

A Measure of Court Response to Requests for Protection

Steve Basile^{1,2}

Are male victims of domestic violence provided the same protections as female victims? With increasing entanglement of custody and domestic violence law, the answer to this question is critical for fathers embroiled in disputes where allegations are sometimes made to secure custody of children. All non-impounded requests for Abuse Prevention Orders initiated in Massachusetts' Gardner District Court, in the year 1997, involving opposite gender litigants were analyzed to determine if court response to the associated allegations is affected by the gender of those litigants. These orders were previously examined and male and female defendants were found similarly abusive. By studying the characteristics of each case, and overall court response at court hearings, a determination is made concerning any evident gender trends in the aggregate court response to requests for protection. Despite gender-neutral language of abuse prevention law (M.G.L. c. 209A), application of that law favors female plaintiffs.

KEY WORDS: domestic violence; abuse prevention order; physical aggression; psychological aggression; court response.

Massachusetts' law considers any assault in a domestic relationship an act of domestic violence regardless if it results in injury. An assault does not even require physical contact, but only the intent to cause physical harm. Consequently, an injury is not a requirement for an act of domestic violence. Physical strength of the victim is inconsequential. Similarly, because it is a crime to assault a partner in a domestic relationship even if that person does not sustain injury, we must take seriously all assaults. The fact that men are usually bigger and stronger than their partners may make them less susceptible to injury but does not make them less likely to be domestic violence victims. However, social norms suggest that men are seldom victims of domestic violence. Few services are available to male victims. It is unclear whether our courts are affected by these social norms, responding differently to male vs. female requests for protection.

Many studies have examined court response to overall or female requests for protection. (Bazawa *et al.*, 1999;

Harrell *et al.*, 1993; Harrell & Smith, 1996; Horton *et al.*, 1987; Kaci, 1992; Klein, 1994; Gondolf *et al.*, 1994). In contrast, research that examines court response to male requests for protection or that compares court response to male vs. female requests is virtually non-existent. Often, research that examines court response to requests for protection systematically excludes any study of male requests.

This research examines the court's response to similar allegations made by male and female victims of domestic abuse to compare and contrast court response to these allegations across gender boundaries. It is hypothesized that our courts are not immune from social norms and that despite gender neutral language of (M.G.L.c. 209A), will exhibit differing tendencies when responding to male vs. female requests for protection.

METHOD

Design

This paper is the second in a two-part analysis. The first part, presented in "Comparison of Abuse Alleged by Same- and Opposite-Gender Litigants As Cited in

¹Fatherhood Coalition, Milford, Massachusetts.

²To whom correspondence should be addressed at North Central Chapter, Fatherhood Coalition, 29 Harrington Road, Westminster, Massachusetts 01473; e-mail: SteveBasile@comcast.net.

Requests for Abuse Prevention Orders” (Basile, 2004), measured the level and type of violence alleged by male and female plaintiffs who asked for *Abuse Prevention Orders*. An Abuse Prevention Order (M.G.L. c. 209A) is a Massachusetts’ civil court order designed to protect victims of domestic violence. Although a civil order, its violation is a criminal offense, punishable by 2.5 years in prison. The research found male and female defendants in these cases known to the court were almost equally abusive. The second part, presented here, measures the court’s response to these same allegations. By measuring how the court responds to similar male and female allegations, gender differences in that response is determined. Examination of living and parenting status is also conducted and compared to the effect of gender on court response to see if living status, parenting status, or gender has the greatest effect.

Massachusetts’ domestic violence victims can first request protection from abuse at an *Ex Parte Hearing* before a district court judge. The defendant is usually not present during this hearing and therefore does not have the opportunity to defend him or herself. At the *Ex Parte Hearing*, a judge can issue an emergency Abuse Prevention Order. Within 10 days of the initial request for protection a judge may allow another hearing, called a *Ten-day Hearing*. This hearing is mandatory if an Abuse Prevention Order was granted at the *Ex Parte Hearing*. At the *Ten-day Hearing* defendants have the first opportunity to present a defense. At this time a judge must decide if an existing order is to be extended or a new order granted. Abuse Prevention Orders issued at *Ten-day Hearings* usually stay in effect for 1 year. This paper uses the term *Ex Parte Abuse Prevention Order* to distinguish an order issued at an *Ex Parte Hearing* from one issued at a *Ten-day Hearing*. The term *Abuse Prevention Order* is used to describe an order granted, or extended, at a *Ten-day Hearing*.

