welcome or encouraged to be present in the hearing. For some petitioners this is no problem, for others, it is. Petitioners who come to court without the support of an advocate may come with their children, not knowing this might be problematic. With all due respect for the judicial officers’ authority and need to control the courtroom environment, and to protect children from the information shared in the hearing, team members concluded this practice constitutes a barrier for some petitioners to attend a hearing and follow through with a protection order.

In interviews with advocates, team members learned that a great deal of time is spent preparing petitioners for court. Petitioners’ court experiences are better when they know what to expect and are prepared. Legal advocates who attend court on a regular basis state it is their job to learn the procedures and practices for each of the judicial officers that hears protection orders. This way, they can better prepare the petitioner. Consistent courtroom practices help provide reliability for the all parties involved in the case. Advocates stated that it is helpful to have regular and open dialogue with the bench in order that they can do their best job in making the courtroom aspect of the protection order process more accessible, understandable and predictable for petitioners. The team learned that both courts have been open to hearing feedback from domestic violence agencies, particularly when there are concerns.

### ***What will help address this gap?***

It bears repeating that Gaps #1 – 6 all contribute in some manner to barriers to access, which is why this particular gap is placed as the final gap. In some ways it could be considered an overarching gap of highest priority because each preceding gap impacts how accessible the protection order process is for victims of domestic violence. Hence, addressing the recommendations in Gaps #1 – 6 will help alleviate

and address this gap. There are also additional recommendations that the team hopes, that once addressed, will build the petitioner's trust in and access to our local domestic violence protection order process.

The Audit Team recommends that:

- ☐ District and Superior Courts develop a uniform domestic violence protection order packet for both courts to use, as well as advocates. The packet should contain the petition, an instruction sheet, an overview of the protection order process, and community resource information.
- ☐ District and Superior Courts discuss and develop written guidelines on telephonic hearings and provide petitioners with information on their availability.
- ☐ District and Superior Courts check with each petitioner prior to filing of the petition to determine if interpreter services are needed and/or if assistance is needed with reading and writing.
- ☐ District and Superior Courts develop a more user-friendly web site on protection orders, with the recommendation to link to the Northwest Justice Project, Washington LawHelp Domestic Violence Order for Protection – Interactive Interview application packet.  
([www.washingtonlawhelp.org/WA/index.cfm](http://www.washingtonlawhelp.org/WA/index.cfm))
- ☐ District and Superior Courts explore the possibility of electronic filing of protection orders.
- ☐ District and Superior Court judicial officers and domestic violence advocates meet annually to review courtroom procedures and practices for protection order hearings.
- ☐ District and Superior Courts provide written protection order instructional material in Spanish, and other languages as relevant.
- ☐ District and Superior Courts, as part of ongoing improvements, conduct a survey of protection order petitioners to assess for barriers to the process.
- ☐ District and Superior Courts advise petitioners in advance about not bringing children to hearings, if that is determined to be the preferred practice.
- ☐ Domestic violence agencies conduct a survey or focus group with victims who have chosen not to file for a protection order, to help assess the barriers for those victims. This information should be shared with any relevant agencies. Domestic violence agencies should develop an implementation plan as related to the findings.
- ☐ Courts, domestic violence and law enforcement agencies seek feedback from members of diverse community groups to help identify any barriers to access to the protection order process.

- ☐ Superior and District Courts work together to secure the resources to restore staffing at Assigned Counsel in order that District Court domestic violence protection order petitioners, at minimum, can receive assistance from the Office of Assigned Counsel again.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.

## More Audit Trails, More Questions:

The Audit team discussed and discovered other areas of concern, but did not have the time to thoroughly explore them using the Safety Audit Methodology. The team calls attention to the following issues with an invitation for the community to consider further discussion and assessment.

### ***Centralized Domestic Violence Protection Order Court***

The Audit Team discussed the potential benefits of having one centralized domestic violence protection order court in Whatcom County. Throughout the Audit process, it was clear to team members that the loss of Assigned Counsel assistance to District Court petitioners was having a negative impact for many of those petitioners. Two important remedies are to restore Assigned Counsel services to District Court domestic violence protection order petitioners, and to ensure that protection order petitioners have more direct access to domestic violence advocates.

As the team considered the challenges in enhancing safety for petitioners in both District and Superior Court courtrooms, or in providing ongoing training and developing written guidelines and procedures in both courts, it occurred to the team that a centralized domestic violence protection order court could more efficiently and effectively address those particular gaps. A centralized domestic violence protection order court, specifically provided by Superior Court, could ensure Assigned Counsel services were available to all petitioners. The Superior Court courtroom is a better space to ensure safety for petitioners, deputies could be in attendance, a smaller group of practitioners could receive specialized training, and only one set of court procedures would need to be developed. Additionally, petitioners would always be directed to the right court.

Superior Court would need to be the centralized protection order court based on RCW 26.50.020, which provides that Superior and District Courts can both issue protection orders. However, District Court cannot issue protection orders, and Superior Court must issue protection orders when, a) Superior Court has exercised or is exercising jurisdiction over a proceeding under RCW 26 or RCW 13.34 involving the parties; or b) the petition for relief presents issues of residential schedule of and contact with children of the parties; or c) the petition for relief under RCW 26.50 requests the court to exclude a party from the dwelling which the parties share.

This idea of a centralized domestic violence protection order court, however, is in no way a solution to all the gaps and evidence noted in this report. However, it has the potential to address a number of the recommendations. The team explored this idea with the Superior Court Administrator/County Clerk and District Court Presiding Judge. Both courts stated there had been some discussion in the past on the possibility of Superior Court handling all domestic violence protection orders. Lack of resources in Superior Court was provided as the primary reason for not pursuing this possibility. Although the team learned there are a number of issues to explore (such as, would District Court still be “required” to respond to petitions for domestic violence protection orders), both courts indicated this was a interesting recommendation to consider.

This idea is listed as a recommendation in Gap #1, #2, and #3. Perhaps it is a long term vision to work towards, as it will require resources and a shift in practices that have been in place for many years. The team emphasizes that this recommendation is viewed in conjunction with all the other recommendations in the Audit report.

### ***Civil Stand-By or Assistance in Obtaining Possession of Certain Items***

Although the Audit team had intended to include the procedures for civil stand-by in the Audit, it was too difficult to arrange an observation of the process, and therefore to conduct a full analysis. However, some of the findings related to civil stand-by are noted below, along with areas for further discussion and exploration.

RCW 26.50.080 provides direction to law enforcement as follows: “(1) When an order is issued under this chapter upon request of the petitioner, the court may order a peace officer to accompany the petitioner and assist in placing the petitioner in possession of those items indicated in the order or to otherwise assist in the execution of the order of protection. The order shall list all items that are to be included with sufficient specificity to make it clear which property is included.”

The petitioner may request special assistance from law enforcement to secure a residence and in obtaining items such as a vehicle, personal belongings or custody of minors. The court has the option to order this special assistance in either the temporary or permanent protection order. Law enforcement stated the request for civil stand-bys was not too common. In a review of case files, 3 of 11 relevant District Court files had court orders for assistance and 4 of 19 relevant Superior Case files had court orders for assistance. In a fifth Superior Court case third party assistance was ordered.

Advocates stated that requests for assistance to obtain items were not frequent. Some petitioners have already separated from the respondent. Others are asking the respondent to vacate the home; therefore they have access to what they need. In these cases, the respondent is ordered to immediately vacate the residence and may take personal clothing and tools of the trade from the residence while a law enforcement officer is present. Team members learned that this was often done during service of the order if the respondent was in the residence.

Advocacy agencies stated that it would be helpful if advocates were more consistent in reviewing the need for any assistance prior to a hearing, as the judicial officer will often ask if the petitioner or respondent has any other concerns or needs. The team did observe one judicial officer stating that law enforcement does not have the resources to provide assistance, and instead encouraged the parties to find a third party or some other way that property could be exchanged. When asked, the judicial officer stated he has not been told this fact by law enforcement. The team was concerned that safety could be jeopardized through the use of third parties and hopes that judicial officers are attentive to those potential safety risks.

The Whatcom County Sheriff's Office was the only law enforcement agency to have a policy on responding to requests for assistance. All law enforcement agencies stated that it is very important for the order to have clear language about what the respondent or petitioner can remove. This is a difficult

situation for law enforcement and one petitioner shared her experience with the respondent taking more than she thought he should, and the officer stated, “It is not my job to decide who gets what.”

Petitioners and advocates shared a few other examples where assistance was not provided in a manner that ensured safety for the petitioner. In one instance, the law enforcement personnel did not monitor the contact between the respondent and petitioner and the petitioner was threatened by gestures and looks from the respondent. In another instance the officer made this statement to a victim, “How can you do this to him? He can’t see his children now.” In a third case, the petitioner could not get the civil stand-by scheduled, and it was suggested that she wait at a public location in case the officer had time. The petitioner did not feel safe doing that.

It is important for both the petitioner and respondent to have the essential personal belongings so that they continue with their lives. As the project partners review the recommendations in this report, the team hopes they will also look at practices and procedures in civil stand-bys. The 2010 King County, WA Domestic Violence Initiative Protective Order Model Guideline, Police Department/Patrol Officer Checklist for Civil Stand-by, could be reviewed as a template.

### **Custody and Parenting Issues**

*Safety for some petitioners includes knowing they have a roof over their head and enough money to properly care for and feed their children.*

Victims of battering who petition for protection orders come with a wide variety of needs. In addition to seeking safety from physical and sexual violence and harassment by their abuser, they may also have concerns about their children’s safety. Safety for some petitioners includes knowing they have a roof over their head and enough money to properly care for and feed their children.

