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INTIMATE PARTNER VIOLENCE:
ACCESS TO PROTECTION BEYOND THE PANDEMIC

*Rachel J. Wechsler**

65 B.C. L. REV. __ (forthcoming 2024)

Abstract: Civil protection orders are the most common legal remedy victims pursue in response to intimate partner violence (IPV). They are more empowering for victims than the criminal legal system because victims themselves drive the process, instead of prosecutors, and they offer more flexible and tailored relief. This Article argues that victims should be able to choose how they file petitions and participate in civil protection order hearings, and that judges should be required to honor those preferences absent good cause. This conclusion is driven by two new, original sets of empirical data collected from IPV survivors who have sought civil protection orders and legal services providers who assist victims with navigating the process.

The data from legal services providers provide a picture of court protective order procedures in jurisdictions across the country from before the pandemic, in the pandemic's early stages, and in the pandemic's advanced stages, once public health restrictions were generally lifted. This complements the rich data about the lived experiences of survivors who sought a protection order against their abuser during the pandemic in one of New York City's five family courts. Eighty-five percent of participants in this study are women of color, whose lived experiences are especially important to understand because they comprise a population that is disproportionately impacted by IPV.

The data indicate that IPV victims have diverse preferences with respect to method of participation in hearings, based on their varying needs, concerns, priorities, and circumstances. The current landscape of procedures across the country largely fails to account for this diversity by mandating a particular participation method or by allowing individual judges to do so in accordance with their own preferences. On the basis of the research results, this Article argues for codifying "accessible process pluralism" in state protective order statutes. This statutory framework would give petitioners the opportunity to indicate their hearing participation preference on the petition itself and require judges to follow these choices absent good cause, among other accessibility-focused provisions. By harnessing the innovations and lessons from the pandemic, this proposal promotes survivor empowerment and access to justice for both petitioners and respondents.

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INTIMATE PARTNER VIOLENCE: ACCESS TO PROTECTION BEYOND THE PANDEMIC

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INTRODUCTION

The COVID-19 pandemic spurred examination and adaptation of traditional legal processes at an unprecedented rate.¹ The concomitant increase in intimate partner violence² (IPV) has made examination of victims' access to civil protective orders (POs),³ the legal remedy they most commonly use in response to IPV,⁴ especially important. Closed courthouse

¹ NAT'L CTR. FOR STATE CTS., GUIDING PRINCIPLES FOR POST-PANDEMIC COURT TECHNOLOGY: A PANDEMIC RESOURCE FROM CCJ/COSCA 1 (2020), http://www.ncsc.org/__data/assets/pdf_file/0014/42332/Guiding-Principles-for-Court-Technology.pdf (“The COVID-19 pandemic is not the disruption courts wanted, but it is the disruption that courts needed: to re-imagine and embrace new ways of operating; and to transform courts into a more accessible, transparent, and user-friendly branch of government.”); Samuel V. Schoonmaker IV, *How the Judiciary Has Driven Innovation during the Pandemic*, 55 FAM. L. Q. 87, 87-88, 105-08, 118-22 (2022) (highlighting the pandemic’s role in motivating significant innovation and procedural reform within the judiciary, with a focus on family courts).

² ALEX PIQUERO ET AL., COUNCIL ON CRIM. JUST., NAT'L COMM'N ON COVID-19 & CRIM. JUST., DOMESTIC VIOLENCE DURING COVID-19: EVIDENCE FROM A SYSTEMATIC REVIEW AND META-ANALYSIS 3, 10 (2021); Prachi H. Bhuptani et al., *Characterizing Intimate Partner Violence in the United States during the COVID-19 Pandemic: A Systematic Review*, 24 TRAUMA, VIOLENCE & ABUSE 3220, 3222-30 (2023); UN WOMEN, MEASURING THE SHADOW PANDEMIC: VIOLENCE AGAINST WOMEN DURING COVID-19 6 (2021). Both ‘intimate partner violence’ and ‘domestic violence’ are used to refer to violence by one romantic partner against another. The latter term is broader than the former and is also used to describe violence by a family member against another family member related by blood or adoption. See LEIGH GOODMARK, DECRIMINALIZING DOMESTIC VIOLENCE: A BALANCED POLICY APPROACH VIOLENCE 157 n.1 (2018). However, IPV and domestic violence “are terms that are often used interchangeably in reference to IPV.” Briana Barocas, Hila Avieli & Rei Shimizu, *Restorative Justice Approaches to Intimate Partner Violence: A Review of Interventions*, 11 PARTNER ABUSE 318, 325 (2020).

³ In the IPV context, a PO is “an injunction or other order, issued by a tribunal under the domestic violence, family violence or anti-stalking laws of the issuing State, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to, another individual.” UNIF. INTERSTATE ENF'T OF DOMESTIC VIOLENCE PROT. ORDS. ACT § 2(5) (Nat'l Conf. Comm'rs Unif. State L. 2002).

⁴ See Jane K. Stoever, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders*, 67 VAND. L. REV. 1015, 1019 (2014) hereinafter, [Stoever, *Enjoining Abuse*]; Tara N. Richards, Alison Tudor, & Angela R. Gover, *An Updated Assessment of Personal Protective Order Statutes in the United States: Have Statutes Become More Progressive in the Past Decade?*, 24 VIOLENCE AGAINST WOMEN 816, 819 (2018) [hereinafter Richards, Tudor & Gover, *Updated Assessment*].

doors were both a major cause for concern for IPV victims⁵ in need of protection and an opportunity to reexamine access to justice for a population whose precarious safety and freedom of movement, as well as limited resources, have often posed obstacles to physical courtroom access long before and apart from the existence of COVID-19.⁶ Despite this reality, virtual procedures were only available in very few jurisdictions prior to the pandemic.⁷ And now that pandemic-related public health restrictions have been lifted, many jurisdictions have eliminated virtual participation options

⁵ The use of the term, “victim,” is complex and contested in scholarly and popular discourse. Some feminists have argued that “survivor” should be used instead of “victim” on the grounds that the latter stigmatizes women who have experienced violence as weak and passive, and the former highlights their strength and resistance. This conceptualization propelled a shift from the use of “victim” to “survivor” within the feminist discourse in the early 1980s. LIZ KELLY, *SURVIVING SEXUAL VIOLENCE* 159–60 (1988). However, the use of “survivor” has also been criticized as minimizing the trauma of gender-based violence and depriving the individual who has experienced it of support and sympathy when the need arises. *E.g.*, Monica Thompson, *Life After Rape: A Chance to Speak?*, 15 *Sexual & Relationship Therapy* 325, 330 (2000). Both terms have rightly been criticized as reductive and together representing a false dichotomy. *See, e.g.*, Jericho M. Hockett, Lora K. McGraw & Donald A. Saucier, *A “Rape Victim” by Any Other Name*, in *EXPRESSION OF INEQUALITY IN INTERACTION: POWER, DOMINANCE, AND STATUS* 81, 97–98 (Hanna Pishwa & Rainer Schulze eds., 2014). In reality, many individuals who have experienced gender-based violence identify differently within different contexts—utilizing one, both or neither of the terms in various settings and time periods in their lives. *See id.* at 85. In this Article, the terms “victim” and “survivor” are used interchangeably to refer to an individual who has experienced IPV and does not employ either term to suggest a particular identity, set of characteristics, or pattern of behavior for this individual. However, I recognize that both terms have their shortcomings.

⁶ *See* Christina M. Dardis et al., *Patterns of Surveillance, Control, and Abuse Among a Diverse Sample of Intimate Partner Abuse Survivors*, 27 *VIOLENCE AGAINST WOMEN* 2882, 2888, 2892, 2894–97, 2899–2901 (2021) (finding that 57% of an ethnically diverse sample of 246 IPV survivors had been surveilled by their abuser, such as through monitoring of their activities, whereabouts, and electronic devices); Jill Theresa Messing et al., *‘Not Bullet Proof’: The Complex Choice Not To Seek a Civil Protection Order for Intimate Partner Violence*, 27 *INT’L REV. VICTIMOLOGY* 173, 181–84 (2021) (finding substantial barriers to accessing civil POs, including “[n]o money, no way to get to court[,]” a belief that “court dates . . . would interrupt [their] lives[,]” and fear that an PO would increase their abuser’s violence in an empirical survey-based study conducted between 2012 and 2014 with 308 female IPV survivors who chose not to seek an PO); NAT’L CTR. FOR STATE CTS., *FACILITATING ACCESS TO PROTECTION ORDERS—TECHNOLOGY SOLUTIONS TO OVERCOME BARRIERS* 2 (2018), http://ccj.ncsc.org/_data/assets/pdf_file/0021/5808/facilitating-access-po.pdf [hereinafter NAT’L CTR. FOR STATE CTS., *FACILITATING ACCESS*] (highlighting challenges domestic violence survivors face when seeking access to a civil PO, including “[f]ear of potential increased danger and other harmful consequences of seeking help from the courts”).

⁷ *See infra* Section II.A, Figure 1. This conclusion is based on the results of a survey of legal services providers across the U.S. about PO procedures, which was conducted for this Article.

and have reverted to “business as usual.”⁸ But is “business as usual” really the best approach?

This Article argues that it is not, based on original empirical survey research with survivors of IPV who sought POs in New York City family courts during the pandemic and other scholarship on gender-based violence. Importantly, this Article also contends that jurisdictions committed to only or presumptively conducting virtual PO proceedings even beyond the pandemic have swung too far in the opposite direction. Both flawed approaches—mandating in-person participation and requiring virtual participation in all or nearly all cases—fail to account for the diversity of circumstances and stressors IPV victims must contend with, thereby rendering access to POs more difficult or even out of reach for a subset of victims.

The survey research conducted for this Article demonstrates these diverse participation preferences and reasons underlying them with both quantitative and qualitative data. In doing so, it provides strong support for a flexible, pluralistic approach that facilitates IPV survivors’ autonomy, access to protection, and empowerment. Based on this survey data and data from legal services providers across the country collected for this Article, I propose a statutory framework that codifies “accessible process pluralism” for civil PO procedures.⁹ Specifically, this statutory proposal would enable petitioners to choose how to file civil PO petitions and participate in hearings, and require judges to honor these preferences absent good cause.

The concept of process pluralism refers to having a variety of different processes available to choose from in our legal system to enable effective responses to diverse disputes and disputants.¹⁰ It “emphasizes the value of variability and flexibility in process design to allow tailoring for individual circumstances.”¹¹ This enhances access to justice because it affords those who are not able to navigate, or who would encounter difficulty navigating, particular legal processes to access justice through alternative

⁸ *Id.*

⁹ See *infra* Part IV. This proposal builds upon Andrea Schneider and her co-authors’ argument in favor of introducing process pluralism into the civil PO process in Milwaukee County, Wisconsin. Andrea Kupfer Schneider et al., *Remote Justice & Domestic Violence: Process Pluralism Lessons from the Pandemic*, 52 STETSON L. REV. 231 (2022). The present Article extends Schneider et al.’s argument by connecting process pluralism with empowerment theory and practice, distinguishing among different forms of virtual participation, and proposing a novel statutory framework to codify process pluralism within the PO process.