By studying characteristics of each case involving litigants of opposite gender, and overall court response at associated *Ex Parte* and *Ten-day Hearings*, we determine if there are evident gender trends in aggregate court response to requests for protection involving opposite gender litigants. An examination of gender trends is conducted, under varying conditions such as the litigants’ parenting or living status. On one level we examined how the court responded to each request. A number of options are available to a judge. At another level, the degree of protection given to plaintiffs who successfully obtained protection is examined. Because the focus involves cases where litigants are of opposite gender, cases involving litigants of the same gender are not examined.

The level of protection secured by the plaintiff is determined from a standard set of options available to judges. It is the judge’s discretion that determines which restrictions are levied upon a defendant. Four of these options, or variables, which comprise a descriptive *Profile* of each granted protective order, are examined. In addition, a fifth profile item that does not involve the court’s response but police involvement, or response to the original events leading to the request for protection, is also included.

Data Collection

The study involves an examination of all cases of domestic violence documented by accessible Abuse Prevention Orders filed in Gardner District Court in 1997. All consecutive requests for protection in that court that are not impounded and initiated between January 1, 1997 and December 31, 1997 are included. Some cases are inaccessible because a judge under certain circumstances can block public access to an Abuse Prevention Order docket, by impounding that docket. Data is primarily collected from three forms usually found in each docket, the *Docket Log*, the *Complaint for Protection from Abuse* and the *Abuse Prevention Order* if granted.

Docket Log

This form is modified each time an item is added to, or modified in, a docket. It is a history of each case. Some of this history information is used to determine how a judge responds to each request for protection at *Ex Parte* and *Ten-day Hearings*.

Complaint for Protection from Abuse

This form is used to request protection from the court. An attached affidavit and a series of checkboxes describe allegations of abuse justifying each request for protection. The form contains information describing who the litigants are, their relationship, and their residence at the time of the complaint. It also indicates whether the litigants are parents of common children.

Abuse Prevention Order

Section A of the form contains a list of standard restrictions that the judge can levy upon the defendant. A subset of these is used to construct a profile of each granted protective order. Sections C, D, E and F of this form

contain information about the granting, modification, extension, and vacating of each Abuse Prevention Order. This information along with that found in the Docket Log is used to determine what action the judge took at each hearing.

Population

Gardner District Court services the city of Gardner and a number of surrounding North Central Massachusetts' towns. The majority of plaintiffs were Gardner residents (62%), but others lived in the surrounding towns of Templeton, Westminster, Hubbardston, Philipston, Baldwinville, Otter River, and elsewhere. According to the 1990 census, Gardner is a medium-sized city with a population of 20,125. It is predominantly white (96%), with a population of 19,290 whites, 316 African-Americans, 19 American Indians, and 239 Asians. Only 2%, or 439 people, are of Hispanic origin. Surrounding towns are even less racially diverse with a white population approaching 100% and a Hispanic population dropping to less than 1%.

Gardner is also home to Gardner State Prison. Relatively low housing costs enable family and acquaintances of prisoners to more easily relocate to the area. Some may retain their residence with ex-offenders after their release. Because of this, the prison may have the effect of drawing a criminal element to the area. If, and to what extent this occurs, is unknown.

Two relationship types (MF, FM) are defined from the genders of the primary plaintiff and defendant. Relationship type MF involves a case with a male plaintiff and female defendant. Conversely, relationship type FM involves a female plaintiff and male defendant. Cases are drawn from the 406 Abuse Prevention Orders issued by Gardner District Court in 1997; 24 of which were not examined because they are impounded by the court and therefore inaccessible. An additional 24 cases were not included because the plaintiff did not request protection for him or herself. This was done because it is impossible to classify the primary plaintiffs' gender when the order is filed only on behalf of multiple children of differing gender.

Variables

Ex Parte Hearing

Ex Parte analysis examines three possible responses available to a judge considering a plaintiff's request for

an Abuse Prevention Order at an Ex Parte Hearing. First, a judge can *deny* the request. If the request is denied, the order is not granted and the case is closed. Second, a judge can *defer* the request. In this case the judge also does not grant an emergency Ex Parte Abuse Prevention Order, but schedules a Ten-day Hearing where the case is again presented in the presence of the defendant who now has the ability to present a defense. Third, a judge can grant the Ex Parte Abuse Prevention Order.