Here is an example of how domestic violence directed at a petitioner created significant safety concerns for her children:

*“David has physically ripped Ryan out of my arms before and tried to keep him from me, and then offered to trade Ryan back to me in exchange for a 4 wheeler. David has pushed me out of a moving vehicle when I was pregnant with Ryan. David has thrown me on the ground with Ryan in my arms. David has also hit me, kicked me, dragged me and pinned me against the wall while I was pregnant with our daughter. He said he didn’t care I was pregnant and would rather the baby die than me leave. My children are in danger from the same sort of abuse right now. I’m in fear for my children.”*

As noted earlier in this report, a case where the petitioner and respondent have children in common will be heard in Superior Court. District Court petitioners may also have children, but the order cannot involve issues of residential schedule of and contact with children of the parties. Team member observations provided evidence that many cases in Superior Court involve children, and that visitation is a topic of concern for both petitioner and respondent, and an issue that requires time and focus from the judicial officer. Many respondents did not contest the entering of a protection order, but wanted to

ensure they had time with their children. Petitioners, on the other hand, expressed a wide range of needs, from asking for the respondent to have no contact with the children, only supervised visitation, visitation provided the respondent was not drinking, or liberal supervision arranged through a family member. The team observed a consistent practice by the current Commissioner in Superior Court. The Commissioner made it clear to both parties that the protection order was not the place to resolve long term custody and visitation issues. He directed parties to resolve those issues through a parenting plan or dissolution, and he addressed temporary custody and visitation arrangements as allowed in the protection order. The Commissioner consistently documented that any future parenting plans would take precedence over the protection order conditions.

Team members became aware that for many petitioners, safety for their children was even more important than their own safety. Petitioners appeared to be receiving the short term protection they were seeking for their children in the protection order (which is usually limited to one year); however, team members were concerned that petitioners, especially those without advocates, might not be successful in obtaining the long term protection they need for their children. There is a cost to file for a parenting plan which can add an additional barrier for many victims.

Currently, the same Commissioner in Superior Court hears both the protection order and domestic calendar. The team concluded that this practice helps ensure there are no conflicting orders regarding parenting and visitation arrangements. Team members hoped Superior Court would continue this practice.

The team did not identify any strong evidence that there is a current gap in how Superior Court addresses custody and visitation issues. The team is aware that there are no resources for third party visitation and that only two organizations offer supervised visitation. Although the supervisor at each of these organizations is knowledgeable about domestic violence and takes safety precautions as much as possible, neither of these supervised visitation sites is structurally and procedurally designed to specifically take into account domestic violence. One program is free, the other is not. Team members were concerned about the systemic gaps in visitation options, and wondered if our community was doing enough to decrease the likelihood of the potential for abusive exchanges.

In *Civil Protection Orders: A Guide for Improving Practice*<sup>44</sup> an entire strategy is outlined for the judiciary related to custody, visitation and support. The guide recommends that orders be carefully crafted to safeguard victims and their children and that supervised visitation should be ordered when necessary. The guide cautions the use of family members for third party supervision, and suggests that third-party supervisors be in court to accept the responsibility for supervision. Other suggestions can be found in

the guidebook cited in the footnote below.

*...for most petitioners, seeking a protection order is not a strategy to gain the upper hand on child custody.*

The team asks that we continue to remember that for most petitioners, seeking a protection order is not a strategy to gain the upper hand on child custody. It is a strategy to

---

<sup>44</sup> *Civil Protection Orders: A Guide for Improving Practice*, National Council of Juvenile and Family Court Judges, Family Violence Department, 2010



bring safety into their lives and their children's lives. The *Civil Protection Order Guide* says this well as one of the universal strategies under the guiding value of safety:

"For many victims of domestic violence, children are central in the decision to stay or leave an abusive relationship.<sup>45</sup> Given the impact of domestic violence on children,<sup>46</sup> the overlap of domestic violence and child maltreatment,<sup>47</sup> and the degree to which perpetrators use children to control and threaten victims, professionals should act to protect children as well as victims throughout the protection order process.<sup>48</sup> A protection order process that prioritizes safety addresses child custody, visitation, and support."

## Economic Justice

*Economic security is vital to the short and long term safety of domestic violence victims and their children. It can be one of the reasons a victim is able to permanently separate from her abuser.*

The new guide, *Civil Protection Orders: A Guide for Improving Practice*<sup>49</sup> recognizes that issuance of protection orders that provide for the broadest relief allowable under law helps to ensure safety.

RCW 26.50.060 (f) allows the court to "order other relief as it deems necessary for the protection of the petitioner and other family or household members sought to be protected..." This catch-all provision, commonly found in civil protection order statutes around the country, was found to be rarely used in Whatcom County. Economic security is vital to the short and long term safety of domestic violence victims and their children. It can be one of the reasons a victim is able to permanently separate from her abuser. Using the protection order process to help ensure economic security for petitioners is one way to ensure economic justice.

---

<sup>45</sup> Lyndal Khaw & Jennifer L. Hardesty, *Theorizing the Process of Leaving: Turning Points and Trajectories in the Stages of Change*, 56 Fam. Rel. 413, 416 (2007) (finding that "research suggests that ... children are an important factor of consideration. Studies have shown that children greatly influence their mothers' decisions to leave abusive relationships ..., particularly when the effects of violence on the children become visible").

<sup>46</sup> Unicef Child Protection Section, *Behind Closed Doors: The Impact of Domestic Violence on Children* (2006).

<sup>47</sup> Numerous studies have focused on the issue of "overlap" or co-occurrence of domestic violence and child maltreatment. A 2008 review of the research literature found that "while rates of overlap between domestic violence and child physical abuse fluctuate between studies ... by a range of 45–70%, there is nonetheless agreement that the presence of domestic abuse is a risk factor for child physical abuse." Stephanie Holt, Helen Buckley & Sadhbh Whelan, *The Impact of Exposure to Domestic Violence on Children and Young People: A Review of the Literature*, 32 Child Abuse & Neglect 797, 800 (2008).

<sup>48</sup> Pamela Whitney & Lonna Davis, *Child Abuse and Domestic Violence in Massachusetts: Can Practice Be Integrated in a Public Child Welfare Setting?*, 4 Child Maltreatment 158, 165 (1999) (summarizing this connection eloquently, finding that "the best interests of children are inextricably linked to the best interests of their mothers").

<sup>49</sup> *Civil Protection Orders: A Guide for Improving Practice*, National Council of Juvenile and Family Court Judges, Family Violence Department, 2010

*Civil Protection Orders: A Guide for Improving Practice*<sup>50</sup> recommends the following for the judiciary:

“Order economic relief such as child support and maintenance when allowed and appropriate.”

Examples are given such as rent or mortgage payments if the respondent is ordered to vacate the residence, or restitution for any financial losses or missed work due to the violence or application process for a protection order. An article in *The Advocates Quarterly* provides examples and strategies for framing and requesting economic remedies for protection order petitioners, and argues “By employing expansive thinking and integrating physical and economic risks, advocates can assist battered women in accessing economic relief in civil protection orders in a manner that more fully achieves the statutory purpose and more comprehensively meets survivors’ needs.”<sup>51</sup>

Through case reviews and interviews with advocates and judicial officers, the team did not see any evidence that petitioners are seeking, or being granted, any remedies to address economic security or financial losses due to the violence. Advocates stated that they do not generally explore these remedies as they have found the court will not grant the request. One judicial officer stated that he did not think the protection order process was the place to address such matters and these issues should be handled in dissolution actions. This judicial officer thought it was important for the protection order hearing to focus on the violence, and not financial matters.

Once again, the team did not find evidence of a gap, but wanted to suggest and encourage advocates and judicial officers to discuss possible ways in which economic justice could be better addressed through the protection order process. This seemed to be an underutilized strategy, yet one that is consistent with the legislative intent to promote future safety and prevent violence.

---

<sup>50</sup> *Civil Protection Orders: A Guide for Improving Practice*, National Council of Juvenile and Family Court Judges, Family Violence Department, 2010

<sup>51</sup> *The Civil Protection Order as a Tool for Economic Justice*, *The Advocate’s Quarterly*, 2006, Issue 3, The Newsletter for the Center for Survivor Agency and Justice

## Next Steps:

### *How is victim safety and access built into the community domestic violence order for protection process?*

*If our goal is for a community domestic violence protection order process that does the best it can to provide access and safety for all petitioners, then we need to build these expectations into the roles and responsibility of practitioners.*

Seven project partners (Bellingham Police Department, Domestic Violence and Sexual Assault Services, Ferndale Police Department, Whatcom County District Court, Whatcom County Sheriff's Office, Whatcom County Superior Court, and Womencare Shelter), with leadership and guidance from the Bellingham-Whatcom County Commission Against Domestic Violence, were willing to work with the Safety Audit Team to examine and explore the above Safety Audit question.

Keeping the experiences of victims of battering in mind, the team identified seven gaps in the community domestic violence protection order process.

Prior to releasing this Safety Audit Report, each of the seven project partners was given the opportunity to review the report. The purpose of the review was to provide a preview of the Audit findings, but also to ensure that the report did not include any incorrect information or misrepresentations. Clearly, statements attributed to unidentified individuals cannot be checked for accuracy. A review by an audited agency is not meant to imply endorsement of this report, its findings or recommendations.

Whatcom County District Court declined to review this report prior to its release, citing the WA State Judicial Ethics Advisory Committee Opinion #09-01. Therefore, any incorrect statements regarding District Court are unintentional. The Superior Court Administrator/County Clerk reviewed a draft of the report. The review was limited to fact-checking those portions of the report titled "What contributes to this gap?"