¹⁰ See Carrie Menkel-Meadow, *Peace and Justice: Notes on the Evolution and Purposes of Legal Processes*, 94 GEO. L. J. 553, 555 (2004); Orna Rabinovich-Einy, *Process Pluralism in the Post-COVID Dispute Resolution Landscape*, 10 TEX. A&M L. REV. 55, 57 (2022).

¹¹ Erin Ryan, *Negotiating Federalism*, 52 B.C. L. REV. 1, 129 (2011) (citing Carrie Menkel-Meadow, *Getting to “Let’s Talk”: Comments on Collaborative Environmental Dispute Resolution Processes*, 8 NEV. L. J. 835, 852 (2008)).

processes that are better suited to their needs, capabilities, and preferences.¹² For IPV victims who desire a civil PO against their abuser, being able to choose among multiple options for the method by which they file their petition and participate in hearings would increase access to this important tool against IPV. These filing and participation options should be easily accessible, especially given that most petitioners are pro se,¹³ and avoid requiring a formal motion or other potentially intimidating or burdensome step to secure. By facilitating the ability of these survivors to achieve their goal of obtaining a PO, accessible process pluralism contributes to their empowerment.

Empowering IPV survivors has long been a central goal of feminist anti-IPV advocacy and research.¹⁴ Experiencing IPV is disempowering and therefore survivor empowerment—essentially increasing survivors’ power, control, and self-efficacy within their lives—is seen as key to helping them to overcome IPV and its deleterious effects.¹⁵ Empowerment involves “the expansion of freedom of choice and action to shape one’s life.”¹⁶ This is closely interlinked with promoting individual autonomy and agency, based on the freedom and capacity to define and pursue one’s own ends.¹⁷ Thus, interventions that genuinely facilitate survivors’ ability to set and pursue “personally meaningful, power-oriented goals[,]”¹⁸ rather than substitute the goals of the state, service provider, counselor, or other ‘expert,’ are empowering for survivors.¹⁹

¹² Rabinovich-Einy, *supra* note 10, at 58.

¹³ Deborah Epstein & Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors’ Credibility and Dismissing Their Experiences*, 167 U. PA. L. REV. 399, 404 (2019).

¹⁴ See Leigh Goodmark, *Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases*, 37 FLA. ST. U. L. REV. 1, 31 (2009) [hereinafter Goodmark, *Autonomy Feminism*]; Lauren Bennett Cattaneo & Lisa A. Goodman, *What Is Empowerment Anyway? A Model for Domestic Violence Practice, Research, and Evaluation*, 5 PSYCH. VIOLENCE 84, 84 (2015); Lauren Bennett Cattaneo & Aliya R. Chapman, *The Process of Empowerment: A Model for Use in Research and Practice*, 65 AM. PSYCH. 646, 646 (2010); LISA A. GOODMAN & DEBORAH EPSTEIN, LISTENING TO BATTERED WOMEN 34 (2008).

¹⁵ See Cattaneo & Goodman, *supra* note 14, at 84; Cattaneo & Chapman, *supra* note 14, at 647-48, 652, 656.

¹⁶ THE WORLD BANK, EMPOWERMENT AND POVERTY REDUCTION: A SOURCEBOOK xviii (Deepa Narayan ed., 2002).

¹⁷ See Goodmark, *Autonomy Feminism*, *supra* note 14.

¹⁸ Cattaneo & Chapman, *supra* note 14, at 651-52.

¹⁹ *Id.*; Lauren Bennett Cattaneo, Jenna M. Calton & Anne E. Brodsky, *Status Quo Versus Status Quake: Putting the Power Back in Empowerment*, 42 J. CMTY. PSYCH. 433, 437-38 (2014); Cattaneo & Goodman, *supra* note 14, at 88, 90-91; Goodmark, *Autonomy Feminism*, *supra* note 14.

Empowerment is not just an idealistic theoretical construct or pie-in-the-sky idea; empirical research has demonstrated the tangible, positive effects of focusing on victim empowerment.²⁰ For example, a longitudinal study of IPV survivors found that the more empowered they felt in court, including during the civil PO process, the less depression they experienced and the higher their quality of life was months later.²¹ Another empirical study with a relatively large sample size found that empowerment is even more protective against PTSD symptomatology for IPV survivors residing in shelters than acquiring resources is.²² Likewise, the empowering statutory framework this Article proposes is likely to have a concrete, positive impact on IPV victims who wish to pursue a civil PO.

Through the presentation of new empirical research conducted with IPV survivors, this Article also contributes to the literature on gender-based violence survivors' lived experiences with legal systems, processes, and actors.²³ Moreover, it makes a contribution to the scholarship on the lived experiences of survivors of color,²⁴ who are disproportionately affected by

²⁰ Cattaneo & Goodman, *supra* note 14, at 85 (describing the findings from empirical studies on the impact of empowerment upon IPV survivors).

²¹ Lauren Bennett Cattaneo & Lisa A. Goodman, *Through the Lens of Therapeutic Jurisprudence: The Relationship Between Empowerment in the Court System and Well-Being for Intimate Partner Violence Victims*, 25 J. INTERPERSONAL VIOLENCE 481, 495-97 (2010) (collecting data three times over a six-month period from 142 female IPV victims who were seeking a civil PO and whose cases had prosecutorial merit, focusing on abuse, well-being, empowerment, and future legal system use variables).

²² Sara Perez et al., *The Attenuating Effect of Empowerment on IPV-related PTSD Symptoms in Battered Women Living in Domestic Violence Shelters*, 18 VIOLENCE AGAINST WOMEN 102, 105-07, 110 (2012) (collecting data from 227 residents of domestic violence shelters with validated self-report measures).

²³ See, e.g., Leigh Goodmark, *Telling Stories, Saving Lives: The Battered Mothers' Testimony Project, Women's Narratives, and Court Reform*, 37 ARIZ. ST. L. J. 709 (2005) (featuring first-person accounts from qualitative research with forty IPV survivors about their experiences with family courts); Julia Bradshaw et al., *Intimate Partner Violence Survivors' Perspectives on Coping with Family Court Processes*, 30 VIOLENCE AGAINST WOMEN 101 (2024) (presenting interview data from 214 IPV survivors about their lived experiences with family court custody proceedings); Rachel J. Wechsler, *Deliberating at a Crossroads: Sex Trafficking Victims' Decisions about Participating in the Criminal Justice Process*, 43 FORDHAM INT'L L. J. 1033 (2020) (analyzing in-depth interview data from 39 sex trafficking survivors concerning their lived experiences with criminal legal actors and their views about the criminal legal process).

²⁴ See, e.g., Laura J. Hickman & Sally S. Simpson, *Fair Treatment or Preferred Outcome? The Impact of Police Behavior on Victim Reports of Domestic Violence Incidents*, 37 LAW & SOC'Y REV. 607 (2003) (presenting interview data from 180 IPV survivors (two-thirds were women of color) who had experienced a police response to their IPV victimization about their satisfaction with police); Bernadine Y. Waller & Tricia B. Bent-Goodley, *"I Have to Fight to Get Out": African American Women Intimate Partner Violence*

IPV and are thus an important population on which to center research.²⁵ Research that gives a voice to survivors themselves is crucial to our understanding of how to effectively assist them and facilitate their empowerment. As feminist criminologists Mary Bosworth, Carolyn Hoyle, and Michelle Dempsey observe, “if women are to overcome abuse, control or oppression, whether at the hands of individual men or of the state, feminist academics must create knowledge of *their* experiences and *their* viewpoints, not simply report the voices of those charged either with supporting or punishing them.”²⁶ This Article contributes to this feminist endeavor.

The remainder of this Article proceeds in four parts. Part I reviews the historical foundations and value of civil POs for IPV victims. It critically analyzes the empirical literature on PO impact and effectiveness with a focus on drawing well-grounded conclusions in light of the relative methodological rigor of existing research. Part II discusses PO procedures and hearing participation methods before, during, and at the current advanced stage of the pandemic, after the lifting of pandemic-related public health restrictions. In doing so, it presents state- and/or county-level data from thirty-eight states to provide a snapshot of PO hearing procedures in jurisdictions across the country at various stages in relation to the pandemic. The vast majority of this data was collected from nearly sixty non-profit organizations providing legal services to IPV victims, in order to obtain an account of actual procedures on the ground, rather than only relying on formal legal sources such as statewide administrative orders. Part II concludes with an analysis of recent legislative efforts undertaken by several states to codify remote hearing options specifically within the civil PO context.

Next, Part III presents the results of original empirical survey research with sixty IPV survivors who petitioned for a civil PO in one of New York City’s five family courts and participated in at least one hearing during the

Survivors’ Construction of Agency, 38 J. INTERPERSONAL VIOLENCE NP4166 (2023) (analyzing in-depth interview data from thirty Black IPV survivors about their experiences seeking assistance, including from police and courts); Jill Theresa Messing et al., *Protection Order Use Among Latina Survivors of Intimate Partner Violence*, 12 FEMINIST CRIMINOLOGY 199 (2017) (discussing the lived experiences of Latina IPV survivors with police and their perspectives on POs based on survey data from 195 Latina survivors and interview data from 27 Latina survivors).

²⁵ See RUTH W. LEEMIS ET AL., CTRS FOR DISEASE CONTROL & PREVENTION, NAT’L CTR. FOR INJURY PREVENTION CONTROL, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2016/2017 REPORT ON INTIMATE PARTNER VIOLENCE 14 (2022); Emiko Petrosky et al., *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence – United States, 2003-2014*, 66 CTRS. FOR DISEASE CONTROL & PREVENTION MMWR 741, 742, 745 (2017).

²⁶ Mary Bosworth, Carolyn Hoyle & Michelle Madden Dempsey, *Researching Trafficked Women: On Institutional Resistance and the Limits to Feminist Reflexivity*, 17 QUALITATIVE INQUIRY 769, 773 (2011).

pandemic. This part examines survivors' experiences with and feelings about the PO process, their hearing participation preferences during and beyond the pandemic, and their recommendations about how to improve the PO process in general. Finally, Part IV envisions a survivor empowerment-based, pluralistic approach to the PO process. It proposes a statutory framework that includes affirmatively eliciting petitioners' hearing participation needs and preferences on the PO petition itself, rather than requiring a motion or other separate, affirmative step from the petitioner to request an alternative participation method. In addition, it limits judicial discretion to deny the petitioner a choice simply "as a result of a judge's individual preference for video[,] . . . phone" or in-person proceedings.²⁷ Through these types of provisions, the framework facilitates survivor access to POs as well as their empowerment during the PO process.

I. INTIMATE PARTNER VIOLENCE AND CIVIL ORDERS OF PROTECTION

The civil PO was developed with the IPV context specifically in mind and it is currently the most widely pursued legal remedy against IPV.²⁸ POs also exist within the criminal legal system and are routinely applied in criminal IPV cases.²⁹ However, civil POs are generally considered more empowering for victims because victims themselves initiate and have much more power to end the proceedings, unlike criminal POs, which prosecutors initiate and direct.³⁰ Indeed, it is not uncommon for criminal courts to issue criminal POs against IPV victims' wishes.³¹ Furthermore, the former "are

²⁷ See Alicia L. Bannon & Douglas Keith, *Remote Court: Principles for Virtual Proceedings during the COVID-19 Pandemic and Beyond*, 115 NW. U. L. REV. 1875, 1901 (2021).