In the rare case that both the plaintiff and defendant are present, the Ex Parte Hearing can be bypassed altogether and a Ten-day Hearing can be conducted immediately. Any case that involves a request that results in an immediate Ten-day Hearing is eliminated from the Ex Parte analysis and instead included in the examination of court response at Ten-day Hearings.

Ten-day Hearing

A Ten-day Hearing to decide if a request for an Abuse Prevention Order is to be granted must be conducted within 10 days of the initial request. At the Ten-day Hearing defendants have the first opportunity to defend themselves against the charges.

Ten-day analysis examines five outcomes possible at Ten-day Hearings. First, should the plaintiff not appear, the case is usually *dismissed*. In rare circumstance, a judge may reschedule (*continue*) the Ten-Day Hearing if the plaintiff notifies the court that they are not able to appear, or if the judge decides to bring the parties back again for another hearing at a later date before issuing a finding. This analysis uses the result of the final non-continued Ten-day Hearing. There were just two continued cases in our population. Second, a judge can *deny* the request. This response is only possible if no order was granted at an earlier Ex Parte Hearing. Third, the order can be *judge vacated*. In this case the judge decides not to extend an Ex Parte Abuse Prevention Order that was granted at an earlier Ex Parte Hearing. Fourth, the order can be *plaintiff vacated*. In this case the plaintiff requests that an already existing Ex Parte Abuse Prevention Order not be extended. In these first four cases, a new order, or an extension to an already existing order, is not granted and the case is closed. Lastly, a judge can grant a new Abuse Prevention Order. In this circumstance the case remains active.

Much of the Ten-day Hearing analysis excludes dismissed and plaintiff vacated cases. This is to focus the analysis on those cases where the plaintiff pursues their request for protection, or the set of cases where the court must decide the outcome.

Table I. Abuse Prevention Order Profile

Item	Description
A2	Defendant ordered not to contact the plaintiff
A3	Defendant ordered to immediately leave and stay away from plaintiff's residence
A6	Custody of children is awarded to the plaintiff
A12	Defendant ordered to immediately surrender guns, ammunition, gun licenses and FID cards
A14	Police records are on file

Protective Order Profile

A profile of each granted Abuse Prevention Order is derived from its restrictions. The total population of Abuse Prevention Orders granted is examined. No effort is made to segregate orders granted at Ex Parte Hearing from those granted at Ten-day Hearings. This is done for two reasons. First, breaking down population by hearing type dilutes it to the point where many of the calculations become insignificant. Second, it is nearly impossible to determine which restrictions were levied at which hearing since orders granted at Ex Parte Hearings are often modified at Ten-day Hearings by crossing out some items and adding additional ones. Although modifications are often documented in margins and in Sections C, D and E of the Abuse Prevention Order, it is often too difficult to determine from a final version of the document when restrictions were added and removed. Table I shows five items comprising an Abuse Prevention Order Profile.

Each item is taken from Section A of the Abuse Prevention Order. The numbering scheme found in the *Item* column matches the numbering scheme found on the order. Items A2, A3, A6, and A12 are direct restrictions placed on defendants. Item A14 involves police involvement. This is not a restriction levied by the court but is included because it is an important characteristic.

Profile item A2 restricts the defendant from contacting the plaintiff. They are restricted from contacting them in person, by telephone, by letter, through a third party, or by any other means. They are even in violation of this provision if contact is accidental or contrived. A defendant tricked or persuaded by the plaintiff to contact them is still in violation. This is possible because under c. 209A no distinctions are made as to the circumstances of a violation of the no-contact provisions.

Profile item A3 orders the defendant to immediately leave the plaintiff's residence. This order can be issued even if the defendant resides with the plaintiff. A defendant can even be evicted if they jointly or solely own the residence where both parties reside. Evicted defendants are usually given opportunity to collect personal belong-

ings in the presence of a police officer if they explicitly ask the court for permission.

Profile item A6 specifies that custody of a minor child be awarded to the plaintiff. The defendant at this point loses custody of their children. This is a temporary order since custody issues are handled in Probate Court. Probate Court can order a plaintiff to go back into District Court and ask this restriction be removed. However, Probate Court is unlikely to overturn such an award in the short term, since a District Court judge has already determined that abuse was more likely than not. Since custody battles fought in Probate Court routinely take from 1.5 to 2 years, custody arrangements imposed via Abuse Prevention Orders become very hard to overturn since children live with the plaintiff during this interim period. Switching living arrangements of children after having been acclimated to living with the plaintiff for this long period of time is usually considered not in the children's best interest by the courts. Because custody of children is often effectively determined when custody is awarded in District Court via an Abuse Prevention Order, such an order often has enormous consequence for both the defendant and their children.