In Whatcom County, there are many practitioners who respond to and make decisions regarding domestic violence protection orders with thoughtfulness and a full understanding of the dynamics of domestic violence. They are located in complex systems and institutions and their work is often organized in ways that may inadvertently minimize safety. If our goal is for a community domestic violence protection order process that does the best it can to provide access and safety for all petitioners, then we need to build these expectations into the roles and responsibility of practitioners.

As the Audit team identified gaps, it developed an understanding of how each gap was created by the ways that work processes are currently organized, while also pointing to the kinds of change that would help close the gap. This Safety Audit Report offers a guide for where to begin changing policy, administrative procedures, conceptual practices, linkages within and across agencies, and other aspects of the ways in which the work of court staff, law enforcement and domestic violence agency personnel are organized to respond. The report emphasizes evidence of the gaps with the goal to improve and strengthen agency practices.

*The Audit Team, in partnership with the Bellingham-Whatcom County Commission Against Domestic Violence, invites the seven project partners to carefully review this Audit report and its recommendations, and to implement the recommendations to the fullest extent possible.*

The Audit Team, in partnership with the Bellingham-Whatcom County Commission Against Domestic Violence, invites the seven project partners to carefully review this Audit report and its recommendations, and to implement the recommendations to the fullest extent possible. Although none of the audited agencies is bound by the Audit findings and recommendations, it is the team's hope that careful thought and time will be given to the recommendations.

It is a bold step for any agency to examine its own work and publicly share the results with others. It is with this courage that the seven project partners agreed to participate in this

Safety Audit, and it speaks to their commitment to improving the community response to domestic violence. The Bellingham-Whatcom County Commission Against will do all it can to support the discussions, problem solving and implementation of these Safety Audit recommendations.

## Appendix A

### Safety Audit Methodology

*Most practitioners responding to domestic violence and working with families do so from good intentions and a commitment to making things better and safer. Peoples' lives are complex, however, as are the elements of risk and safety for any child or adult living with battering. Equally complex institutions, such as the criminal and civil legal systems, are often a poor fit for meeting what individual victims need to stay safe and protect their children. Building safe communities, however, requires ongoing attention to making a better fit between the institutional response and individual needs.*

The Praxis Safety and Accountability Audit (Safety Audit), developed by Dr. Ellen Pence, uses a unique method of analyzing the actions of institutions. A local interdisciplinary team<sup>52</sup> looks at how work routines and ways of doing business strengthen or impede safety for victims of battering and their children.<sup>53</sup> By asking **how** something comes about, rather than looking at the individual in the job, the process reveals systemic problems and produces recommendations for longer-lasting change. The Safety Audit is designed to leave communities with concrete suggestions for changing daily practices that lead to problematic outcomes, along with new perspectives that can be applied in an ongoing review of its response.

It is one thing for systems and communities to examine their own work; it is another matter for them to share the results with others, particularly when the focus of the inquiry is identifying problems. Most practitioners responding to domestic violence and working with families do so from good

intentions and a commitment to making things better and safer. Peoples' lives are complex, however, as are the elements of risk and safety for any child or adult living with battering. Equally complex institutions, such as the criminal and civil legal systems, are often a poor fit for meeting what individual victims need to stay safe and protect their children. Building safe communities, however, requires ongoing attention to making a better fit between the institutional response and individual needs.

The Safety Audit is built on a foundation of understanding: (1) institutional case processing, or how a child or adult victim of battering becomes a **case**, i.e., a custody case, a domestic violence case; (2) how response to that case is organized and coordinated within and across interveners; and (3) the complexity of risk and safety for (a) each child whose long-term living is being decided by complex institutional and personal processes and (b) each adult victim whose connections to her or his batterer magnifies the vulnerability to long-term abuse and coercion. To learn about individual experiences and institutional responses, the Safety Audit team conducts interviews, including victim/survivor focus groups; observes interveners in their real-time-and-place work settings; and, reads and analyzes forms, reports, case files, and other documents that organize case processing. Over a series of debriefing sessions, the team

<sup>52</sup> Sometimes the Safety Audit inquiry is conducted in partnership with Praxis consultants.

<sup>53</sup> Over forty communities nationwide have used the Safety and Accountability Audit to explore criminal and civil legal system response to domestic violence, the intersection of domestic violence and child abuse, and the role of supervised visitation and exchange in post-separation violence. See examples of reports at <http://www.praxisinternational.org>.

*In a Safety Audit, the constant focal point is the **gap** between what people experience and need and what institutions provide... In locating how a problem is embedded in institutional practices, the Safety Audit simultaneously discovers how to solve it.*

makes sense of what it has learned in order to articulate problem statements, support them with evidence, and frame the kinds of changes that need to occur.

Since the Safety Audit focuses on **institutional processes** rather than individual workers, there are no systematic sampling procedures. Instead, interviews, observations, and case file reviews sample the work process at different points to ensure a sufficient range of experiences. Interviews and observations are conducted with practitioners who are

skilled and well-versed in their jobs. Their knowledge of the institutional response in everyday practice and their first-hand experience with the people whose cases are being processed supply many of the critical observations and insights.

Safety Audit data collection and analysis pay attention to eight primary methods that institutions use to standardize actions across practitioners, disciplines, agencies, levels of government, and job function. These “Audit Trails” help point the way to problems and solutions.

- Mission, Purpose, and Function: mission of the *overall process*, such as domestic relations or family law; purpose of a *specific process*, such as conducting a custody evaluation; and, function of a worker in a *specific context*, such as the court-appointed mediator in a divorce action.
- Concepts and Theories: language, categories, theories, assumptions, philosophical frameworks.
- Rules and Regulations: any directive that practitioners are required to follow, such as policies, laws, and memorandums of understanding.
- Administrative Practices: any case management procedure, protocols, forms, documentation practices, intake processes, screening tools.
- Resources: practitioner case load, technology, staffing levels, availability of support services, and resources available to those whose cases are being processed.
- Education and Training: professional, academic, in-service, informal and formal.
- Linkages: links to previous, subsequent, and parallel interveners.
- Accountability: each of the ways that processes and practitioners are organized to (a) hold abusers accountable for their abuse; (b) be accountable to victims; and, (c) be accountable to other intervening practitioners.

In a Safety Audit, the constant focal point is the **gap** between what people experience and need and what institutions provide. At the center of the interviews, observations, and case file analysis is the effort to see the gap from the position of the person whose case is being processed and to see how it is produced by case management practices. In locating how a problem is embedded in institutional

practices, the Safety Audit simultaneously discovers how to solve it. Recommendations then link directly to the creation of new standardizing practices, such as new rules, policies, procedures, forms, and training.

The Safety Audit also considers the ways in which the nature of institutions contributes to problematic practices. It pays attention to inherent qualities of institutions that are always somehow related to poor case outcomes and the gap between what people need and the institution's response. These "twelve features of institutions" are present in all aspects of institutional work and cannot be eliminated, but they can be recognized and controlled and their impact minimized.<sup>54</sup> A Safety Audit therefore seeks to recognize when institutions (1) employ fragmented approaches to complex situations; (2) rely on the use of categories to process large numbers of cases; (3) engage in conceptual practices or "discourses" that organize how workers think and act; (4) create communication patterns that restrict opportunities for dialogue; (5) coordinate and standardize workers' actions through "texts," i.e., through forms, reports, case files, policies, and other media that carry the official case; (6) use coercion to gain compliance; (7) mask institutional limitations and failures; (8) operate on a time different from peoples' lived time; (9) maintain inadequate systems of accountability; (10) create standards based on fictitious "universal" people; (11) put institutional functioning over individual needs; and (12) individualize complex social problems.

---

<sup>54</sup> Ellen Pence, *(IN)visible Workings: Problematic Features Workbook*, Praxis International, 2009

## Appendices B-E

The full Audit report includes a detailed look at seven primary gaps, how they were identified through evidence, and how they can be addressed through recommendations. All the Safety Audit recommendations are listed in Appendices B-E in order to assist the project partners with implementation. Each recommendation is related to a gap in safety and accountability and is directly linked to evidence and findings from the Audit team's analysis. Therefore, although the attached lists will assist with implementation, the reader is reminded that the full report provides the context and foundation from which the recommendations were generated.

Appendix B: All Recommendations

Appendix C: Recommendations for Courts (Whatcom County District Court and Whatcom County Superior Court)

Appendix D: Recommendations for Domestic Violence Agencies (Domestic Violence & Sexual Assault Services and Womenscare Shelter)

Appendix E: Recommendations for Law Enforcement (Bellingham Police Department, Ferndale Police Department, and Whatcom County Sheriff's Office)



## Appendix B: All Recommendations

**Gap #1: Courthouse and courtroom procedures make it possible for respondents (batterers) to contact and intimidate petitioners (victims), resulting in safety concerns for petitioners (victims).**

The Audit Team recommends that:

- ☐ Superior Court considers a way to provide certified copies of the protection order to both parties during the hearing process.
- ☐ All personnel, especially court personnel, involved in the protection order process receive training on domestic violence, with an emphasis on tactics of intimidation and coercive control, and separation violence.
- ☐ District and Superior Courts and the Whatcom County Sheriff's Office discuss a standard practice to ensure that a courthouse deputy is present at all protection order hearings.
- ☐ Whatcom County Sheriff's Office develops a written procedure for courthouse deputies that articulates the priority of attending protection order hearings.
- ☐ District and Superior Courts, along with community based domestic violence agencies, discuss with Whatcom County Courthouse Facilities the need for secure waiting areas for petitioners.
- ☐ All project partners (courts, law enforcement, and domestic violence agencies) collectively review existing security procedures in courthouse/courtrooms and make and implement any additional recommendations to enhance safety.
- ☐ Superior and District Court judicial officers review the *Domestic Violence Manual for Judges*<sup>55</sup> Chapters 8 and 13 and consider adoption of the preferred practices in order to minimize the respondent's ability to intimidate or threaten the petitioner during the hearing. The manual provides discussion on rules of evidence, security and conduct of hearings. For example: "The courtroom should be set up to ensure the parties and their witnesses do not have to have direct contact with the other party and his or her witnesses, and that the parties are sufficiently kept separate so that one party is not able to talk or signal to the other party before or after the hearing. A support person should be allowed to stand with a party before the bench to provide physical separation between the parties and some sense of security."
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.
- ☐ District and Superior Courts and domestic violence agencies develop a "universal" handout for petitioners detailing safety tips within the courthouse and courtroom, to be distributed by court personnel, advocates, and others as relevant.