²⁸ See *supra* note 6.

²⁹ Jeannie Suk, *Criminal Law Comes Home*, 116 YALE L.J. 2, 16-17 (2006).

³⁰ See Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse without Ending the Relationship?*, 29 CARDOZO L. REV. 1487, 1508 (2008); Jane K. Stoever, *Freedom from Violence, Using the Stage Model to Realize the Promise of Civil Protection Orders*, 72 OHIO ST. L. J. 303, 321 (2011) [hereinafter Stoever, *Freedom from Violence*]. However, some judges have at times refused to grant petitioners' requests to vacate an existing civil PO on victim safety and public policy grounds. Tamara L. Kuennen, "No-Drop" Civil Protection Orders: Exploring the Bounds of Judicial Intervention in the Lives of Domestic Violence Victims, 16 UCLA WOMEN'S L.J. 39, 41 (2007); Laurie S. Kohn, *The Justice System and Domestic Violence: Engaging the Case but Divorcing the Victim*, 32 N.Y.U. REV. L. & SOC. CHANGE 191, 225-34 (2008).

³¹ See, e.g., Goodmark, *Autonomy Feminism*, *supra* note 14, at 34 (describing a Colorado case in which prosecutors attempted to prosecute an IPV survivor for complicity on the grounds that she had contacted her partner, who was being prosecuted for IPV, in violation of a criminal protective order that the survivor did not want and had repeatedly requested be lifted); LEIGH GOODMARK, A TROUBLED MARRIAGE: VIOLENCE AND THE LEGAL SYSTEM

intended to be tailored to the needs of each victim[.]” whereas the latter must account for the interests of the general public, as represented through the prosecutor.³² This difference is reflected in the much wider range of relief available through civil POs as compared to criminal POs.³³ The latter typically contain boilerplate no-contact language, whereas the former usually feature tailored provisions based on the particular circumstances of each case, such as specific locations the respondent must avoid, counseling requirements, child custody, support, and visitation arrangements, and exclusive use of personal and residential property.³⁴

In addition to recognizing civil POs’ theoretical potential, it is important to gain insight into their real-world, practical impact for IPV survivors prior to examining the issue of their access to them. In other words, how can facilitating access to civil POs be justified before demonstrating the likelihood of their positive impact? For this initial step, Section B of this part critically reviews the landscape of empirical research analyzing the effects of civil POs, following a brief discussion of their historical development.

A. *Roots and Development of Protective Orders in the Intimate Partner Violence Context*

Injunctive decrees in the IPV context were uncommon until specific domestic violence statutes were passed beginning in the 1970s,³⁵ in response to feminist advocacy demanding a stronger governmental response to IPV.³⁶

162 (2012) (narrating a case in which the conditions of release set for an IPV defendant included a criminal PO prohibiting contact between him and the victim (and their son), and the judge denied the victim’s request to rescind the PO). Some states statutorily mandate the imposition of a criminal PO throughout IPV prosecutions and/or as a condition for pretrial release of IPV defendants. *See, e.g.*, COLO. REV. STAT. § 18-1-1001(1) (West 2023) (“There is created a mandatory protection order against any person charged with a criminal violation of any of the provisions of this title 18, which order remains in effect from the time that the person is advised of the person’s rights at arraignment or the person’s first appearance before the court and informed of such order until final disposition of the action.”); S.D. CODIFIED LAWS § 25-10-23 (2023) (“If bond for the defendant in any domestic abuse action is authorized, a condition of no contact with the victim shall be stated and incorporated into the terms of the bond.”).

³² *See* Goldfarb, *supra* note 30, at 1507-08; *see also* Suk, *supra* note 29, at 17.

³³ Stoeber, *Enjoining Abuse*, *supra* note 4, at 1044, 1069.

³⁴ *Id.*; *see also* EVE S. BUZAWA, CARL G. BUZAWA & EVAN STARK, *RESPONDING TO DOMESTIC VIOLENCE: THE INTEGRATION OF CRIMINAL JUSTICE AND HUMAN SERVICES* 283 (4th ed. 2012); Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1131 (2009).

³⁵ BUZAWA, BUZAWA & STARK, *supra* note 34, at 275.

³⁶ *See* Janice Grau, Jeffrey Fagan & Sandra Wexler, *Restraining Orders for Battered Women: Issues of Access and Efficacy*, in *CRIMINAL JUSTICE POLITICS AND WOMEN: THE*

Prior to the enactment of these statutes, IPV victims typically had to initiate divorce proceedings to access a PO.³⁷ Many sources assert that Pennsylvania's Protection from Abuse Act of 1976 was the first statute to introduce civil POs for IPV victims,³⁸ but this is not actually the case—New York and D.C. preceded it in 1962 and 1970, respectively.³⁹ New York's statute strongly influenced the development of the Pennsylvania act,⁴⁰ and the latter was highly influential in its own right, motivating many other states to enact similar civil PO legislation.⁴¹

By the early 1990s, every state had passed statutes enabling victims to seek this type of relief.⁴² But variation has long existed among these statutes, with certain jurisdictions providing victims with more comprehensive protection than others, though states have increasingly adopted certain victim-friendly provisions in recent years.⁴³ These include provisions giving full faith and credit to POs issued in other state or tribal jurisdictions, using gender-neutral language, providing for petitioner address confidentiality, and limiting the issuance of mutual POs to cases in which the parties both apply for POs and there is proof of mutual abuse.⁴⁴ Civil PO statutes across the country have come a long way both substantively and

AFTERMATH OF LEGALLY MANDATED CHANGE 13, 14 (Claudine SchWeber & Clarice Feinman eds., 1985); SUSAN SCHECHTER, *WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN'S MOVEMENT* 163 (1982).

³⁷ Molly Chauduri & Kathleen Daly, *Do Restraining Orders Help? Battered Women's Experience with Male Violence and Legal Process*, in *DOMESTIC VIOLENCE: THE CHANGING CRIMINAL JUSTICE RESPONSE* 228, 230 (Eve S. Buzawa & Carl G. Buzawa eds., 1992); SCHECHTER, *supra* note 36, at 162.

³⁸ *See, e.g.*, BUZAWA, BUZAWA & STARK, *supra* note 34, at 279; Goldfarb, *supra* note 30, at 1503 (2008); Jake Hammon, Note, *Walk a Day in Their Shoes: Addressing Ohio's Civil Protection Order Law*, 47 *TOL L. REV.* 795, 799 (2016).

³⁹ Family Court Act of the State of New York, ch. 686, § 356, 1962 N.Y. Laws 3043, 3075 (1962); Intrafamily Offenses Act for the District of Columbia, Pub. L. No. 91-358, §§ 16-1003-16-1006, 84 Stat. 546, 546-48 (1970).

⁴⁰ Margaret Klaw & Mary Scherf, *Feminist Advocacy: The Evolution of Pennsylvania's Protection from Abuse Act*, 1 *HYBRID: J. L. & SOC. CHANGE* 21, 21-22 (1993).

⁴¹ *See* Grau, Fagan & Wexler, *supra* note 36, at 14; *see also* SCHECHTER, *supra* note 36, at 163.

⁴² David M. Zlotnick, *Empowering the Battered Woman: The Use of Criminal Contempt Sanctions to Enforce Civil Protection Orders*, 56 *OHIO ST. L. J.* 1153, 1190 & n.169 (1995); *see also* Susan L. Keilitz, *Civil Protection Orders: A Viable Justice System Tool for Deterring Domestic Violence*, 9 *VIOLENCE & VICTIMS* 79, 80 (1994).

⁴³ Richards, Tudor & Gover, *Updated Assessment*, *supra* note 4, at 827 (comparing the victim-friendliness of states' (and D.C.'s) civil PO statutes from 2003 and 2014); *see also* Stoever, *Enjoining Abuse*, *supra* note 4, at 1043.

⁴⁴ Richards, Tudor & Gover, *Updated Assessment*, *supra* note 4, at 826-31.

procedurally since their initial introduction,⁴⁵ but many legal scholars and advocates still see substantial room for improvement.⁴⁶

B. *The Value of POs*

The effectiveness of civil POs has long been studied and debated. Parsing the research on PO efficacy is complex for a variety of reasons, including differences in how researchers define effectiveness, variation in data sources (e.g. official sources such as police reports vs. survivor interviews about whether the PO was violated), and differences among PO policies and practices across jurisdictions and over time, which renders generalizations difficult.⁴⁷ Furthermore, the methodological quality of many studies concerning the effectiveness of POs is lower than the level needed to rely with confidence upon their results.⁴⁸ Given the large body of studies and methodological issues of varying degrees, systematic reviews and meta-analyses that account for the rigor and characteristics of individual studies

⁴⁵ See, e.g., *id.* and accompanying text (identifying victim-friendly statutory PO provisions that many states adopted between 2003 and 2014); Stoever, *Enjoining Abuse*, *supra* note 4, at 1045 (pointing out that civil PO “statutes have evolved over the past four decades to protect unmarried women and men in heterosexual or homosexual relationships, and [that] many states have expanded relief to address teen dating violence and the abuse of pets.”); Helen Eigenberg et al., *Protective Order Legislation: Trends in State Statutes*, 31 J. CRIM. JUST. 411, 411-12, 414-21 (2003) (comparing states’ civil PO statutes from 1988 with those from 1999, 2000, and/or 2001 and identifying general trends in their evolution during this period, including a broadening of eligibility requirements, elimination of filing fees, increased PO duration, and shorter periods between temporary and final POs).

⁴⁶ See, e.g., *infra* Part III (arguing that civil PO procedures should be responsive to IPV victims’ diverse needs and circumstances by providing them with choices regarding their method of participation in PO hearings); Stoever, *Enjoining Abuse*, *supra* note 4, at 1083-92 (criticizing the limited statutory duration of civil domestic violence POs and proposing that statutes be amended to permit indefinite domestic violence POs and establish a presumptive minimum duration of two years); Jane K. Stoever, *Access to Safety and Justice: Service of Process in Domestic Violence Cases*, 94 WASH. L. REV. 333, 336-42, 345, 357-59, 361, 365-68, 393-400 (2019) [hereinafter Stoever, *Safety and Justice*] (arguing that personal service requirements for civil POs in most jurisdictions undermine IPV survivors’ access to safety and justice and proposing that the alternative means of service permitted in other types of cases be permitted in the civil PO context); Johnson, *supra* note 34, at 1133-39, 1164 (2009) (critiquing civil PO statutes’ definitions of abuse as often being unduly narrow and excluding victims of common forms of non-physical abuse from access to civil POs); Goldfarb, *supra* note 30, at 1488-91, 1500-03 (criticizing the common PO requirement of no contact between the parties as depriving IPV victims of autonomy and the opportunity to restructure their relationship with their intimate partner without ending it).

⁴⁷ See Reinie Cordier et al., *The Effectiveness of Protection Orders in Reducing Recidivism in Domestic Violence: A Systematic Review and Meta-Analysis*, 22 TRAUMA, VIOLENCE & ABUSE 804, 805, 822-25 (2021).