Profile item A14 specifies if police records are on file, which indicate if police were involved. This item provides insight about which cases the police are and are not involved in.

Statistical Analysis

The sample is also a population because it includes all non-impounded requests during a 1-year time period. All orders issued in a year were collected to eliminate sampling error and to avoid seasonal anomalies. Statistics are derived from 2×2 contingency tables, calculated via Fisher's Exact Test (two-tail).

RESULTS

Analysis of court response at Abuse Prevention Order Hearings finds the vast majority of requests for protection are granted, especially when examining plaintiff

Table II. Court Response at Ex Parte Hearing by Gender

Response	Male plaintiff (<i>N</i> = 44) (%)	Female plaintiff (<i>N</i> = 238) (%)	<i>p</i>
Deny	11	5	<i>ns</i>
Defer	23	5	0.0003
Grant	66	91	0.00006

Note. *df* = 1; *p*: probability according to Fisher's Exact Test (two-tail), *ns*: not significant.

Table III. Court Response at Ten-Day Hearing by Gender

Response	Male plaintiff (N = 38) (%)	Female plaintiff (N = 231) (%)	p
Dismiss	11	23	ns
Deny	16	1	0.0003
Judge Vacate	8	3	ns
Plaintiff vacate	8	6	ns
Grant	58	67	ns

Note. *df* = 1; *p*: probability according to Fisher’s Exact Test (two-tail), *ns*: not significant.

who followed through with their request. However, this was especially true for female plaintiffs. Table II shows that at Ex Parte Hearings, female plaintiffs were far more successful than male plaintiffs.

Female requests were granted 91% of the time while male requests were granted only 66% of the time (Fisher’s Exact Test (two-tail), *p* < 0.001). Inequality is primarily attributed to deferrals. Male plaintiffs were more than four times as likely to have a decision on their case deferred until a Ten-day Hearing was held (Fisher’s Exact Test (two-tail), *p* < 0.001). Deferring a decision often discourages a plaintiff from further pursuing their request. If a decision is deferred, a plaintiff may view the court as unresponsive to their request for immediate protection. At this point they may decide not to take additional time from work to attend the Ten-day Hearing. Also, if a defendant is allowed to contact the plaintiff during the time preceding a Ten-day Hearing, a defendant may discourage a plaintiff from pursuing their request.

Analysis of the overall response of the court to requests at Ten-day Hearings, presented in Table III, shows that the most striking gender difference is the number of requests that are denied. Male requests were denied 16% of the time compared to 1% for female plaintiffs (Fisher’s Exact Test (two-tail), *p* < 0.001). Also, a large number of cases were dismissed because the plaintiff failed to appear or because they explicitly asked the judge to vacate the order. Cases involving female plaintiffs were dismissed or plaintiff vacated 29% of the time compared to 19% of the time for cases involving male plaintiffs.

Analysis of court response when a plaintiff pursues their request, presented in Table IV, shows that a female plaintiff who pursues their request at a Ten-day Hearing is less likely to have their request denied or vacated by the judge, and more likely to have their request granted than are their male counterparts. Females acquired Abuse Prevention Orders 94% of the time when they pursued their requests at Ten-day Hearings while males who pursued their requests acquired protection only 71% of the time (Fisher’s Exact Test (two-tail), *p* < 0.001).

The impact of living and parenting status on the court response to requests for protection at Ex Parte and Ten-day Hearings is summarized in Tables V and VI. Litigants who lived together at the time of the complaint, and who have common children, are defined as *parents* in this analysis. A litigant is not considered a parent if they have a child, but no common child with the opposing litigant in the case. Also, only those litigants who currently live together are considered. This subset focuses on how protective orders affect intact families. Specifically, custody awards of minor children are examined. However, some of these children may not be under the age of 18 years. The forms contain a checkbox, which is used if the plaintiff has common children with the defendant. In most cases there is no information about whether they are minor children unless there is a custody award. Because of this, the total number of cases involving minor children, and the number of cases where there is not a custody award is likely to be overestimated.