---

<sup>55</sup> *Domestic Violence Manual for Judges*, 2006, Washington State Gender and Justice Commission, WA State Administrative Office of the Courts

- ☐ District Court explores remedies for seating arrangements within the courtroom to provide a greater sense of safety for victims, as well as explore alternative scheduling for protection order hearings, including the possibility of a dedicated domestic violence protection order calendar.
- ☐ District and Superior Courts discuss and develop written guidelines on telephonic hearings and provide petitioners with information on their availability.
- ☐ District and Superior Courts explore the possibility of creating a centralized domestic violence protection order “court”. In this model all domestic violence protection order petitions would be heard in Superior Court. (See further discussion in More Audit Trails, More Questions)

**Gap #2: Although the domestic violence protection order process is pro se, it is complex and not all petitioners receive the assistance and support necessary to understand the process and make fully informed decisions.**

The Audit Team recommends that:

- ☐ Superior and District Courts work together to secure the resources to restore staffing at Assigned Counsel in order that District Court domestic violence protection order petitioners, at minimum, can receive assistance from the Office of Assigned Counsel again.
- ☐ Community based domestic violence agencies meet with Assigned Counsel staff and the District Court Administrator to ensure that referrals and linkages are made at every opportunity possible.
- ☐ Community based domestic violence agencies consider finding ways to offer services to petitioners who have not reached out for advocacy services. This might include co-locating services in the courthouse or reaching out more pro-actively to unaccompanied petitioners in hearings. As per the WA State Fatality Review <sup>56</sup> recommendation:  

“All courts issuing civil Protection Orders should have domestic violence advocates available on-site to meet with victims when they first petition for a Domestic Violence Protection Order.”
- ☐ District Court develops additional informational and instructional material on the protection order process for petitioners, both written and on-line. Written material should be available for petitioners to keep.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims’ access to information about and linkages to domestic violence advocacy services.
- ☐ Superior and District Courts and domestic violence agencies work together to develop a standard set of informational handouts for petitioners that can be used by other community

---

<sup>56</sup> *Now That We Know: Findings and Recommendations from the WA State Domestic Violence Fatality Review*, December 2008, WA State Coalition Against Domestic Violence

agencies and law enforcement. This should include a review of current handouts and resource cards to ensure accuracy.

- ☐ Law enforcement officers receive additional training and information to gain a fuller understanding of the protection order process. This training should help inform how referrals for protection orders are made to domestic violence victims.
- ☐ Law enforcement officers, as part of a referral to the protection order process, regularly suggest that a victim seek out services of a domestic violence agency for assistance in filing for a domestic violence protection order.
- ☐ District Court reviews RCW 26.50.030 (3) and General Rule 24 and considers if court staff could provide assistance to domestic violence protection order petitioners. At minimum, District Court should consider if a designated clerk could follow up with petitioners when applications are incomplete, such as the confidential Law Enforcement Information forms.
- ☐ District and Superior Courts explore the possibility of creating a centralized domestic violence protection order “court”. In this model, all domestic violence protection order petitions would be heard in Superior Court. (See further discussion in More AuditTrails, More Questions)
- ☐ District and Superior Courts regularly ensure that the staff reference material at the Courthouse Kiosk regarding referrals for domestic violence protection order process is current and accurate.
- ☐ All project partners work together so that there is no wrong door for petitioners seeking a domestic violence protection order.

**Gap #3: Petitioners seeking protection orders face procedures and responses across and within agencies that are inconsistent and sometimes not fully grounded in an understanding of the law and dynamics of battering.**

The Audit Team recommends that:

- ☐ Courts, law enforcement and domestic violence agencies develop protocols guiding all practitioners involved in the protection order process, with safety of victims as the overarching goal. Regular and appropriate supervision should be built in to ensure the protocols and procedures are followed.
- ☐ Courts, law enforcement and domestic violence agencies consider standard protocols across all systems, for example, standard protocols for service or protection orders for all Whatcom County law enforcement agencies.
- ☐ District and Superior Courts and law enforcement strengthen practitioners’ knowledge on the dynamics of domestic violence and battering by conducting training relevant to the practitioners’ position and work setting.

- ☐ Courts, law enforcement, and domestic violence agencies as needed, build in systemic training and an understanding on the overall domestic violence protection order process for all key practitioners.
- ☐ Courts, law enforcement and domestic violence agencies conduct an annual review of RCW 26.50 to ensure compliance with all aspects of the law, including the use of current state pattern forms.
- ☐ Superior and District Courts use current state pattern forms.
- ☐ Superior and District Courts create and utilize a checklist to ensure orders are completed. (See King County, WA checklist for courts.)
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.
- ☐ District and Superior Court judicial officers continue to find opportunities to conduct courtroom procedures in a manner that minimizes intimidation of petitioners, and conveys messages of safety and access for petitioners and accountability for respondents.
- ☐ District and Superior Courts review process for ex parte hearings and consider ways to increase information to petitioners, if appropriate, when temporary orders are denied.
- ☐ District and Superior Courts explore the possibility of creating a centralized domestic violence protection order "court". In this model, all domestic violence protection order petitions would be heard in Superior Court. (See further discussion in More Audit Trails, More Questions)

**Gap #4: Standard and consistent responses to reducing respondent access to firearms (and dangerous weapons) in the protection order process are lacking, despite petitioner safety concerns and practitioner knowledge of the dangers of domestic violence and firearms.**

The Audit Team recommends that:

- ☐ Whatcom County establish a Domestic Violence Protection Order and Firearms work group to develop preferred practices for all relevant practitioners, to include the development of any forms related to compliance that puts responsibility on the respondent. The work group should consult with the many resources available through the National Center on Full Faith and Credit and the National Council on Juvenile and Family Court Judges, Family Violence Department. The second phase should include implementation of the preferred practices by all relevant practitioners.
- ☐ District and Superior Court clerks and judicial officers receive relevant training and familiarity with protection order pattern forms for firearms surrender and use as appropriate.
- ☐ District and Superior Court judicial officers receive ongoing judicial education on statutory authority related to firearms surrender. If new practices are developed, judicial officers are encouraged to review these with law enforcement, prosecution, and defense.

- ☐ Domestic violence advocates receive ongoing training and a full understanding on the forms for firearms surrender and the authority of the court. Advocates should proactively explore petitioners' determination as to whether or not to file a Petition for Surrender of Weapon.
- ☐ Domestic violence advocates continue to explore safety planning regarding firearms, especially in those cases where the federal prohibitions do not apply and no other restrictions are placed on possession.
- ☐ District and Superior Court judicial officers complete the "Caution: Access for Firearms" check box on the front sheet of the temporary and permanent protection orders.
- ☐ Warrant Officer/Civil Deputy, and any law enforcement officer providing service, orally review the federal firearms prohibitions with respondent upon service, and in conjunction with the courts, develop and utilize an instruction sheet for respondents on how to surrender firearms.
- ☐ District and Superior Court judicial officers routinely read to the respondent the firearms restrictions when respondent is present at a hearing.
- ☐ Whatcom County law enforcement agencies develop written guidelines for firearms surrender (voluntary and/or mandatory) for qualifying domestic violence civil protection orders.
- ☐ Concurring with statewide recommendations from the 2008 WA State Domestic Violence Fatality Review, "The Administrative Office of the Courts should add a protection provision pursuant to RCW 9.41.800 to the "Petition for Order for Protection" and "Temporary Order for Protection and Notice of Hearing" forms. This provision would allow petitioners for a Temporary Protection Order to request that the court order the respondent to surrender firearms and prohibit the respondent from obtaining or possessing a firearm prior to the Protection Order hearing. The AOC should amend the instructions for Protection Order petitioners to inform them of their right under RCW 9.41.800 to request that the court order the respondent to surrender firearms and prohibit the respondent from obtaining or possessing firearms with both temporary and full Protection Orders, using the Petition for Surrender of Weapon."<sup>57</sup>
- ☐ District and Superior Courts consider developing a mechanism by which respondents could demonstrate to the courts that they have complied with the order to surrender firearms. This could include the use of an instruction sheet for respondents developed in conjunction with law enforcement.
- ☐ District and Superior Court judicial officers, and law enforcement, only allow third party transfers of firearms under limited conditions and after vetting of the party receiving the firearms. Model practices should be explored to see how other jurisdictions handle this matter, which could include a practice of requiring the third party to sign an affidavit of receipt for third-party transfers.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.