⁴⁸ *Id.* at 805, 810-15, 823, 825.

while also providing the bigger picture on the state of the research are particularly useful.⁴⁹ Fortunately, there are two recent systematic reviews and meta-analyses examining the effectiveness of civil POs against IPV recidivism—one from 2021 (the “2021 review”) and one from 2018 (the “2018 review”).⁵⁰

The 2021 review provides an analysis of twenty-five studies.⁵¹ But, as the authors of the review point out, we must interpret the results with caution because most of the underlying studies scored a rating of “fair” methodological quality, with one included study rated as “poor” and only a fifth rated as “strong,” according to the Standard Quality Assessment Criteria used for evaluating the methodological quality of empirical research.⁵² With this in mind, we can turn to the results.

The 2021 review finds that overall, POs are effective in reducing IPV to an extent but not in eliminating it completely.⁵³ The authors conclude that

⁴⁹ Systematic reviews are “now widely accepted as the most reliable source of knowledge from research” and the “dominance of systematic reviews looks set to continue[.]” Mike Clarke & Iain Chalmers, *Reflections on the History of Systematic Reviews*, 23 *BMJ EVIDENCE-BASED MEDICINE* 121, 121 (2018). A systematic review is a comprehensive and methodical review of the existing research on a topic or intervention which “critically apprais[es], summariz[es], and attempt[s] to reconcile the evidence in order to inform police and practice.” MARK PETTICREW & HELEN ROBERTS, *SYSTEMATIC REVIEWS IN THE SOCIAL SCIENCES: A PRACTICAL GUIDE* 15 (2006); *see also* MARTIN DEMPSTER, *A RESEARCH GUIDE FOR HEALTH AND CLINICAL PSYCHOLOGY* 15 (2011). It guards against the biases commonly present in traditional literature reviews by employing a pre-specified protocol for searching widely to identify and evaluate the universe of existing studies, paying careful attention to the quality of the studies, taking a clear and systematic approach to drawing conclusions about the data, and using transparent and rigorous processes throughout. *See* Liz Victor, *Systematic Reviewing*, 54 *SOCIAL RESEARCH UPDATE* 1, 1 (2008); DEMPSTER, *supra*, at 15; PETTICREW & ROBERTS, *supra*, at 2, 9-10. Systematic reviews often feature meta-analysis. Clarke & Chalmers, *supra*, at 121; PETTICREW & ROBERTS, *supra*, at 19. Meta-analysis is a methodology that systematically and statistically synthesizes the results from multiple empirical studies examining a particular research question in order to draw well-grounded conclusions from the combined data. Edward Wells, *Uses of Meta-Analysis in Criminal Justice Research: A Quantitative Review*, 26 *Just. Q.* 268, 270–71, 291 (2009). While descriptive surveys of existing studies are certainly useful, meta-analyses yield more valid and informative results on which to base policy decisions because they avoid the former’s subjectivity, ambiguity, and the great difficulty of drawing conclusions about and comparing individual studies with weak detected effects, limited samples, statistical errors, and/or the fallible measurements common in real-world research. *Id.* at 268–71, 291.

⁵⁰ *See* Cordier et al, *supra* note 47; CHRISTOPHER DOWLING ET AL., *AUSTL. INST. CRIMINOLOGY, PROTECTION ORDERS FOR DOMESTIC VIOLENCE: A SYSTEMATIC REVIEW* (2018).

⁵¹ *See generally id.* Twenty-four of the studies were conducted in the United States and one was conducted in Sweden. *Id.* at 811-15.

⁵² *Id.* at 808, 811-15, 825.

⁵³ *Id.* at 823, 825.

POs are particularly effective for certain groups: victims who are not stalked by their abuser, those no longer in a relationship with their abuser, those with median-to-high median family incomes, and those whose abuser does not have a prior history of arrests or high levels of violence.⁵⁴ On the whole, PO violation rates were 34.3% according to data sourced from survivors and 28.2% based on data gathered from police reports.⁵⁵ This statistically significant difference makes sense because survivors may not report PO violations to law enforcement,⁵⁶ and therefore the former rate is likely to be a more accurate measure of IPV incidents following the issuance of POs.

The 2018 review concludes that survivors who obtain a PO are less likely to be revictimized by their abuser than those who do not have a PO.⁵⁷ However, the effect size of this statistically significant relationship is small, meaning that the reduction in IPV associated with POs is relatively modest.⁵⁸ In contrast to the 2021 review, which includes twenty studies in its meta-analysis,⁵⁹ the 2018 review's meta-analysis only includes four individual studies, as the authors of the latter limited the inclusion criteria to studies utilizing comparison groups (permitting comparison of those with POs to those without POs).⁶⁰ They set this limiting criteria with the aim of excluding less methodologically rigorous studies from their meta-analysis, based on the Maryland Scientific Methods Scale, a five-point scale for assessing and communicating the methodological quality of studies evaluating the effects of interventions.⁶¹ But like the 2021 review's authors, the 2018 review's authors conducted a wider systematic review, through which they explored factors associated with increased and decreased PO effectiveness with a larger body of studies than that used for the meta-analysis.⁶² The latter

⁵⁴ *Id.* at 824-25.

⁵⁵ *Id.* at 821, 823.

⁵⁶ See TK Logan, Lisa Shannon & Robert Walker, *Protective Orders in Rural and Urban Areas: A Multiple Perspective Study*, 11 VIOLENCE AGAINST WOMEN 876, 890 (2005).

⁵⁷ DOWLING ET AL., *supra* note 50, at 5.

⁵⁸ *Id.*

⁵⁹ Cordier et al., *supra* note 47, at 821 (explaining why only twenty of the twenty-five studies included in the systematic review were selected for the meta-analysis).

⁶⁰ DOWLING ET AL., *supra* note 50, at 3. Three of the studies included in the meta-analysis were carried out in the U.S. and one was conducted in the UK. *Id.* at 4.

⁶¹ *Id.* (indicating that the authors excluded studies categorized below level three on the Maryland Scientific Methods Scale); David P. Farrington et al., *The Maryland Scientific Methods Scale*, in EVIDENCE-BASED CRIME PREVENTION 13, 13-18 (Lawrence W. Sherman et al. eds., 2002) (explaining that studies of criminological interventions classified as "Level 3" on the Maryland Scientific Methods Scale measure crime before and after implementation of the intervention in both experimental and control groups, which the authors characterize as "the minimum design that is adequate for drawing conclusions about what works").

⁶² *Id.* at 4, 9-10 (indicating that the systematic review includes sixty-three studies and discussing moderators of PO efficacy).

systematic review covers some of the same studies as the former and also includes additional studies. The 2018 review agrees with the 2021 review's conclusions that PO effectiveness is positively associated with victim socio-economic status and the discontinuation of the abusive relationship, and is negatively associated with perpetrator history of stalking and criminal offending.⁶³ In addition, the 2018 review concludes that POs are less effective with abusers who suffer from mental health issues, especially those with depression, anxiety, and trauma or stress-related disorders.⁶⁴ Both reviews also note a 2005 study's finding that women living in rural areas experience a greater number of PO violations than women living in urban locations, based on a relatively large sample of IPV survivors who had obtained civil POs.⁶⁵

Based on the foregoing systematic reviews and meta-analyses, civil POs likely mitigate IPV to a small-to-moderate extent overall and are particularly effective for certain groups. These reviews also highlight the need for additional research on the effectiveness of POs with more rigorous study designs, clear definitions of "effectiveness," and standardization of outcome measures, with an eye towards facilitating future meta-analysis.⁶⁶

Importantly, the value of POs likely extends beyond their ability to reduce subsequent IPV incidents, to their impact upon survivors' mental and emotional well-being. Existing literature provides some support for this benefit. Psychologists Karla Fischer and Mary Rose surveyed 287 women immediately following their receipt of a temporary PO and found that 98% felt more in control of their lives, despite 86% believing that their abuser would violate the PO.⁶⁷ Fischer and Rose then interviewed 83% of this sample shortly after their hearing for a permanent PO, finding support for the notion that POs can provide psychological benefits to survivors, specifically by promoting feelings of empowerment, inner strength, and hope for the future.⁶⁸

A study with a similar methodology involving interviews of 285 women approximately one month following their receipt of a PO in Wilmington, Delaware, Denver, Colorado, or D.C. found that over 70% of the sample reported that their lives had improved, that they felt better about

⁶³ *Id.* at 9.

⁶⁴ *Id.*

⁶⁵ *Id.*; Cordier et al., *supra* note 47, at 821; Logan, Shannon & Walker, *supra* note 56, at 881, 897-98 (interviewing 200 women living in rural areas and 250 women living in urban areas approximately one-to-four weeks following the issuance of a civil PO).

⁶⁶ See Cordier et al., *supra* note 47, at 823-25; DOWLING ET AL., *supra* note 50, at 13.

⁶⁷ Karla Fischer & Mary Rose, *When "Enough Is Enough": Battered Women's Decision Making Around Court Orders of Protection*, 41 CRIME & DELINQ. 414, 415, 417 (1995).

⁶⁸ *Id.* at 415, 417, 423-25.

themselves, and that they felt safer than they had prior to obtaining a PO.⁶⁹ Following the re-interview of 177 of the women six months after they had obtained their PO, the researchers concluded that “these positive effects improved over time.”⁷⁰ However, they did not conduct any significance tests to discern whether the increase of reported safety and well-being between the first and second interviews was statistically significant or merely coincidental. Since the raw data from this study are available through the Inter-university Consortium for Political and Social Research’s data archive,⁷¹ I performed logistic regressions on the data and determined that the increase in the percentage of participants feeling safer at the follow-up interview was statistically significant,⁷² but the increases in the percentage reporting that their lives had improved and that they felt better about themselves were not significant. In addition, the use of the term, “effects,” implies causation, but the study design does not permit causal conclusions to be drawn.⁷³ Therefore, while having a PO in place *may* have caused survivors in the study to feel safer six months following their receipt of the PO than it did one month post-PO, it cannot be concluded that it *did* as the significant increase in reported safety may have been due to other factors not ruled out in the study.

A more recent study of 170 women who had reported being fearful of future harm shortly after they had obtained a PO against a male intimate partner found that significantly fewer participants feared future harm (including physical injury, harassment, public humiliation, financial harm, and other types of harm) six months after receiving their PO.⁷⁴ While the data

⁶⁹ SUSAN L. KEILITZ, PAULA L. HANNAFORD & HILLERY S. EFKEMAN, NAT’L CTR. FOR STATE CTS., CIVIL PROTECTION ORDERS: THE BENEFITS AND LIMITATIONS FOR VICTIMS OF DOMESTIC VIOLENCE ix (1997).

⁷⁰ *Id.*

⁷¹ Inter-university Consortium for Political and Social Research (ICPSR), <http://www.icpsr.umich.edu/web/ICPSR/studies/2557#> (last visited July 11, 2023).