The data presented in Tables IV–VI is examined to compare the impact of living and parenting status, to the impact of gender on court response when the plaintiff pursues their request. This data excludes those cases that were dismissed at a Ten-day Hearing due to the plaintiff’s failure to appear, or that were vacated at a Ten-day Hearing because of a plaintiff’s request. The comparison reveals that the plaintiff’s gender is, by far, the greatest predictor of whether the court will grant an Abuse Prevention Order.

Male plaintiffs are 25% points or 27% (Fisher’s Exact Test (two-tail), *p* < 0.001) less likely at Ex Parte Hearings and 23% points or 24% (Fisher’s Exact Test (two-tail), *p* < 0.001) less likely at Ten-day Hearings to

Table IV. Court Response by Gender When Request Pursued

Response	Ex Parte Hearing			p	Response	Ten-day Hearing		
	Male plaintiff (N = 44) (%)	Female plaintiff (N = 238) (%)				Male plaintiff (N = 31) (%)	Female plaintiff (N = 164) (%)	
Deny	11	5		ns	Deny	19	2	0.0006
Defer	23	5		0.0003	Judge Vacate	10	4	ns
Grant	66	91		0.00006	Grant	71	94	0.0006

Note. *df* = 1; *p*: probability according to Fisher’s Exact Test (two-tail), *ns*: not significant.

Table V. Court Response by Living Status When Request Pursued

Response	Ex Parte Hearing			Response	Ten-day Hearing		
	Non-cohabiting (N = 175) (%)	Cohabiting (N = 107) (%)	p		Non-cohabiting (N = 134) (%)	Cohabiting (N = 61) (%)	p
Deny	7	3	ns	Deny	7	0	0.0593
Defer	8	7	ns	Judge Vacate	6	3	ns
Grant	85	91	ns	Grant	87	97	0.0404

Note. *df* = 1; *p*: probability according to Fisher's Exact Test (two-tail), *ns*: not significant.

be granted an Abuse Prevention Order than are their female counterparts. In contrast, plaintiffs who do not live with the defendant are 6% points or 7% (Fisher's Exact Test (two-tail), $p > 0.05$) less likely at Ex Parte Hearings and 10% points or 10% (Fisher's Exact Test (two-tail), $p < 0.05$) less likely at Ten-day Hearings to be granted protection when compared to those plaintiffs who live with the defendant. Also, cohabiting plaintiffs who are not parents are 3% points or 3% (Fisher's Exact Test (two-tail), $p > 0.05$) more likely to be granted protection at an Ex Parte Hearing and 6% points or 6% (Fisher's Exact Test (two-tail), $p > 0.05$) less likely to be granted protection at a Ten-day Hearing when compared to those cohabiting plaintiffs who are parents.

Gender is also, by far, the greatest predictor of whether the court will defer a request made at an Ex Parte Hearing until a Ten-day Hearing is held. Male requests are 18% points or 360% (Fisher's Exact Test (two-tail), $p < 0.001$) more likely to be deferred than are similar requests made by their female counterparts. In contrast, living status and parenting status each have only an insignificant one-percentage point effect on the probability of a deferral.

Examination of granted Abuse Prevention Orders shows that in general, male plaintiffs were less likely to receive protections than were female plaintiffs. It also shows that plaintiffs who lived with the defendant were generally less likely to receive protections than were those plaintiffs who did not, and that parents were generally more likely to acquire protections than were non-parents. Gender, as

illustrated in Table VII, had by far the greatest impact on whether the court issued more severe restrictions on the defendant. The plaintiff's parenting status had the least impact on acquired restrictions, while the plaintiff's living status had a greater impact than parenting status.

The difference between Abuse Prevention Orders granted to male and female plaintiffs was statistically significant (Fisher's Exact Test (two-tail), $p < 0.05$) for all profile items except for orders to stay away from the plaintiff's residence (A3). The most significant difference was found with awards of custody (A6). Female plaintiffs were 288% more likely to receive custody of children. Male plaintiffs only received a custody award 8% of the time compared to 31% of the time for female plaintiffs. However, male plaintiffs simply did not secure long-term custody of their children with Abuse Prevention Orders. In our population a couple of male plaintiffs were temporarily awarded custody of minor children at Ex Parte Hearings, but none were awarded custody at a Ten-day Hearing, where the order usually stays in effect for a year.