---

<sup>57</sup> *Now That We Know: Findings and Recommendations from the WA State Domestic Violence Fatality Review*, December 2008, WA State Coalition Against Domestic Violence

**Gap #5: Multiple practices and procedures around service and process of protection orders place victims at risk at a time when the need for safety is actually heightened.**

The Audit Team recommends that:

- ☐ District and Superior Courts and law enforcement agencies review the checklists developed for law enforcement and the courts in the 2010 King County, WA Domestic Violence Initiative Protective Order Model Guidelines. These checklists can be especially helpful with service issues.
- ☐ District and Superior Courts identify ways to increase their ability to identify which law enforcement agency should receive the order for service and entry.
- ☐ District and Superior Courts fax all orders, rather than mail, at minimum, and consider electronic transmissions to Whatcom County law enforcement agencies after discussion with law enforcement executives about this option.
- ☐ District and Superior Courts, and domestic violence advocates, facilitate better completion of the confidential Law Enforcement Information forms.
- ☐ District and Superior Courts ensure law enforcement receives copies of ROS (Return of Service) for entry into databases, when those are submitted directly to the court by private parties or process servers.
- ☐ District and Superior Courts distribute SAVIN Protective Order brochures to all protection order petitioners.
- ☐ District and Superior Courts ensure service of Notice of Hearings for modification and termination requests by petitioners, as well as service of orders of modifications and terminations.
- ☐ Superior Court Administrator/County Clerk and law enforcement records staff discuss the concern with validation issues and develop a back-up resource for records when needed.
- ☐ Law enforcement agencies make available and distribute SAVIN Protective Order brochures, and ensure that any petitioner who brings protection order paperwork for service receives a brochure.
- ☐ Courts, domestic violence agencies and law enforcement agencies review all written informational material on protection orders to ensure it is accurate regarding service and enforcement.
- ☐ Law enforcement agencies identify ways to increase round the clock data entry for service notation of orders in WACIC/NCIC.
- ☐ Law enforcement agencies review the practice of not serving notice of hearings without an order, and consider providing that service for domestic violence protection order hearings.

- ☐ Law enforcement agencies develop written procedures for service of protection orders using the Ferndale Police Department procedures or the 2010 King County, WA checklists noted above for examples. The procedures should consider the inclusion of the items below:
  - Check histories on both parties
  - Contact petitioner if able
  - Read documents to understand risk
  - Read documents to determine what action may need to be taken (vacate residence, civil standby, confiscation of weapons)
  - Verify respondent and serve
  - Review contents of order with respondent and take any action as required by order
  - Document response of respondent and file a report on the service
  - Contact records that service has been made
  - Contact petitioner that service has been made
  - Complete the Return of Service form
  - If service was not accomplished, document service attempt and forward to court
- ☐ Whatcom County Jail corrections staff and Assigned Counsel staff follow the written procedures developed by law enforcement for service of orders per Safety Audit recommendations when serving domestic violence protection orders.
- ☐ Law enforcement agencies carefully review contacting the respondent prior to service of an order, and limit this practice, if at all possible, to those situations where the petitioner has been contacted ahead of time for safety planning and risk assessment.
- ☐ Safety of the victim should be considered the highest priority at all times.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.

**Gap #6: Assessment of the context, severity and impact of violence and implications for risk, danger and safety for the petitioner is not consistently addressed throughout the protection order process.**

The Audi Team recommends that:

- ☐ District and Superior Court judicial officers receive ongoing judicial education to recognize the increased lethality risk represented by stalking, sexual assault, homicide and suicide threats by an abuser, as well as an overview on all risk factors associated with lethality and dangerousness.
- ☐ District and Superior Court judicial officers review risk assessment tools, such as the Gender Fairness Implementation Committee of the MN State Supreme Court, Domestic Violence Risk Assessment Bench Guide (2009) for use in the protection order process.
- ☐ Superior and District Courts work together to secure the resources to restore staffing at Assigned Counsel in order that District Court domestic violence protection order petitioners, at minimum, can receive assistance from the Office of Assigned Counsel again.
- ☐ District Court considers a practice to compile and review case histories of the parties prior to and during the protection order hearing, in order to have all needed information for decisions on issuance.

- ☐ Court staff, law enforcement and domestic violence agencies receive ongoing training on stalking and sexual assault within domestic violence and incorporate training into standard practices.
- ☐ Domestic violence advocates thoroughly explore risk factors with petitioners, especially stalking and sexual assault, and assist petitioners in documenting the history, context and severity of violence over time in the petition if relevant and if safe for petitioners.
- ☐ District and Superior Courts explore options for compliance review and civil contempt hearings and initiate some form of review if able and appropriate.
- ☐ District and Superior Court staff provide petitioners with referrals to domestic violence advocacy services when petitioners are unaccompanied and/or do not receive a temporary protection order. This should happen both at the time of petitioning for a protection order as well as at any protection order hearings.
- ☐ Law enforcement agencies develop written procedures for service of protection orders that ensure risk factors are reviewed and taken into account.
- ☐ Court staff, law enforcement and domestic violence agencies receive ongoing training on current research and findings on domestic violence risk and lethality factors, followed by incorporating the risk information into written practices and procedures.
- ☐ District and Superior Courts and domestic violence agencies use current state pattern forms.
- ☐ Assigned Counsel reviews with the petitioner all questions on the petitioner's statement and encourages petitioners to complete all, provided petitioners understand the information will be public.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.

**Gap #7: Some petitioners experience multiple barriers in accessing the protection order process, increasing the difficulty and impacting the courage it takes to initiate and follow through with the process.**

The Audit Team recommends that:

- ☐ District and Superior Courts develop a uniform domestic violence protection order packet for both courts to use, as well as advocates. The packet should contain the petition, an instruction sheet, an overview of the protection order process, and community resource information.
- ☐ District and Superior Courts discuss and develop written guidelines on telephonic hearings and provide petitioners with information on their availability.



- ☐ District and Superior Courts check with each petitioner prior to filing of the petition to determine if interpreter services are needed and/or if assistance is needed with reading and writing.
- ☐ District and Superior Courts develop a more user-friendly web site on protection orders, with the recommendation to link to the Northwest Justice Project, Washington LawHelp Domestic Violence Order for Protection – Interactive Interview application packet. ([www.washingtonlawhelp.org/WA/index.cfm](http://www.washingtonlawhelp.org/WA/index.cfm))
- ☐ District and Superior Courts explore the possibility of electronic filing of protection orders.
- ☐ District and Superior Court judicial officers and domestic violence advocates meet annually to review courtroom procedures and practices for protection order hearings.
- ☐ District and Superior Courts provide written protection order instructional material in Spanish, and other languages as relevant.
- ☐ District and Superior Courts, as part of ongoing improvements, conduct a survey of protection order petitioners to assess for barriers to the process.
- ☐ District and Superior Courts advise petitioners in advance about not bringing children to hearings, if that is determined to be the preferred practice.
- ☐ Domestic violence agencies conduct a survey or focus group with victims who have chosen not to file for a protection order, to help assess the barriers for those victims. This information should be shared with any relevant agencies. Domestic violence agencies should develop an implementation plan as related to the findings.
- ☐ Courts, domestic violence and law enforcement agencies seek feedback from members of diverse community groups to help identify any barriers to access to the protection order process.
- ☐ Superior and District Courts work together to secure the resources to restore staffing at Assigned Counsel in order that District Court domestic violence protection order petitioners, at minimum, can receive assistance from the Office of Assigned Counsel again.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.

## APPENDIX C: Recommendations for Courts (Whatcom County District Court and Whatcom County Superior Court)

**Gap #1: Courthouse and courtroom procedures make it possible for respondents (batterers) to contact and intimidate petitioners (victims), resulting in safety concerns for petitioners (victims).**

The Audit Team recommends that:

- ☐ Superior Court considers a way to provide certified copies of the protection order to both parties during the hearing process.
- ☐ All personnel, especially court personnel, involved in the protection order process receive training on domestic violence, with an emphasis on tactics of intimidation and coercive control, and separation violence.
- ☐ District and Superior Courts and the Whatcom County Sheriff's Office discuss a standard practice to ensure that a courthouse deputy is present at all protection order hearings.
- ☐ District and Superior Courts, along with community based domestic violence agencies, discuss with Whatcom County Courthouse Facilities the need for secure waiting areas for petitioners.
- ☐ All project partners (courts, law enforcement, and domestic violence agencies) collectively review existing security procedures in courthouse/courtrooms and make and implement any additional recommendations to enhance safety.
- ☐ Superior and District Court judicial officers review the *Domestic Violence Manual for Judges*<sup>58</sup> Chapters 8 and 13 and consider adoption of the preferred practices in order to minimize the respondent's ability to intimidate or threaten the petitioner during the hearing. The manual provides discussion on rules of evidence, security and conduct of hearings. For example: "The courtroom should be set up to ensure the parties and their witnesses do not have to have direct contact with the other party and his or her witnesses, and that the parties are sufficiently kept separate so that one party is not able to talk or signal to the other party before or after the hearing. A support person should be allowed to stand with a party before the bench to provide physical separation between the parties and some sense of security."
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.
- ☐ District and Superior Courts and domestic violence agencies develop a "universal" handout for petitioners detailing safety tips within the courthouse and courtroom, to be distributed by court personnel, advocates, and others as relevant.