⁷² $p < .01$, OR = 2.88. A *P* value of less than .01 means that the probability of the detected relationship being due to chance is less than one percent. In the social sciences, this *P* value indicates that the result is highly reliable. See CELIA CARTER REAVES, QUANTITATIVE RESEARCH FOR THE BEHAVIORAL SCIENCES 227-28 (1992); W. LAWRENCE NEUMAN, BASICS OF SOCIAL RESEARCH: QUALITATIVE AND QUANTITATIVE APPROACHES 284 (3d. 2012). The effect size, which is the magnitude of the increase, is medium-to-large, as the OR (odds ratio) is 2.88 (2 is considered a medium effect size and 3 a large effect size). See Gail M. Sullivan & Richard Feinn, *Using Effect Size—or Why the P Value Is Not Enough*, J. GRADUATE MED. EDUC. 279, 279-80 (2012). I thank my research assistant, Omoshola Kehinde, for assistance with performing the statistical tests.

⁷³ A control group is needed to reliably conclude that an intervention causes a result, and there was no control group in Keilitz, Hannaford, and Efke’s study. See Farrington et al., *supra* note 61, at 14, 17.

⁷⁴ TK Logan & Robert Walker, *Civil Protective Order Effectiveness: Just a Piece of Paper?*, 25 VIOLENCE & VICTIMS 332, 336, 341 (2010).

from this study are also insufficient for causal determinations, a potential explanation for the reduction in survivors' fear is their positive experiences with the PO during the preceding months.

Relatedly, the value of POs is also linked to their ability to facilitate IPV survivors' autonomy and exercise of agency within their lives.⁷⁵ In previous work, I underscore the importance of autonomy to gender-based violence survivors' healing process,⁷⁶ safety,⁷⁷ and human dignity.⁷⁸ Survivors themselves are especially well-placed to judge how their abuser will respond to various interventions, including POs, based on their abuser's personality, tendencies, and past conduct.⁷⁹ They are also most familiar with their own needs and goals, and are therefore in the best position to assess whether pursuing a PO would serve them.⁸⁰ For example, a study of 157 IPV survivors who petitioned for a PO revealed that they did so for multiple reasons.⁸¹ Their most commonly reported goals were to move forward with their life (93% of participants), to feel more at peace (89%), to make their abuser realize how badly he treated them or their family (85%), to persuade their abuser to take them more seriously (79%), and to convince their abuser to seek help for his problems (79%).⁸² Fischer and Rose's research likewise demonstrates that survivors have concrete objectives when pursuing a PO, including ending the violence, communicating a message to their abuser, creating a public record of the abuse, and reclaiming a measure of control in

⁷⁵ Stoever, *Freedom from Violence*, *supra* note 30, at 320-21.

⁷⁶ Rachel J. Wechsler, *Victims as Instruments*, 97 WASH. L. REV. 507, 536-37 (2022) (citing Elizabeth Osuch & Charles C. Engel, *Research on the Treatment of Trauma Spectrum Responses: The Role of the Optimal Healing Environment and Neurobiology*, 10 J. ALT. & COMPLIMENTARY MED. S-211, S-215 (2004) (explaining the severe disruption to the neurobiology underlying a person's sense of agency during the course of a traumatic experience and asserting that "[i]t is probable that restoring agency is critical in creating the feelings of control necessary for healing in the individual").

⁷⁷ *Id.* at 534-36.

⁷⁸ *Id.* at 554-71.

⁷⁹ See Laurie S. Kohn, *The Justice System and Domestic Violence: Engaging the Case but Divorcing the Victim*, 32 N.Y.U. REV. L. & SOC. CHANGE 191, 229 & n.182 (2008); Susan Brotherton & Jamie Manirakiza, *Understanding Sex Trafficking Through the Lens of Coercion: A Closer Look at Exploitation, Threats, and Betrayal*, in WORKING WITH THE HUMAN TRAFFICKING SURVIVOR: WHAT COUNSELORS, PSYCHOLOGISTS, SOCIAL WORKERS AND MEDICAL PROFESSIONALS NEED TO KNOW 125, 133 (Mary C. Burke ed., 2019).

⁸⁰ See Wechsler, *supra* note 76, at 534 (citing REBECCA SURTEES, INT'L CTR. FOR MIGRATION POL'Y DEV., LISTENING TO VICTIMS: EXPERIENCES OF IDENTIFICATION, RETURN AND ASSISTANCE IN SOUTH-EASTERN EUROPE 16 (2007)); Johnson, *supra* note 34, at 1126-27.

⁸¹ Lauren Bennett Cattaneo et al., *The Goals of IPV Survivors Receiving Orders of Protection: An Application of the Empowerment Process Model*, 31 J. INTERPERSONAL VIOLENCE 2889, 2895, 2898 (2016).

⁸² *Id.* at 2898.

their lives.⁸³ Since IPV survivors often view POs as a useful tool for advancing their self-defined goals,⁸⁴ ensuring PO accessibility is an important component of an IPV response promoting survivor autonomy and empowerment.⁸⁵

II. PROTECTIVE ORDER PROCEDURAL TRAJECTORIES

A. *The Pre-pandemic Protective Order Process*

At the outset, an IPV survivor seeking a civil PO must file a petition with a family court or other designated court in their jurisdiction.⁸⁶ Civil PO proceedings typically involve two phases: the first concerns a temporary PO and the second pertains to a final or “permanent” PO.⁸⁷ There is a full hearing before a judge during the second stage⁸⁸ and many jurisdictions conduct a hearing during the first stage as well (usually ex parte on the basis of an imminent threat of harm).⁸⁹ If the judge concludes that the petitioner has proven by a preponderance of the evidence that the respondent committed IPV (according to the jurisdiction’s statutory definition) against her and a

⁸³ Fischer & Rose, *supra* note 67, at 420-23 (interviewing eighty-three IPV survivors shortly following their hearing for permanent POs).

⁸⁴ See Cattaneo et al., *supra* note 81, at 2897-2907.

⁸⁵ Empowerment involves a process “in which a person who lacks power sets a personally meaningful goal oriented toward increasing power, takes action, and makes progress toward that goal, drawing on his or her evolving self-efficacy, knowledge, skills, and community resources and supports, and observes and reflects on the impact of his or her actions.” Cattaneo & Goodman, *supra* note 14, at 88.

⁸⁶ Jeffrey R. Baker, *Enjoining Coercion: Civil Protection Orders with the Reality of Domestic Abuse*, 11 J. L. & FAM. STUD. 35, 40 (2008); Tara N. Richards, Angela R. Gover & Alison Tudor, *A Nation-wide Assessment of Empowerment among States’ Personal Protective Order Statutes*, 36 J. INTERPERSONAL VIOLENCE 4876, 4877-78 (2021).

⁸⁷ Baker, *supra* note 86, at 40; John Costello & Alesha Durfee, *Survivor-Defined Advocacy in the Civil Protection Order Process*, 15 FEMINIST CRIMINOLOGY 299, 301 (2020). “Permanent” is in quotation marks because, despite often being referred to as permanent POs, most POs granted in the second phase are only valid for a limited duration. See Stoever, *Enjoining Abuse*, *supra* note 4, at 1021 (highlighting that most states only permit the issuance of a PO that is valid for a maximum of one year or for “a similarly limited duration”); Karol Lucken, Jeffrey W. Rosky, & Cory Watkins, *She Said, He Said, Judge Said: Analyzing Judicial Decision Making in Civil Protection Order Hearings*, 30 J. INTERPERSONAL VIOLENCE 2038, 2062 n.2 (2015) (explaining that the terms, “permanent” or “final,” when used to characterize a PO, should be interpreted in a relative sense as compared with a “temporary” or “emergency” PO, and that a typical duration for a permanent or final PO is one year); Stoever, *Safety and Justice*, *supra* note 46, at 360 (referring to “‘permanent’ protection order” with quotation marks around ‘permanent’).

⁸⁸ Stoever, *Enjoining Abuse*, *supra* note 4, at 1073.

⁸⁹ NAT’L CTR. FOR STATE CTS., FACILITATING ACCESS, *supra* note 6, at 10; Stoever, *Enjoining Abuse*, *supra* note 4, at 1073 & n.318.

threat of future harm exists, then the PO petition should be granted.⁹⁰

Prior to the pandemic, PO proceedings predominantly took place in person across the country, with limited exceptions.⁹¹ A notable exception with respect to in-person hearing requirements is Alaska, which due to its vastness, rurality, and the fact that many villages are a plane ride away from their nearest courthouse, has long utilized telephonic hearings for POs.⁹² To a much lesser extent, other jurisdictions permitted remote participation in hearings when parties were located a significant distance from the courthouse. For example, prior to the pandemic, Kansas permitted virtual participation for those living more than 100 miles from the courthouse⁹³ and counties in Florida,⁹⁴ Indiana,⁹⁵ Nevada,⁹⁶ and Arizona⁹⁷ at times permitted virtual participation for parties located out-of-state. In its 2018 report on the use of technology in PO processes, the National Center for State Courts highlighted initiatives in North Carolina, New York, New Jersey, D.C., and Multnomah County, Oregon that enabled petitioners to participate in hearings via videoconference, but these programs were limited to the temporary PO phase and usually required participation from a domestic violence agency's office, shelter, hospital, or other designated setting rather than from a location of the petitioner's choosing.⁹⁸ In addition, the New York Family Court Act, as amended to add virtual filing and hearing options for certain petitioners in 2015, requires a petitioner for an ex parte temporary PO to "set forth the circumstances in which traveling to or appearing in the courthouse would constitute an undue hardship, or create a risk of harm to the petitioner" to

⁹⁰ Stoever, *Enjoining Abuse*, *supra* note 4, at 1018 n.3, 1073; Stoever, *Freedom from Violence*, *supra* note 30, at 306 n.6.

⁹¹ See *infra* Figure 1.

⁹² E-mail from Alaska Ct. Sys., to Clare Hensley, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (June 30, 2022, 12:46 CST) (on file with author); see also Maxine Eichner et al., *Family Law Court Proceedings in the Pandemic's First Year: The Experience of Each State as Reflected in Contemporaneous Interviews and Reviews of Court Websites and Orders*, 55 FAM. L. Q. 195, 19 (2022).

⁹³ E-mail from legal services provider in Kan., to Laura Wilcoxon, Reference & Student Servs. Libr., Univ. of Mo. Sch. of L. (July 11, 2022, 11:31 CST) (on file with author).

⁹⁴ Telephone Interview with legal services provider in Hillsborough Cnty., Fla., (July 1, 2022).

⁹⁵ E-mail from legal services provider in Tippecanoe Cnty., Ind., to Clare Hensley, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (July 26, 2022, 09:43 CST) (on file with author).

⁹⁶ E-mail from legal services provider in Reno, Nev., to Clare Hensley, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (June 29, 2022, 17:53 CST) (on file with author).

⁹⁷ E-mail from legal services providers in Ariz., to Clare Hensley, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (July 29, 2022, 02:23 CST) (on file with author).

⁹⁸ NAT'L CTR. FOR STATE CTS., FACILITATING ACCESS, *supra* note 6, at 10-11.

request permission to appear virtually for the hearing.⁹⁹ This requirement is a constraint on petitioners' access as it limits virtual participation to those who can convince the judge that their situation meets the statutory standard.