Male plaintiffs were also 21% points, or 32%, less likely to have the judge order the defendant to surrender any firearms (A12). This was true even though male plaintiffs in this population more frequently alleged that women wielding dangerous weapons attacked them (Basile, 2004). Police were also 100% more likely to have been involved (A14) if the plaintiff was female. Police were involved 44% of the time if the plaintiff was female but involved only 22% of the time if the plaintiff was male. From our data, it is impossible to tell if police were less

Table VI. Court Response by Parenting Status for Cohabiting Litigants When Request Pursued

Response	Ex Parte Hearing			Response	Ten-day Hearing		
	Non-parent (N = 52) (%)	Parent (N = 55) (%)	p		Non-parent (N = 35) (%)	Parent (N = 26) (%)	p
Deny	2	4	ns	Deny	0	0	ns
Defer	6	7	ns	Judge Vacate	6	0	ns
Grant	92	89	ns	Grant	94	100	ns

Note. *df* = 1; *p*: probability according to Fisher's Exact Test (two-tail), *ns*: not significant.

Table VII. Protective Order Profile

Item	Male plaintiff (<i>N</i> = 37) (%)	Female plaintiff (<i>N</i> = 238) (%)	<i>p</i>
By gender			
A2	81	94	0.0128
A3	84	92	<i>ns</i>
A6	8	31	0.0029
A12	65	86	0.0039
A14	22	44	0.0114
By living status			
	Non-cohabiting (<i>N</i> = 167) (%)	Cohabiting (<i>N</i> = 108) (%)	<i>p</i>
A2	96	87	0.01
A3	94	86	0.032
A6	26	31	<i>ns</i>
A12	87	77	0.0345
A14	35	51	0.0086
By parenting status for cohabiting litigants			
	Non-parent (<i>N</i> = 56) (%)	Parent (<i>N</i> = 52) (%)	<i>p</i>
A2	89	85	<i>ns</i>
A3	88	85	<i>ns</i>
A6	n/a	56	n/a
A12	77	77	<i>ns</i>
A14	48	54	<i>ns</i>

Note. *df* = 1; *p*: probability according to Fisher’s Exact Test (two-tail), *ns*: not significant, n/a: not applicable.

responsive to allegations of domestic violence committed against males, or if male plaintiffs were less likely to call the police for help. Males may not have called the police because they are traditionally not conditioned to think of themselves as victims of domestic violence, or because they feared that they may be arrested if they had used physical force to defend themselves.

Statistical difference (Fisher’s Exact Test (two-tail), *p* < 0.05) between Abuse Prevention Orders granted to plaintiffs who live with the defendant and those who do not was found for all scale items except custody of children (A6). The most significant difference is a 46% gap found when comparing police involvement (A14). Police were involved 51% of the time if the plaintiff was living with the

defendant but involved only 35% of the time if they were not. No statistical difference between cohabiting parents and non-parents was found. No comparison is possible for custody of children (A6) since by definition custody can only be awarded to parents.

The impact of gender and parenting status for cohabiting litigants is also presented in Table VIII. The smaller sample size makes statistical significance more difficult. However, a couple of key observations are made. First, Judges were more likely to order a no-contact provision (A2) and to evict (A3) a male defendant from their home, especially if the male defendant was a parent. Second, police were less likely to be involved (A14) if the plaintiff who lives with the defendant was a male.

Table VIII. Protective Order Profile by Gender and Parenting Status for Cohabiting Litigants

Item	Cohabiting			Cohabiting parents		
	Male plaintiff (<i>N</i> = 16) (%)	Female plaintiff (<i>N</i> = 92) (%)	<i>p</i>	Male plaintiff (<i>N</i> = 5) (%)	Female plaintiff (<i>N</i> = 47) (%)	<i>p</i>
A2	69	90	0.0333	40	89	0.0216
A3	69	89	0.0453	40	84	0.0216
A6	13	34	<i>ns</i>	20	60	<i>ns</i>
A12	63	79	<i>ns</i>	40	81	<i>ns</i>
A14	25	55	0.031	20	57	<i>ns</i>

Note. *df* = 1; *p*: probability according to Fisher’s Exact Test (two-tail), *ns*: not significant, n/a: not applicable.