---

<sup>58</sup> *Domestic Violence Manual for Judges*, 2006, Washington State Gender and Justice Commission, WA State Administrative Office of the Courts

- ☐ District Court explores remedies for seating arrangements within the courtroom to provide a greater sense of safety for victims, as well as explore alternative scheduling for protection order hearings, including the possibility of a dedicated domestic violence protection order calendar.
- ☐ District and Superior Courts discuss and develop written guidelines on telephonic hearings and provide petitioners with information on their availability.
- ☐ District and Superior Courts explore the possibility of creating a centralized domestic violence protection order “court”. In this model all domestic violence protection order petitions would be heard in Superior Court. (See further discussion in More Audit Trails, More Questions)

**Gap #2: Although the domestic violence protection order process is pro se, it is complex and not all petitioners receive the assistance and support necessary to understand the process and make fully informed decisions.**

The Audit Team recommends that:

- ☐ Superior and District Courts work together to secure the resources to restore staffing at Assigned Counsel in order that District Court domestic violence protection order petitioners, at minimum, can receive assistance from the Office of Assigned Counsel again.
- ☐ Community based domestic violence agencies meet with Assigned Counsel staff and the District Court Administrator to ensure that referrals and linkages are made at every opportunity possible.
- ☐ District Court develops additional informational and instructional material on the protection order process for petitioners, both written and on-line. Written material should be available for petitioners to keep.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims’ access to information about and linkages to domestic violence advocacy services.
- ☐ Superior and District Courts and domestic violence agencies work together to develop a standard set of informational handouts for petitioners that can be used by other community agencies and law enforcement. This should include a review of current handouts and resource cards to ensure accuracy.
- ☐ District Court reviews RCW 26.50.030 (3) and General Rule 24 and considers if court staff could provide assistance to domestic violence protection order petitioners. At minimum, District Court should consider if a designated clerk could follow up with petitioners when applications are incomplete, such as the confidential Law Enforcement Information forms.
- ☐ District and Superior Courts explore the possibility of creating a centralized domestic violence protection order “court”. In this model, all domestic violence protection order petitions would be heard in Superior Court. (See further discussion in More Audit Trails, More Questions)
- ☐ District and Superior Courts regularly ensure that the staff reference material at the Courthouse Kiosk regarding referrals for domestic violence protection order process is current and accurate.

- ☐ All project partners work together so that there is no wrong door for petitioners seeking a domestic violence protection order.

**Gap #3: Petitioners seeking protection orders face procedures and responses across and within agencies that are inconsistent and sometimes not fully grounded in an understanding of the law and dynamics of battering.**

The Audit Team recommends that:

- ☐ Courts, law enforcement and domestic violence agencies develop protocols guiding all practitioners involved in the protection order process, with safety of victims as the overarching goal. Regular and appropriate supervision should be built in to ensure the protocols and procedures are followed.
- ☐ Courts, law enforcement and domestic violence agencies consider standard protocols across all systems, for example, standard protocols for service or protection orders for all Whatcom County law enforcement agencies.
- ☐ District and Superior Courts and law enforcement strengthen practitioners' knowledge on the dynamics of domestic violence and battering by conducting training relevant to the practitioners' position and work setting.
- ☐ Courts, law enforcement, and domestic violence agencies as needed, build in systemic training and an understanding on the overall domestic violence protection order process for all key practitioners.
- ☐ Courts, law enforcement and domestic violence agencies conduct an annual review of RCW 26.50 to ensure compliance with all aspects of the law, including the use of current state pattern forms.
- ☐ Superior and District Courts use current state pattern forms.
- ☐ Superior and District Courts create and utilize a checklist to ensure orders are completed. (See King County, WA checklist for courts.)
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.
- ☐ District and Superior Court judicial officers continue to find opportunities to conduct courtroom procedures in a manner that minimizes intimidation of petitioners, and conveys messages of safety and access for petitioners and accountability for respondents.
- ☐ District and Superior Courts review process for ex parte hearings and consider ways to increase information to petitioners, if appropriate, when temporary orders are denied.

- ☐ District and Superior Courts explore the possibility of creating a centralized domestic violence protection order “court”. In this model, all domestic violence protection order petitions would be heard in Superior Court. (See further discussion in More Audit Trails, More Questions)

**Gap #4: Standard and consistent responses to reducing respondent access to firearms (and dangerous weapons) in the protection order process are lacking, despite petitioner safety concerns and practitioner knowledge of the dangers of domestic violence and firearms.**

The Audit Team recommends that:

- ☐ Whatcom County establish a Domestic Violence Protection Order and Firearms work group to develop preferred practices for all relevant practitioners, to include the development of any forms related to compliance that puts responsibility on the respondent. The work group should consult with the many resources available through the National Center on Full Faith and Credit and the National Council on Juvenile and Family Court Judges, Family Violence Department. The second phase should include implementation of the preferred practices by all relevant practitioners.
- ☐ District and Superior Court clerks and judicial officers receive relevant training and familiarity with protection order pattern forms for firearms surrender and use as appropriate.
- ☐ District and Superior Court judicial officers receive ongoing judicial education on statutory authority related to firearms surrender. If new practices are developed, judicial officers are encouraged to review these with law enforcement, prosecution, and defense.
- ☐ District and Superior Court judicial officers complete the “Caution: Access for Firearms” check box on the front sheet of the temporary and permanent protection orders.
- ☐ District and Superior Court judicial officers routinely read to the respondent the firearms restrictions when respondent is present at a hearing.
- ☐ Concurring with statewide recommendations from the 2008 WA State Domestic Violence Fatality Review, “The Administrative Office of the Courts should add a protection provision pursuant to RCW 9.41.800 to the “Petition for Order for Protection” and “Temporary Order for Protection and Notice of Hearing” forms. This provision would allow petitioners for a Temporary Protection Order to request that the court order the respondent to surrender firearms and prohibit the respondent from obtaining or possessing a firearm prior to the Protection Order hearing. The AOC should amend the instructions for Protection Order petitioners to inform them of their right under RCW 9.41.800 to request that the court order the respondent to surrender firearms and prohibit the respondent from obtaining or possessing firearms with both temporary and full Protection Orders, using the Petition for Surrender of Weapon.”<sup>59</sup>
- ☐ District and Superior Courts consider developing a mechanism by which respondents could demonstrate to the courts that they have complied with the order to surrender firearms. This

---

<sup>59</sup> *Now That We Know: Findings and Recommendations from the WA State Domestic Violence Fatality Review*, December 2008, WA State Coalition Against Domestic Violence

could include the use of an instruction sheet for respondents developed in conjunction with law enforcement.

- ☐ District and Superior Court judicial officers, and law enforcement, only allow third party transfers of firearms under limited conditions and after vetting of the party receiving the firearms. Model practices should be explored to see how other jurisdictions handle this matter, which could include a practice of requiring the third party to sign an affidavit of receipt for third-party transfers.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.

**Gap #5: Multiple practices and procedures around service and process of protection orders place victims at risk at a time when the need for safety is actually heightened.**

The Audit Team recommends that:

- ☐ District and Superior Courts and law enforcement agencies review the checklists developed for law enforcement and the courts in the 2010 King County, WA Domestic Violence Initiative Protective Order Model Guidelines. These checklists can be especially helpful with service issues.
- ☐ District and Superior Courts identify ways to increase their ability to identify which law enforcement agency should receive the order for service and entry.
- ☐ District and Superior Courts fax all orders, rather than mail, at minimum, and consider electronic transmissions to Whatcom County law enforcement agencies after discussion with law enforcement executives about this option.
- ☐ District and Superior Courts, and domestic violence advocates, facilitate better completion of the confidential Law Enforcement Information forms.
- ☐ District and Superior Courts ensure law enforcement receives copies of ROS (Return of Service) for entry into databases, when those are submitted directly to the court by private parties or process servers.
- ☐ District and Superior Courts distribute SAVIN Protective Order brochures to all protection order petitioners.
- ☐ District and Superior Courts ensure service of Notice of Hearings for modification and termination requests by petitioners, as well as service of orders of modifications and terminations.
- ☐ Superior Court Administrator/County Clerk and law enforcement records staff discuss the concern with validation issues and develop a back-up resource for records when needed.
- ☐ Courts, domestic violence agencies and law enforcement agencies review all written informational material on protection orders to ensure it is accurate regarding service and enforcement.

- ☐ Whatcom County Jail corrections staff and Assigned Counsel staff follow the written procedures developed by law enforcement for service of orders per Safety Audit recommendations when serving domestic violence protection orders.
- ☐ Safety of the victim should be considered the highest priority at all times.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.

**Gap #6: Assessment of the context, severity and impact of violence and implications for risk, danger and safety for the petitioner is not consistently addressed throughout the protection order process.**

The Audit Team recommends that:

- ☐ District and Superior Court judicial officers receive ongoing judicial education to recognize the increased lethality risk represented by stalking, sexual assault, homicide and suicide threats by an abuser, as well as an overview on all risk factors associated with lethality and dangerousness.
- ☐ District and Superior Court judicial officers review risk assessment tools, such as the Gender Fairness Implementation Committee of the MN State Supreme Court, Domestic Violence Risk Assessment Bench Guide (2009) for use in the protection order process.
- ☐ Superior and District Courts work together to secure the resources to restore staffing at Assigned Counsel in order that District Court domestic violence protection order petitioners, at minimum, can receive assistance from the Office of Assigned Counsel again.
- ☐ District Court considers a practice to compile and review case histories of the parties prior to and during the protection order hearing, in order to have all needed information for decisions on issuance.
- ☐ Court staff, law enforcement and domestic violence agencies receive ongoing training on stalking and sexual assault within domestic violence and incorporate training into standard practices.
- ☐ District and Superior Courts explore options for compliance review and civil contempt hearings and initiate some form of review if able and appropriate.
- ☐ District and Superior Court staff provide petitioners with referrals to domestic violence advocacy services when petitioners are unaccompanied and/or do not receive a temporary protection order. This should happen both at the time of petitioning for a protection order as well as at any protection order hearings.
- ☐ Court staff, law enforcement and domestic violence agencies receive ongoing training on current research and findings on domestic violence risk and lethality factors, followed by incorporating the risk information into written practices and procedures.
- ☐ District and Superior Courts and domestic violence agencies use current state pattern forms.