Thus, apart from Alaska, remote participation in PO hearings was generally the exception rather than the rule prior to COVID-19. Even in largely rural states, where parties and counsel are more likely to have long and difficult travel to courthouses, in-person participation was always or nearly always required. For instance, the Wyoming Coalition Against Domestic Violence and Sexual Assault reports that their motions requesting that their attorneys participate in a hearing over video based on the significant distance to the courthouse were "not granted most of the time" prior to the pandemic.¹⁰⁰ In northern Virginia, a video testimony option for petitioners living in rural areas was discussed prior to the pandemic, but it had not been implemented and remote participation in PO hearings was still generally not permitted.¹⁰¹

Likewise, relatively few jurisdictions permitted electronic filing of PO petitions prior to the pandemic.¹⁰² One or more counties in California, Indiana, Minnesota, New York, Washington, and Wisconsin had e-filing systems in place or accepted petitions via e-mail and fax.¹⁰³ But like pre-pandemic virtual hearing initiatives, some electronic filing options required petitioners to travel to a domestic violence organization's office or another location to complete their petition, thereby preserving some of the barriers to PO access associated with requiring travel to a courthouse.¹⁰⁴

⁹⁹ N.Y. Family Court Act, ch. 367, § 153-c(3)(i), 2015 N.Y. Laws 957, 958 (2016). Similarly, starting well before the pandemic, Arizona's Rules of Protective Order Procedure have permitted a party to testify at a PO hearing telephonically or by videoconference if she could demonstrate that she was "reasonably prevented from attending the hearing" or "attendance in person at the hearing . . . would be a burdensome expense," and "no substantial prejudice will be caused to either party by allowing telephonic or video conference testimony[.]" ARIZ. R. PROTECTIVE ORD. P. 9 (effective from Jan. 1, 2016 in its current form).

¹⁰⁰ E-mail from legal services provider in Wyo., to Clare Hensley, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (June 29, 2022, 14:34 CST) (on file with author).

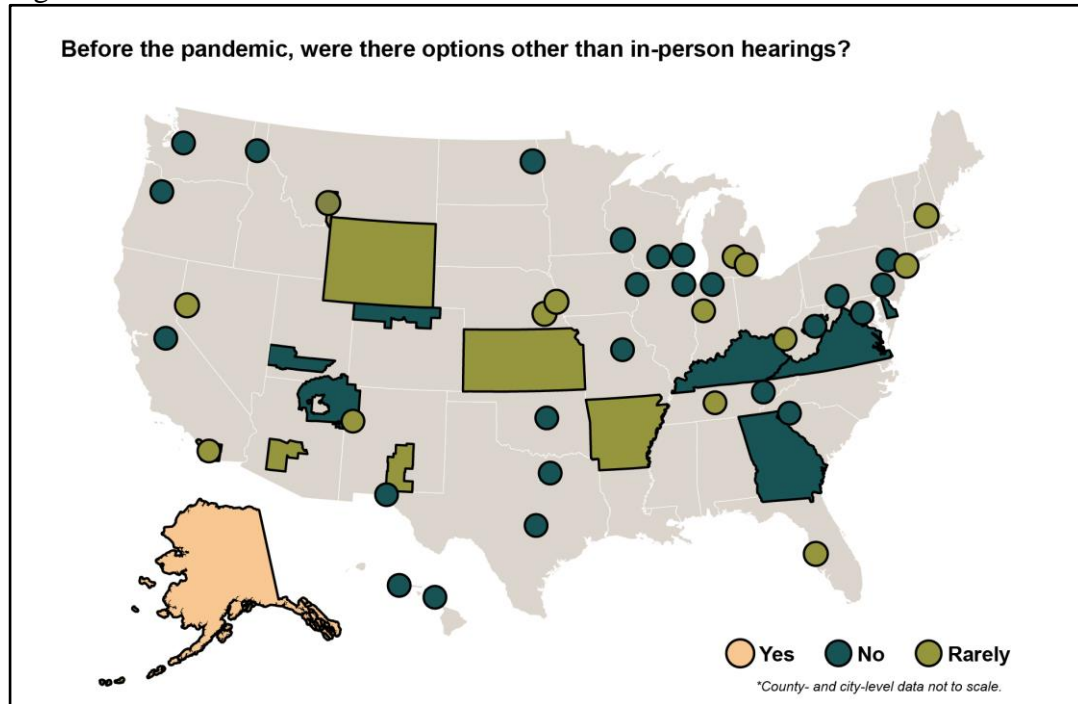
¹⁰¹ E-mail from legal services provider in Fairfax, Alexandria Cty., Arlington, Prince, William, and Loudoun Cntys., Va., to Clare Hensley, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (Aug. 1, 2022, 15:05 CST) (on file with author).

¹⁰² See NAT'L CTR. FOR STATE CTS., FACILITATING ACCESS, *supra* note 6, at 9.

¹⁰³ *Id.*; Schneider et al., *supra* note 9, at 243.

¹⁰⁴ See NAT'L CTR. FOR STATE CTS., FACILITATING ACCESS, *supra* note 6, at 4, 7-8 (identifying New York, Indiana, and Pierce County, Washington as jurisdictions permitting e-filing only from specified locations). See *infra* Section II.B for a discussion of these barriers.

Figure 1.



B. Enter COVID-19

1. Early Pandemic Protection Order Procedures

Early in the pandemic, most jurisdictions temporarily closed courthouses and instituted virtual procedures for hearings, including for family law matters.¹⁰⁵ However, given their urgent nature, many jurisdictions permitted certain PO hearings to be conducted in person as an exception to COVID restrictions, especially when it was not feasible to conduct these hearings remotely.¹⁰⁶ In the early stages of the pandemic, some jurisdictions

¹⁰⁵ See generally Maxine Eichner et al., *supra* note 92; Figure 2, *infra*.

¹⁰⁶ See *id.* at 196-210 (noting that this was the case in all or parts of Alabama, Arkansas, Colorado, Connecticut, Hawai'i, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Carolina, Illinois, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, Virginia, Washington, and Wyoming); see also, e.g., E-mail from legal services provider in Del., to Clare Hensley, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (Aug. 1, 2022, 07:55 CST) (on file with author) (Delaware); E-mail from legal services provider in San Diego, Cal., to Clare Hensley, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (Sept. 8, 2022, 11:52 CST) (on file with author) (San Diego, California); E-mail from legal services provider in Williamson Cnty, Tenn., to Clare Hensley, Rsch. Assistant to

adapted with telephonic hearings, but switched to video hearings later on.¹⁰⁷ This likely reflects the greater time it took to equip courts and judges with videoconferencing hardware, software, and training in comparison with the time needed to arrange for telephonic hearings, which involve a more familiar and widespread technology.

A minority of jurisdictions studied did not make any remote participation options available for PO hearings or only utilized them for a very brief period.¹⁰⁸ Idaho, for example, conducted PO hearings over Zoom early in the pandemic but after approximately two weeks, “the court decided that it was impossible for [PO hearings] to take place via Zoom.”¹⁰⁹ The executive director of an Idahoan IPV non-profit organization believes that this assessment is based upon issues related to admitting evidence into the record, specifically, that the parties e-mailed their evidence to the court before a hearing and were not present to answer questions when the judge received the evidence.¹¹⁰ It is unclear why the judge would not be able to adequately question the parties about the evidence during the Zoom hearing, prior to admitting it into the record. Milwaukee County also chose not to provide virtual hearing options. Instead, when COVID-19 hit, it eliminated hearings on temporary POs and court commissioners began to grant or deny PO petitions based on the electronically-filed petition alone.¹¹¹ Hearings for

Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (July 20, 2022, 16:52 CST) (on file with author) (Williamson County, Tennessee).

¹⁰⁷ *E.g.* Missouri (mid-Missouri), Oregon (Marion County), Washington (King County). E-mail from legal services provider in Mid-Mo., to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (Sept. 21, 2022, 16:18 CST) (on file with author); E-mail from legal services provider in Marion Cnty., Or., to Clare Hensley, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (Nov 1, 2022, 12:55 CST) (on file with author); E-mail from legal services provider in King Cnty., Wash., to Clare Hensley, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (Aug. 4, 2022, 17:18 CST) (on file with author).

¹⁰⁸ *E.g.*, Idaho, Colorado (Larimer and Weld Counties), Pennsylvania (Bedford County), Tennessee (Anderson County), West Virginia (Barbour, Braxton, Randolph, Tucker, Upshur, and Webster Counties), Wisconsin (Milwaukee County). E-mail from legal services provider in Kootenai Cnty., Idaho, to Hannah Jackson, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (July 6, 2022, 11:08 CST) (on file with author); E-mail from legal services provider in Knox and Anderson Cntys., Tenn., to Clare Hensley, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (Aug. 1, 2022, 21:12 CST) (on file with author); E-mail from legal services provider in Randolph, Barbour, Tucker, Upshur, Braxton, and Webster Cntys., Va., to Hannah Jackson, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (July 26, 2022, 07:45 CST) (on file with author); Schneider et al., *supra* note 9, at 244; *see infra* Figure 2.

¹⁰⁹ *See* e-mail from legal services provider in Kootenai Cnty., Idaho, *supra* note 108.

¹¹⁰ *Id.*

¹¹¹ Schneider et al., *supra* note 9, at 244.

long-term POs, after the temporary PO stage, remained in person at the courthouse, as they had been conducted prior to the pandemic.¹¹²

A fair number of the jurisdictions studied adopted remote filing procedures for PO petitions early in the pandemic, including e-mail,¹¹³ fax,¹¹⁴ and online filing platforms.¹¹⁵ However, virtual filing methods in a few jurisdictions required petitioners to rely on non-profit organizations to access.¹¹⁶ While assistance from a knowledgeable organization can be invaluable during the PO process,¹¹⁷ some survivors may not wish to engage with services providers for a variety of reasons, such as privacy concerns.¹¹⁸ Notably, jurisdictions with remote filing options did not necessarily have remote hearing participation options,¹¹⁹ and vice versa.¹²⁰

¹¹² *Id.* at 243.

¹¹³ *E.g.*, Georgia (DeKalb County), Nebraska (Douglass County), Utah (Beaver, Iron, and Garfield Counties). E-mail legal services provider in Dekalb Cnty., Ga., to Hannah Jackson, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (July 28, 2022, 12:27 CST) (on file with author); Telephone Interview by Clare Hensley, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L., with legal services provider in Douglass Cnty., Neb. (July 1, 2022); E-mail from legal services provider in Beaver, Iron, and Garfield Cntys., Utah, to Hannah Jackson, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (Sept. 19, 2022, 16:40 CST) (on file with author).

¹¹⁴ *E.g.*, Hawai'i (Maui County), Michigan (Ingham County). E-mail from legal services provider in Maui, Haw., to Hannah Jackson, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (June 22, 2022, 20:27 CST) (on file with author); E-mail from legal services provider in Lansing, Mich., to Clare Hensley, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (Sept. 12, 2022, 10:06 CST) (on file with author).

¹¹⁵ *E.g.*, Kansas (Johnson County), New Hampshire, Wisconsin (Milwaukee County). E-mail from legal services provider in Kan., to Laura Wilcoxon, Reference & Student Servs. Librarian, Univ. of Mo. Sch. of L. (July 11, 2022, 11:31 CST) (on file with author); E-mail from legal services provider in Hillsborough Cnty., N.H., to Hannah Jackson, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (July 25, 2022, 13:52 CST) (on file with author); Schneider et al., *supra* note 9 at 243-44.