Judges evicted female defendants from their homes 69% of the time if they were living with the plaintiff and 40% of the time if they were living with the plaintiff whom they have had a common child with. In comparison male defendants were evicted 89% of the time if they were living with the plaintiff and 84% of the time if they were living with the plaintiff whom they have had a common child with. In other words, male defendants, who were living with the defendant, were 29% (Fisher's Exact Test (two-tail), $p < 0.05$) more likely to be the evicted and 110% (Fisher's Exact Test (two-tail), $p < 0.05$) more likely to be evicted if they also have had a common child with that plaintiff.

Similarly, male defendants, who were living with the plaintiff at the time of the complaint, were 21% points, or 29% (Fisher's Exact Test (two-tail), $p < 0.05$), more likely to be ordered not to contact the plaintiff. If the male defendant also had a common child with the plaintiff, they were 49% points, or 123% (Fisher's Exact Test (two-tail), $p < 0.05$), more likely to be ordered not to contact the plaintiff.

Police were 30% points, or 120% (Fisher's Exact Test (two-tail), $p < 0.05$), more likely to be involved if a plaintiff, who was living with the defendant, was female. A larger, 37% point, or 185%, gap is measured between male and female cohabiting parents, however because of the small sample size, the result is not statistically significant (Fisher's Exact Test (two-tail), $p = 0.1684$).

DISCUSSION

The present study hypothesized that courts are not immune from social norms and that despite gender neutral language of (M.G.L. c. 209A), would exhibit differing tendencies when responding to male vs. female requests for protection. The present study finds that in this one court setting, male victims of domestic violence were not afforded the same protections as their female counterparts. This inequality in court response occurred even though male and female plaintiffs were similarly victimized by their opposite gender defendants.

Of particular concern is an inequity in custody awards of minor children. None of the males in the study population were able to secure custody of their minor children for more than a few days. This finding validates the concerns of many male victims of domestic violence who are parents and who are locked into violent relationships because they fear the court will not grant them custody of their minor children and may even lose contact with their children if their female abuser files a counterclaim against them.

One can argue that the measured difference in custody awards, and in evictions of parents, might have been

much greater if more male victims asked the courts for protection. Males who did enter the system challenged stereotypes, which portray domestic violence as something male batterers do to their female victims, mothers as the primary caretakers of children, and an infrastructure and outreach geared to assist female victims. There were no "battered men advocates" in Gardner District Court, responsible for supporting and guiding male victims and their children through the system. Male parents who overcame these barriers might represent the most severe cases. In fact, the only two male parents in our sample who did temporarily acquire custody of their children at an Ex Parte Hearing did so because the mother had a long documented history of severe substance abuse.

In Massachusetts, gender inequality in court response to claims of abuse is of special concern to fathers. Because judges seldom overturn long-term "temporary" custody arrangements, and because of recent legislation inhibiting any parent from acquiring custody of their children in Probate Court if they are the targets of a relatively easy-to-acquire civil Abuse Prevention Order, the award of such an order usually determines permanent custody. The Jacques/Cohen bill (1998 Massachusetts H5621) which amends (M.G.L. c. 208, Sect. 31A, & M.G.L. c. 209C, Sect. 10(e)) inhibits anyone who has demonstrated a "pattern of abuse" from obtaining custody of one's children. However, "pattern of abuse" is derived from the definition found in Massachusetts' Abuse Prevention law (M.G.L. c. 209A, Sect. 1). It includes the controversial "placing one in fear" provision. Since the definition of abuse is similar to what is needed to secure an Abuse Prevention Order, the existence of such an order is documented proof of such a pattern of abuse. Consequently, false claims of domestic abuse are sometimes waged to secure custody of children.

Gender inequalities in the court response to claims of domestic violence is not surprising given the public perception of domestic violence and given the massive infrastructure in place for protecting women from domestic violence. Massive funding for outreach, training, and counseling is readily available for female victims through a variety of sources including the Violence Against Woman Act (VAWA, 1994). The Violence Against Woman Act II (VAWA II, 2000) will provide much more of this and includes \$925 million in STOP (Services for Training for Officers and Prosecutors) grants to train police officers and prosecutors, which will strengthen the current perceptions. Conversely, there is little public awareness and attention given to female initiated violence, and resources for male victims are scarce.

To address these inequalities, funding should be provided to monitor court response to requests for protection to ensure Abuse Prevention Orders are equitably applied.