- ☐ Assigned Counsel reviews with petitioner all questions on the petitioner's statement and encourages petitioners to complete all, provided petitioners understand the information will be public.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.

**Gap #7: Some petitioners experience multiple barriers in accessing the protection order process, increasing the difficulty and impacting the courage it takes to initiate and follow through with the process.**

The Audit Team recommends that:

- ☐ District and Superior Courts develop a uniform domestic violence protection order packet for both courts to use, as well as advocates. The packet should contain the petition, an instruction sheet, an overview of the protection order process, and community resource information.
- ☐ District and Superior Courts discuss and develop written guidelines on telephonic hearings and provide petitioners with information on their availability.
- ☐ District and Superior Courts check with each petitioner prior to filing of the petition to determine if interpreter services are needed and/or if assistance is needed with reading and writing.
- ☐ District and Superior Courts develop a more user-friendly web site on protection orders, with the recommendation to link to the Northwest Justice Project, Washington LawHelp Domestic Violence Order for Protection – Interactive Interview application packet.  
([www.washingtonlawhelp.org/WA/index.cfm](http://www.washingtonlawhelp.org/WA/index.cfm))
- ☐ District and Superior Courts explore the possibility of electronic filing of protection orders.
- ☐ District and Superior Court judicial officers and domestic violence advocates meet annually to review courtroom procedures and practices for protection order hearings.
- ☐ District and Superior Courts provide written protection order instructional material in Spanish, and other languages as relevant.
- ☐ District and Superior Courts, as part of ongoing improvements, conduct a survey of protection order petitioners to assess for barriers to the process.
- ☐ District and Superior Courts advise petitioners in advance about not bringing children to hearings, if that is determined to be the preferred practice.
- ☐ Courts, domestic violence and law enforcement agencies seek feedback from members of diverse community groups to help identify any barriers to access to the protection order process.



- ☐ Superior and District Courts work together to secure the resources to restore staffing at Assigned Counsel in order that District Court domestic violence protection order petitioners, at minimum, can receive assistance from the Office of Assigned Counsel again.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.

## **APPENDIX D: Recommendations for Domestic Violence Agencies (Domestic Violence & Sexual Assault Services and Womenscare Shelter)**

**Gap #1: Courthouse and courtroom procedures make it possible for respondents (batterers) to contact and intimidate petitioners (victims), resulting in safety concerns for petitioners (victims).**

The Audit Team recommends that:

- ☐ All personnel, especially court personnel, involved in the protection order process receive training on domestic violence, with an emphasis on tactics of intimidation and coercive control, and separation violence.
- ☐ District and Superior Courts, along with community based domestic violence agencies, discuss with Whatcom County Courthouse Facilities the need for secure waiting areas for petitioners.
- ☐ All project partners (courts, law enforcement, and domestic violence agencies) collectively review existing security procedures in courthouse/courtrooms and make and implement any additional recommendations to enhance safety.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.
- ☐ District and Superior Courts and domestic violence agencies develop a "universal" handout for petitioners detailing safety tips within the courthouse and courtroom, to be distributed by court personnel, advocates, and others as relevant.

**Gap #2: Although the domestic violence protection order process is pro se, it is complex and not all petitioners receive the assistance and support necessary to understand the process and make fully informed decisions.**

The Audit Team recommends that:

- ☐ Community based domestic violence agencies meet with Assigned Counsel staff and District Court Administrator to ensure that referrals and linkages are made at every opportunity possible.
- ☐ Community based domestic violence agencies consider finding ways to offer services to petitioners who have not reached out for advocacy services. This might include co-locating services in the courthouse or reaching out more pro-actively to unaccompanied petitioners in hearings. As per the WA State Fatality Review<sup>60</sup> recommendation:  
"All courts issuing civil Protection Orders should have domestic violence advocates available on-site to meet with victims when they first petition for a Domestic Violence Protection Order."

---

<sup>60</sup> *Now That We Know: Findings and Recommendations from the WA State Domestic Violence Fatality Review*, December 2008, WA State Coalition Against Domestic Violence

- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.
- ☐ Superior and District Courts and domestic violence agencies work together to develop a standard set of informational handouts for petitioners that can be used by other community agencies and law enforcement. This should include a review of current handouts and resource cards to ensure accuracy.
- ☐ All project partners work together so that there is no wrong door for petitioners seeking a domestic violence protection order.

**Gap #3: Petitioners seeking protection orders face procedures and responses across and within agencies that are inconsistent and sometimes not fully grounded in an understanding of the law and dynamics of battering.**

The Audit Team recommends that:

- ☐ Courts, law enforcement and domestic violence agencies develop protocols guiding all practitioners involved in the protection order process, with safety of victims as the overarching goal. Regular and appropriate supervision should be built in to ensure the protocols and procedures are followed.
- ☐ Courts, law enforcement and domestic violence agencies consider standard protocols across all systems, for example, standard protocols for service or protection orders for all Whatcom County law enforcement agencies.
- ☐ Courts, law enforcement, and domestic violence agencies as needed, build in systemic training and an understanding on the overall domestic violence protection order process for all key practitioners.
- ☐ Courts, law enforcement and domestic violence agencies conduct an annual review of RCW 26.50 to ensure compliance with all aspects of the law, including the use of current state pattern forms.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.

**Gap #4: Standard and consistent responses to reducing respondent access to firearms (and dangerous weapons) in the protection order process are lacking, despite petitioner safety concerns and practitioner knowledge of the dangers of domestic violence and firearms.**

The Audit Team recommends that:

- ☐ Whatcom County establish a Domestic Violence Protection Order and Firearms work group to develop preferred practices for all relevant practitioners, to include the development of any forms related to compliance that puts responsibility on the respondent. The work group should consult with the many resources available through the National Center on Full Faith and Credit and the National Council on Juvenile and Family Court Judges, Family Violence Department. The

second phase should include implementation of the preferred practices by all relevant practitioners.

- ☐ Domestic violence advocates receive ongoing training and a full understanding on the forms for firearms surrender and the authority of the court. Advocates should proactively explore petitioners' determination as to whether or not to file a Petition for Surrender of Weapon.
- ☐ Domestic violence advocates continue to explore safety planning regarding firearms, especially in those cases where the federal prohibitions do not apply and no other restrictions are placed on possession.
- ☐ Concurring with statewide recommendations from the 2008 WA State Domestic Violence Fatality Review, "The Administrative Office of the Courts should add a protection provision pursuant to RCW 9.41.800 to the "Petition for Order for Protection" and "Temporary Order for Protection and Notice of Hearing" forms. This provision would allow petitioners for a Temporary Protection Order to request that the court order the respondent to surrender firearms and prohibit the respondent from obtaining or possessing a firearm prior to the Protection Order hearing. The AOC should amend the instructions for Protection Order petitioners to inform them of their right under RCW 9.41.800 to request that the court order the respondent to surrender firearms and prohibit the respondent from obtaining or possessing firearms with both temporary and full Protection Orders, using the Petition for Surrender of Weapon."<sup>61</sup>
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.

**Gap #5: Multiple practices and procedures around service and process of protection orders place victims at risk at a time when the need for safety is actually heightened.**

The Audit Team recommends that:

- ☐ District and Superior Courts, and domestic violence advocates, facilitate better completion of the confidential Law Enforcement Information forms.
- ☐ Courts, domestic violence agencies and law enforcement agencies review all written informational material on protection orders to ensure it is accurate regarding service and enforcement.
- ☐ Safety of the victim should be considered the highest priority at all times.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.

---

<sup>61</sup> *Now That We Know: Findings and Recommendations from the WA State Domestic Violence Fatality Review*, December 2008, WA State Coalition Against Domestic Violence

**Gap #6: Assessment of the context, severity and impact of violence and implications for risk, danger and safety for the petitioner is not consistently addressed throughout the protection order process.**

The Audit Team recommends that:

- ☐ Court staff, law enforcement and domestic violence agencies receive ongoing training on stalking and sexual assault within domestic violence and incorporate training into standard practices.
- ☐ Domestic violence advocates thoroughly explore risk factors with petitioners, especially stalking and sexual assault, and assist petitioners in documenting the history, context and severity of violence over time in the petition if relevant and if safe for petitioners.
- ☐ Court staff, law enforcement and domestic violence agencies receive ongoing training on current research and findings on domestic violence risk and lethality factors, followed by incorporating the risk information into written practices and procedures.
- ☐ District and Superior Courts and domestic violence agencies use current state pattern forms.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.

**Gap #7: Some petitioners experience multiple barriers in accessing the protection order process, increasing the difficulty and impacting the courage it takes to initiate and follow through with the process.**

The Audit Team recommends that:

- ☐ District and Superior Courts develop a uniform domestic violence protection order packet for both courts to use, as well as advocates. The packet should contain the petition, an instruction sheet, an overview of the protection order process, and community resource information.
- ☐ District and Superior Court judicial officers and domestic violence advocates meet annually to review courtroom procedures and practices for protection order hearings.
- ☐ Domestic violence agencies conduct a survey or focus group with victims who have chosen not to file for a protection order, to help assess the barriers for those victims. This information should be shared with any relevant agencies. Domestic violence agencies should develop an implementation plan as related to the findings.
- ☐ Courts, domestic violence and law enforcement agencies seek feedback from members of diverse community groups to help identify any barriers to access to the protection order process.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.