¹¹⁶ *E.g.*, New Hampshire, New York (New York City). E-mail from legal services provider in Hillsborough Cnty., N.H., *supra* note 115; Telephone Interview with legal services provider in N.Y.C. (July 19, 2023).

¹¹⁷ *See infra* Part III.A.

¹¹⁸ *See, e.g.*, Allie Reed, *Virtual Court Hearings Earn Permanent Spot after Pandemic's End*, BLOOMBERG LAW NEWS (May 18, 2023), <http://news.bloomberglaw.com/us-law-week/virtual-court-hearings-earn-permanent-spot-after-pandemics-end> (describing a rural community in which there was no public transportation to the courthouse and community members knew individuals were IPV victims when they saw them with a domestic violence advocate who often drove petitioners to their PO hearings).

¹¹⁹ *E.g.*, Wisconsin (Milwaukee County). Schneider et al., *supra* note 9, at 243-44.

¹²⁰ *E.g.*, Kentucky. E-mail from legal services provider in Ky., to Clare Hensley, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (June 29, 2022, 11:29 CST) (on file with author).

A trend that emerged early in the pandemic and has continued through its later stages is significant variation in approaches to PO hearing participation methods across counties within a single state, courts within a county, and even judges within a court.¹²¹ Despite the presence of statewide administrative orders and guidance regarding court procedures at the height of COVID, in many states, procedures were far from homogenous. For example, the Director of the Family Law Unit at the Georgia Legal Services Program shared that “after the pandemic [began,] Georgia courts changed primarily to video hearings for TPOs [(temporary POs)]. Some courts resisted and required in person hearings. These were limited numbers but dangerous to our clients and staff.”¹²² Likewise, Maxine Eichner and her co-authors found that, according to family law attorneys they had interviewed, “application of the [Georgia COVID-19 procedural] rules and recommendations varied from court to court and judge to judge” during the first year of the pandemic.¹²³ Kentucky has also reflected this trend. According to the Kentucky Coalition Against Domestic Violence,

the KY Supreme Court orders pretty much kept everything virtual . . . for about a year. . . . [PO hearings] went to “100%” telephonic or virtual with a variety of platforms used—conference calls, Skype, Zoom. However, some judges still held in person hearings. At the beginning, petitioners were not given choice but were told how the hearing would happen, and given instructions (sometimes incorrect/unhelpful ones) about how to participate.¹²⁴

These findings underscore the importance of examining data from sources with firsthand knowledge of PO procedures on the ground from experience with many PO cases to obtain an accurate picture of these procedures in practice, rather than only relying on formal legal sources. This Article does so through its analysis of data from legal services providers across the nation who assist IPV survivors with the PO process. As Alicia Bannon and Douglas Keith similarly observe about the eviction proceeding context during the pandemic based on their data from legal services providers, “system-wide directives obscured substantial variation in court operations

¹²¹ See, e.g., Eichner et al., *supra* note 92, at 199; E-mail from legal services provider in Ga., to Hannah Jackson, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (July 26, 2022, 17:11 CST) (on file with author); E-mail legal services provider in Ky., *supra* note 120; Telephone Interview with legal services provider in N.Y.C., *supra* note 116.

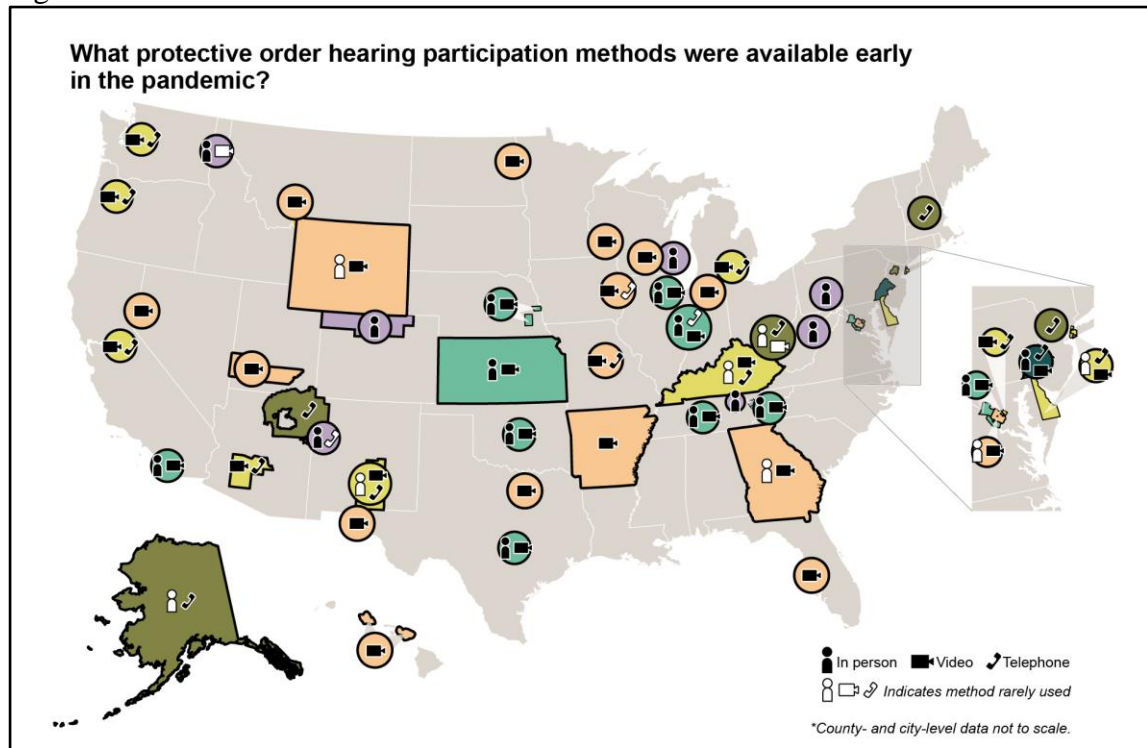
¹²² E-mail from legal services provider in Ga., *supra* note 121.

¹²³ Eichner et al., *supra* note 92, at 199.

¹²⁴ E-mail from legal services provider in Ky., *supra* note 120.

that arose as courts within jurisdictions interpreted and used their authority differently[.]. . . [T]here is substantial inconsistency . . . even within courthouses, often as a result of a judge’s individual preference for video or phone.”¹²⁵

Figure 2.



2. Late-Stage Pandemic Protection Order Procedures

As vaccines were rolled out and pandemic restrictions lifted, states and counties varied in their approaches to PO procedures. Many returned to “business as usual”—the fully in-person procedures they had utilized prior to the pandemic¹²⁶—while others continued to utilize the virtual participation

¹²⁵ Bannon & Keith, *supra* note 27, at 1901.

¹²⁶ *E.g.*, Arkansas, Idaho, Iowa, Kentucky, Nebraska (Lincoln), North Dakota (Grand Forks County), Oklahoma (Oklahoma City), Pennsylvania (Bedford County), South Carolina (Anderson, Greenville, Oconee, and Pickens Counties), Tennessee (Knox and Anderson Counties) Texas (Denton and Tarrant Counties). E-mail from legal services provider in Ark., to Laura Wilcoxon, Reference & Student Servs. Libr., Univ. of Mo. Sch. of L. (July 11,

options they had instituted during the height of the pandemic exclusively¹²⁷ or in combination with pre-pandemic procedures.¹²⁸ A few of the surveyed

2022, 14:01 CST) (on file with author); E-mail from legal services provider in Kootenai Cnty., Idaho, to Hannah Jackson, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (July 6, 2022, 11:08 CST) (on file with author); E-mail from legal services provider in Scott, Clinton, Jackson, and Muscatine Cntys., Iowa, to Hannah Jackson, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (July 29, 2022, 9:54 CST) (on file with author); E-mail from legal services provider in Ky., *supra* note 120; E-mail from legal services provider in Lexington, Ky., to Clare Hensley, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (July 27, 2022, 9:00 CST) (on file with author); E-mail from legal services provider in Lincoln, Neb., to Clare Hensley, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (July 7, 2022, 17:51 CST) (on file with author); E-mail from legal services provider in Grand Forks Cnty., N.D., to Clare Hensley, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (July 27, 2022, 15:19 CST) (on file with author); E-mail from legal services provider in Okla. Cnty., Okla, to Clare Hensley, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (June 29, 2022, 10:31 CST) (on file with author); E-mail from legal services provider in Bedford Cnty., Pa., to Clare Hensley, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (July 27, 2022, 8:44 CST) (on file with author); E-mail from legal services provider in Anderson, Greenville, Pickens, and Oconee Cntys., S.C., to Clare Hensley, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (July 27, 2022, 15:45 CST) (on file with author); E-mail from legal services provider in Knox and Anderson Cntys., Tenn., *supra* note 108; E-mail from legal services provider in Denton Cnty., Tex., to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (Mar. 3, 2023, 12:43 CST) (on file with author); E-mail from legal services provider in Tarrant Cnty., Tex., to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (Feb. 17, 2023, 10:48, 13:43 CST) (on file with author); E-mail from legal services provider in Randolph, Barbour, Tucker, Upshur, Braxton, and Webster Cntys., W. Va., to Hannah Jackson, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (July 25, 2022) (on file with author). *See infra* Figure 3. The late-stage pandemic data for Figure 3 was collected between mid-2022 and mid-2023.

¹²⁷ *E.g.*, Minnesota (Winona County), New Mexico (Otero and Lincoln Counties), Navajo Nation (geographically located within New Mexico), Wisconsin (Dane County). E-mail legal services provider in Winona Cnty., Minn., to Clare Hensley, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (July 27, 2022, 12:34 CST) (on file with author); E-mail from legal services provider in Otero and Lincoln Cntys, N.M., to Hannah Jackson, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (Aug. 9, 2022, 11:08 CST) (on file with author); E-mail from legal services provider in Navajo Nation, N.M., to Hannah Jackson, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (Aug. 10, 2022, 10:20 CST) (on file with author); E-mail from legal services provider in Dane Cnty., Wis., to Clare Hensley, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (June 29, 2022, 15:50 CST) (on file with author). *See infra* Figure 3.