Courts should take pro-active steps to address inequalities in court response, counseling, and outreach services. Domestic violence advocates and court officials should receive training on female initiated violence. They should be cognizant of the fact that female plaintiffs filing for protection may even be domestic batterers themselves. They must be trained to query plaintiffs about their own violent acts. They must look for signs that a plaintiff might be a batterer and may need treatment. Batterers often project their own behaviors as those of their victims. Not treating the female batterer may leave them vulnerable to eventual serious retaliation by their male partners.

In addition to these measures, the Massachusetts' Abuse Prevention law (M.G.L. c. 209A) should be revised to reduce their overuse and misuse, since improper use can have such a devastating effect on children and those unjustly targeted by them. One suggested modification to reduce their misuse is to change one of the criteria for obtaining them.

Currently under M.G.L. c. 209A, a plaintiff simply has to claim they *fear* the defendant. Fear is victim-defined and does not require an explicit action by the defendant. Since fear is a plaintiff's state of mind, this claim is nearly impossible to defend against. When claims of abuse involved in these cases were analyzed (Basile, 2004), it was discovered that 42% of all plaintiffs filed for protection only because they feared the defendant. Plaintiffs claimed that the defendant did not harm, attempted to harm, or force sexual relations.

This fear criterion should be changed to *threat*. While this change might seem subtle, it is significant because a threat involves an explicit action by the defendant and is well defined by current case law. Allegations of threatening behavior can be argued in a court of law. This change may discourage some misuse.

Finally, but most importantly, there must be a presumption of joint physical custody in the state of Massachusetts. The "*best interest*" of the child must be defined as full access to two loving parents. A substantial burden of proof must be required to prove in any particular case that joint physical custody is not in the best interest of the child because of some pattern of child abuse. The existence of a civil Abuse Prevention Order should not be sufficient to demonstrate this pattern. This would prevent much misuse of Abuse Prevention Orders filed in the context of a divorce or custody battle.

ACKNOWLEDGMENTS

This project could not have been completed without contribution from others. Thanks to James Clemence, Ron Deyo, and Mark Charalambous for copying court files. Thanks to Mark Brown, Ron Deyo, and Mark Saurhoffer for entering court files into the database. Thanks to Vicki Tyler, Patricia Friedman, Mark Charalambous, and Clara Basile for reviewing manuscripts for grammatical errors. Thanks to Dr. Murray A. Straus who reviewed early versions of the manuscript and gave guidance for further revisions. Thanks to Chief Justice Samuel Zoll who informed us of Administrative Directive I-89 and gave us permission to do this study. Thanks to Gardner District Court for graciously answering our requests to access over 400 Abuse Prevention Orders and for granting us conference room space to copy court documents. They were accommodating to what must have been an unusually large request for information.

REFERENCES

- Basile, S. (2004). Comparison of abuse alleged by same- and opposite-gender litigants as cited in requests for abuse prevention orders. *J. Fam. Violence* 19(1): 59–68.
- Bazawa, E., Byrne, J., Hotaling, G. T., and Klein, A. (1999, July). *Response to domestic violence in a pro-active court setting*. Final report presented to the National Institute of Justice, US Department of Justice, Washington, DC, NCJ No. 181427 C.2.
- Gondolf, E. W., McWilliams, J., Hart, B., and Stuehling, J. (1994). Court response to petitions for civil protection orders. *J. Interpers. Violence* 9: 503–517.
- Harrell, A., Smith, B., and Newmark, L. (1993). *Court Processing of Restraining Orders for Domestic Violence Victims*, The Urban Institute, Washington, DC.
- Harrell, A., and Smith, E. B. (1996). Effects of restraining orders on domestic violence victims. In: Buzawa, E., and Buzawa, C. (eds.), *Do Arrests and Restraining Orders Work?* Sage Publications, London, New Delhi.
- Horton, A. L., Simonidis, K. M., and Simonidis, L. L. (1987). Legal remedies for spousal abuse: Victim characteristics, expectations and characteristics. *J. Fam. Violence* 2(3): 265–279.
- Kaci, J. H. (1992). A study of protective orders issued under California's Domestic Violence Prevention Act. *Crim. Justice Rev.* 17(1): 61–76.
- Klein, A. (1994). *Re-abuse in a Population of Court-Restrained Male Batterers After Two Years: Development of a Predictive Model*. Unpublished doctoral dissertation, Northeastern University, Boston, MA.
- VAWA (1994). Title IV of the Crime Bill, U.S. Public Law 103-322, September 13, 1994.
- VAWA II (2000). VAWA reauthorization bill. United States H.R. 1248, S. 2787.