## **APPENDIX E: Recommendations for Law Enforcement (Bellingham Police Department, Ferndale Police Department, and Whatcom County Sheriff's Office)**

**Gap #1: Courthouse and courtroom procedures make it possible for respondents (batterers) to contact and intimidate petitioners (victims), resulting in safety concerns for petitioners (victims).**

The Audit Team recommends that

- ☐ All personnel, especially court personnel, involved in the protection order process receive training on domestic violence, with an emphasis on tactics of intimidation and coercive control, and separation violence.
- ☐ District and Superior Courts and the Whatcom County Sheriff's Office discuss a standard practice to ensure that a courthouse deputy is present at all protection order hearings.
- ☐ Whatcom County Sheriff's Office develops a written procedure for courthouse deputies that articulates the priority of attending protection order hearings.
- ☐ All project partners (courts, law enforcement, and domestic violence agencies) collectively review existing security procedures in courthouse/courtrooms and make and implement any additional recommendations to enhance safety.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.

**Gap #2: Although the domestic violence protection order process is pro se, it is complex and not all petitioners receive the assistance and support necessary to understand the process and make fully informed decisions.**

The Audit Team recommends that:

- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.
- ☐ Law enforcement officers receive additional training and information to gain a fuller understanding of the protection order process. This training should help inform how referrals for protection orders are made to domestic violence victims.
- ☐ Law enforcement officers, as part of a referral to the protection order process, regularly suggest that a victim seek out services of a domestic violence agency for assistance in filing for a domestic violence protection order.
- ☐ All project partners work together so that there is no wrong door for petitioners seeking a domestic violence protection order.

**Gap #3: Petitioners seeking protection orders face procedures and responses across and within agencies that are inconsistent and sometimes not fully grounded in an understanding of the law and dynamics of battering.**

The Audit Team recommends that:

- ☐ Courts, law enforcement and domestic violence agencies develop protocols guiding all practitioners involved in the protection order process, with safety of victims as the overarching goal. Regular and appropriate supervision should be built in to ensure the protocols and procedures are followed.
- ☐ Courts, law enforcement and domestic violence agencies consider standard protocols across all systems, for example, standard protocols for service or protection orders for all Whatcom County law enforcement agencies.
- ☐ District and Superior Courts and law enforcement strengthen practitioner's knowledge on the dynamics of domestic violence and battering by conducting training relevant to the practitioner's position and work setting.
- ☐ Courts, law enforcement, and domestic violence agencies as needed, build in systemic training and an understanding on the overall domestic violence protection order process for all key practitioners.
- ☐ Courts, law enforcement and domestic violence agencies conduct an annual review of RCW 26.50 to ensure compliance with all aspects of the law, including the use of current state pattern forms.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.

**Gap #4: Standard and consistent responses to reducing respondent access to firearms (and dangerous weapons) in the protection order process are lacking, despite petitioner safety concerns and practitioner knowledge of the dangers of domestic violence and firearms.**

The Audit Team recommends that:

- ☐ Whatcom County establish a Domestic Violence Protection Order and Firearms work group to develop preferred practices for all relevant practitioners, to include the development of any forms related to compliance that puts responsibility on the respondent. The work group should consult with the many resources available through the National Center on Full Faith and Credit and the National Council on Juvenile and Family Court Judges, Family Violence Department. The second phase should include implementation of the preferred practices by all relevant practitioners.
- ☐ Warrant Officer/Civil Deputy, and any law enforcement officer providing service, orally review the federal firearms prohibitions with respondent upon service, and in conjunction with the courts, develop and utilize an instruction sheet for respondents on how to surrender firearms.

- ☐ Whatcom County law enforcement agencies develop written guidelines for firearms surrender (voluntary and/or mandatory) for qualifying domestic violence civil protection orders.
- ☐ Concurring with statewide recommendations from the 2008 WA State Domestic Violence Fatality Review, “The Administrative Office of the Courts should add a protection provision pursuant to RCW 9.41.800 to the “Petition for Order for Protection” and “Temporary Order for Protection and Notice of Hearing” forms. This provision would allow petitioners for a Temporary Protection Order to request that the court order the respondent to surrender firearms and prohibit the respondent from obtaining or possessing a firearm prior to the Protection Order hearing. The AOC should amend the instructions for Protection Order petitioners to inform them of their right under RCW 9.41.800 to request that the court order the respondent to surrender firearms and prohibit the respondent from obtaining or possessing firearms with both temporary and full Protection Orders, using the Petition for Surrender of Weapon.”<sup>62</sup>
- ☐ District and Superior Courts consider developing a mechanism by which respondents could demonstrate to the courts that they have complied with the order to surrender firearms. This could include the use of an instruction sheet for respondents developed in conjunction with law enforcement.
- ☐ District and Superior Court judicial officers, and law enforcement, only allow third party transfers of firearms under limited conditions and vetting of the party receiving the firearms. Model practices should be explored to see how other jurisdictions handle this matter, which could include a practice of requiring the third party to sign an affidavit of receipt for third-party transfers.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims’ access to information about and linkages to domestic violence advocacy services.

**Gap #5: Multiple practices and procedures around service and process of protection orders place victims at risk at a time when the need for safety is actually heightened.**

The Audit Team recommends that:

- ☐ District and Superior Courts and law enforcement agencies review the checklists developed for law enforcement and the courts in the 2010 King County, WA Domestic Violence Initiative Protective Order Model Guidelines. These checklists can be especially helpful with service issues.
- ☐ District and Superior Courts identify ways to increase ability to identify which law enforcement agency should receive the order for service and entry.
- ☐ District and Superior Courts fax all orders, rather than mail, at minimum, and consider electronic transmissions to Whatcom County law enforcement agencies after discussion with law enforcement executives about this option.

---

<sup>62</sup> *Now That We Know: Findings and Recommendations from the WA State Domestic Violence Fatality Review*, December 2008, WA State Coalition Against Domestic Violence



- ☐ District and Superior Courts ensure law enforcement receives copies of ROS (Return of Service) for entry into databases, when those are submitted directly to the court by private parties or process servers.
- ☐ Superior Court Administrator/County Clerk and law enforcement records staff discuss the concern with validation issues and develop a back-up resource for records when needed.
- ☐ Law enforcement agencies make available and distribute SAVIN Protective Order brochures, and ensure that any petitioner who brings protection order paperwork for service receives a brochure.
- ☐ Courts, domestic violence agencies and law enforcement agencies review all written informational material on protection orders to ensure it is accurate regarding service and enforcement.
- ☐ Law enforcement agencies identify ways to increase round the clock data entry for service notation of orders in WACIC/NCIC.
- ☐ Law enforcement agencies review the practice of not serving notice of hearings without an order, and consider providing that service for domestic violence protection order hearings.
- ☐ Law enforcement agencies develop written procedures for service of protection orders using the Ferndale Police Department procedures or the 2010 King County, WA checklists noted above for examples. The procedures should consider the inclusion of the items below:
  - ☐ Check histories on both parties
  - ☐ Contact petitioner if able
  - ☐ Read documents to understand risk
  - ☐ Read documents to determine what action may need to be taken (vacate residence, civil standby, confiscation of weapons)
  - ☐ Verify respondent and serve
  - ☐ Review contents of order with respondent and take any action as required by order
  - ☐ Document response of respondent and file a report on the service
  - ☐ Contact records that service has been made
  - ☐ Contact petitioner that service has been made
  - ☐ Complete the Return of Service form
  - ☐ If service was not accomplished, document service attempt and forward to court
- ☐ Whatcom County Jail corrections staff and Assigned Counsel staff follow the written procedures developed by law enforcement for service of orders per Safety Audit recommendations when serving domestic violence protection orders.
- ☐ Law enforcement agencies carefully review contacting the respondent prior to service of an order, and limit this practice, if at all possible, to those situations where the petitioner has been contacted ahead of time for safety planning and risk assessment.
- ☐ Safety of the victim should be considered the highest priority at all times.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.

**Gap #6: Assessment of the context, severity and impact of violence and implications for risk, danger and safety for the petitioner is not consistently addressed throughout the protection order process.**

The Audit Team recommends that:

- ☐ Court staff, law enforcement and domestic violence agencies receive ongoing training on stalking and sexual assault within domestic violence and incorporate training into standard practices.
- ☐ Law enforcement agencies develop written procedures for service of protection orders that ensure risk factors are reviewed and taken into account.
- ☐ Court staff, law enforcement and domestic violence agencies receive ongoing training on current research and findings on domestic violence risk and lethality factors, followed by incorporating the risk information into written practices and procedures.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.

**Gap #7: Some petitioners experience multiple barriers in accessing the protection order process, increasing the difficulty and impacting the courage it takes to initiate and follow through with the process.**

The Audit Team recommends that:

- ☐ Courts, domestic violence and law enforcement agencies seek feedback from members of diverse community groups to help identify any barriers to access to the protection order process.
- ☐ Courts, law enforcement and domestic violence agencies expand and strengthen victims' access to information about and linkages to domestic violence advocacy services.

**The Bellingham-Whatcom County Commission Against Domestic Violence provides leadership in the community's effort to reduce and prevent domestic violence.**

### **Commission Members: 2011**

Laurie Alexander  
Pat Buchinski  
Karen Burke  
Regina Delahunt  
Mary Dumas  
William Elfo  
Sheri Emerson  
Nikki Finkbonner  
Kirsten Hammer  
Joan Hoisington  
Gary Jensen  
Rebecca Johnson

Michael Knapp  
Jon Komorowski  
Sherry Mallory  
Dave McEachran  
Linda Quinn  
Todd Ramsay  
Becky Skaggs  
Linda Storck  
Dan Story  
Cherie Stutesman  
Bruce Van Glubt  
Greg Winter

### **Commission Staff**

Susan Marks, Director  
Sue Parrott, Program Supervisor  
Juliet Thompson, Program Coordinator  
Meaghan Connell, Administrative Assistant