¹²⁸ *E.g.*, Hawai'i (Honolulu and Maui Counties), Michigan (Ingham County), New York (New York City); Oregon (Marion County); Washington. E-mail from legal services provider in Honolulu Cnty., Haw., to Hannah Jackson, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (June 22, 2022, 9:24 CST) (on file with

jurisdictions have chosen to retain the electronic filing methods for PO petitions that they had adopted early in the pandemic but returned to in-person hearings with no or only rare virtual participation opportunities.¹²⁹

The trend of procedural variation across jurisdictions within states, courts within counties, and judges within individual courts has continued. A salient example is New York City, which is the research setting for the empirical study with IPV survivors conducted for this Article and discussed in Part III. Currently, most civil PO petitions related to IPV are filed electronically with one of New York City's five family courts through LawHelp Interactive.¹³⁰ After an initial hearing via telephone or video—petitioners are e-mailed both a Microsoft Teams link and a telephone number following the e-filing of their petition and can choose how to participate in this first hearing—there is substantial variation in procedures following the grant of a temporary PO.¹³¹ Petitioners receive an e-mail with a “return date” that specifies how they must attend the hearing concerning whether a permanent PO will be granted in their case.¹³² In Queens, Bronx, and Staten Island family courts, the instructions nearly always indicate that this hearing will be held in person at the courthouse.¹³³ In Manhattan and Brooklyn family courts, the instructions vary as to whether the hearing will be held in person or virtually.¹³⁴ Variations likely turn on the individual preferences of the judges and court attorney referees who hear PO cases, according to Victoria Padilla, the Director of Safe Horizon's Manhattan Family Court office, which assists IPV survivors with filing PO petitions.¹³⁵ She noted that at least two

author); E-mail from legal services provider in Maui Cnty., Haw., *supra* note 114; E-mail from legal services provider in Lansing, Mich., *supra* note 114; E-mail from legal services provider in N.Y.C., to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (July 19, 2023, 10:17 CST) (on file with author); E-mail from legal services provider in Marion, Cnty., Or., *supra* note 107; E-mail from legal services provider in King Cnty., Wash., *supra* note 107. *See infra* Figure 3.

¹²⁹ *E.g.*, Montana, New Hampshire, Nebraska (Douglass County). E-mail from legal services provider in Bozeman, Mont., to Hannah Jackson, Rsch. Assistant to Assoc. Professor of L. Rachel J. Wechsler, Univ. of Mo. Sch. of L. (July 7, 2022, 14:35 CST) (on file with author); E-mail from legal services provider in Hillsborough Cnty., N.H., *supra* note 115; Telephone Interview by Clare Hensley, *supra* note 113.

¹³⁰ Only organizations approved by Pro Bono Net, a non-profit organization working to increase access to justice through technology, can e-file PO petitions with New York City family courts through LawHelp Interactive. Telephone Interview with legal services provider in N.Y.C., *supra* note 116; *see also About Us*, LAWHELP INTERACTIVE, <http://support.lawhelpinteractive.org/hc/en-us/articles/221936468-About-Us> (last visited July 31, 2023).

¹³¹ Telephone Interview with legal services provider in N.Y.C., *supra* note 116.

¹³² *Id.*

¹³³ *Id.*; E-mail from legal services provider in N.Y.C., *supra* note 128.

¹³⁴ Telephone Interview with legal services provider in N.Y.C., *supra* note 116.

¹³⁵ *Id.*

judges or referees at Manhattan Family Court will only conduct PO proceedings in person following the initial hearing.¹³⁶ Furthermore, she observed that during some initial hearings, judges or referees in Manhattan Family Court have asked petitioners whether they have access to a computer or smartphone with video capabilities before setting the method of participation for the next hearing, presumably because they wished to ensure that they would be able to see the parties if they set the hearing as virtual.¹³⁷ Although the introduction of petitioner choice between video and telephonic participation in the initial hearing is a positive development, the arbitrariness of basing the participation method for later hearings upon individual judge or referee preference undermines survivors' access to justice and protection.

Inspired by their experiences during the pandemic, several states have made efforts to codify virtual civil PO procedures to ensure their availability going forward. State-wide legislation is a promising mechanism for preventing the accessibility of POs from hinging upon judges' idiosyncratic participation preferences and for facilitating survivors' agency and empowerment. In March 2022, Washington state enacted legislation to continue its remote hearing options for POs and institute an electronic filing option statewide.¹³⁸ The statute, titled "An act relating to updating laws concerning civil protection orders to further enhance and improve their efficacy and accessibility," provides petitioners with access to electronic filing and provides all hearing participants with virtual hearing participation options that are untethered to the existence of the pandemic or any public health risk.¹³⁹ In furtherance of its goal "to enhance access for all parties[,]” it permits any PO hearing participant to attend "in person or remotely," including by telephone, video or other electronic means where possible.¹⁴⁰ Thus, this statute facilitates court access and due process rights for *both* petitioners and respondents.

If a party or witness wishes to participate remotely, they must make this request a minimum of three days before the hearing, but encouragingly, "[t]he court shall grant any request for a remote appearance unless the court finds good cause to require in-person attendance or attendance through a specific means."¹⁴¹ Although the court is not required to affirmatively elicit individuals' participation preferences and pro se parties may not be aware of their participation options, Washington courts are likely to grant most requests for virtual participation in PO hearings under this statutory standard.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ WASH. REV. CODE §§ 7.105.105; 7.105.205 (2022) (taking effect on July 1, 2022).

¹³⁹ *See id.*

¹⁴⁰ WASH. REV. CODE § 7.105.205(2).

¹⁴¹ *Id.*

Regarding the filing of petitions for civil POs, the statute takes an empowering, pluralistic approach by specifying that petitioners can choose their preferred filing method: in person, electronic, or by mail—though eligibility for this final method is unfortunately limited to incarcerated individuals and those who are otherwise unable to file by in-person or electronic means.¹⁴²

California likewise codified virtual filing and hearing options for POs, effective from January 1, 2022.¹⁴³ The California Family Code requires courts that receive petitions for domestic violence POs to permit electronic filing by July 1, 2023¹⁴⁴ and specifies that “[a] party or witness may appear remotely at the hearing on a petition for a domestic violence restraining order.”¹⁴⁵ Like the Washington statute, this California law rightly includes remote access opportunities for both petitioners and respondents. However, the statute does not specify which types of virtual means should be made available for hearings, leaving the details of remote appearances to the superior court of each California county, which are required to “develop local rules and instructions for remote appearances” and post them on their website.¹⁴⁶ This is likely to result in significant variation across counties, with some providing more robust participation options and easier processes to access them than others. As of this writing, a number of California superior courts do not have instructions for requesting or arranging remote PO appearances on their websites,¹⁴⁷ in violation of the statute.

Texas legislators attempted to follow in Washington and California’s footsteps by codifying remote PO hearing procedures but they were ultimately unsuccessful when the bill died in Senate committee, despite being passed in the House in May 2023.¹⁴⁸ While a laudable effort, the bill had several shortcomings. First, only petitioners and witnesses, but not respondents, could request remote participation in a PO hearing.¹⁴⁹ Second,

¹⁴² WASH. REV. CODE § 7.105.105(1)(a) (requiring all Washington state superior courts to institute this filing framework for civil POs by January 1, 2023 and requiring courts of limited jurisdiction to do so by January 1, 2026).

¹⁴³ CAL. FAM. CODE §§ 6307, 6308 (West 2022).

¹⁴⁴ CAL. FAM. CODE § 6307(a).

¹⁴⁵ CAL. FAM. CODE § 6308(a).

¹⁴⁶ *Id.*

¹⁴⁷ *See, e.g.*, Calaveras County Superior Court, <http://www.calaveras.courts.ca.gov/> (last visited July 18, 2023); Colusa County Superior Court, (last visited July 18, 2023); Del Norte County Superior Court, <http://www.delnorte.courts.ca.gov/> (last visited July 18, 2023); *COVID-19 Restriction Rollback*, INYO CNTY. SUPERIOR CT., (June 24, 2021), <http://www.inyo.courts.ca.gov/system/files/court-post-covid-operations-memo.pdf>; Plumas County Superior Court, <http://www.plumascount.ca.gov/Telephonic.htm> (last visited July 18, 2023).

¹⁴⁸ H.R. 698, 2023 Leg., 88th Sess. (Tex. 2023).

¹⁴⁹ *See id.*

it only required courts to provide “a method” for remote participation but did not specify the type of method (which is also an issue with the California statute) or require both telephone and video methods be made available,¹⁵⁰ which would have made hearings more accessible for a wider set of individuals with varying characteristics and life circumstances. Third, it required petitioners and witnesses to submit requests for remote participation in writing,¹⁵¹ which may be more onerous than making a verbal request for some petitioners and is certainly more onerous than indicating a participation preference on the petition itself, which is one aspect of my proposal in Part IV. But on a positive note, like the Washington statute, the Texas bill only permitted denial of a request to participate remotely for good cause.¹⁵² There are plans to reintroduce the bill in the next legislative session.¹⁵³

Though not a legislative development, it is worth noting that in 2021, several West Virginia counties instituted a pilot program enabling domestic violence and sexual assault victims to file PO petitions and participate in hearings from sites run by domestic violence organizations rather than having to do so at courthouses.¹⁵⁴ Former Supreme Court Chief Justice Evan Jenkins explained, “[t]he remote technology during the COVID-19 pandemic has built our confidence and comfort in ensuring justice is delivered in a safe and secure way.” The pilot program’s development is traceable to investments in the West Virginia court system’s technological infrastructure and technology training spurred by the pandemic.¹⁵⁵ According to the state supreme court’s

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ E-mail from Natalie Nanasi, Assoc. Professor of L. & Dir., Judge Elmo B. Hunter Legal Ctr. for Victims of Crimes against Women, SMU Dedman Sch. of L., to author (June 19, 2023, 10:07 CST) (on file with author).

¹⁵⁴ Press Release, West Virginia Supreme Court of Appeals, Supreme Court Announces New Remote Technology Project to Promote Access and Safety in Domestic Violence and Sexual Assault Cases (Aug. 18, 2021), http://www.courtswv.gov/public-resources/press/releases/2021-releases/aug18_21.pdf; Press Release, West Virginia Supreme Court of Appeals, Ohio County to Test Remote Technology Project to Promote Access, Safety in Domestic Violence and Assault Cases (Sept. 28, 2021), http://www.courtswv.gov/public-resources/press/releases/2021-releases/sept28_21.pdf; Press Release, West Virginia Supreme Court of Appeals, New Remote Technology Provides Safe Access in Domestic Violence and Sexual Assault Cases in Kanawha County (Oct. 25, 2021), http://www.courtswv.gov/public-resources/press/releases/2021-releases/oct25_21.pdf; Press Release, West Virginia Supreme Court of Appeals, Jefferson County to Test Remote Technology Project to Promote Access, Safety in Domestic Violence and Sexual Assault Cases (Nov. 4, 2021), http://www.courtswv.gov/public-resources/press/releases/2021-releases/nov4_21.pdf.

¹⁵⁵ Courtney Hessler, *New Program Prevents Victims in Cabell County from Facing Aggressors*, HERALD DISPATCH (Aug. 18, 2021),

press releases, the program's goals are to expand PO access, reduce victims' levels of fear and intimidation by avoiding face-to-face contact with their abusers, and prevent abusers from threatening victims' safety in or near courthouse facilities.¹⁵⁶ Notably, this program does not permit victims to participate in hearings remotely from their home or other location of their choice, but instead only offers remote access from specific offices (one or two in each county) run by organizations focused on assisting victims of sexual assault and/or domestic violence.¹⁵⁷ These sites are outfitted with computer equipment to enable petitioners to videoconference with the judge deciding their case, who is located in a courtroom.¹⁵⁸ Helpfully, domestic violence and sexual assault victims still have the option to choose to file PO petitions and attend in-person hearings at a courthouse if they do not wish to participate remotely from an organization's office.¹⁵⁹

Figure 3.

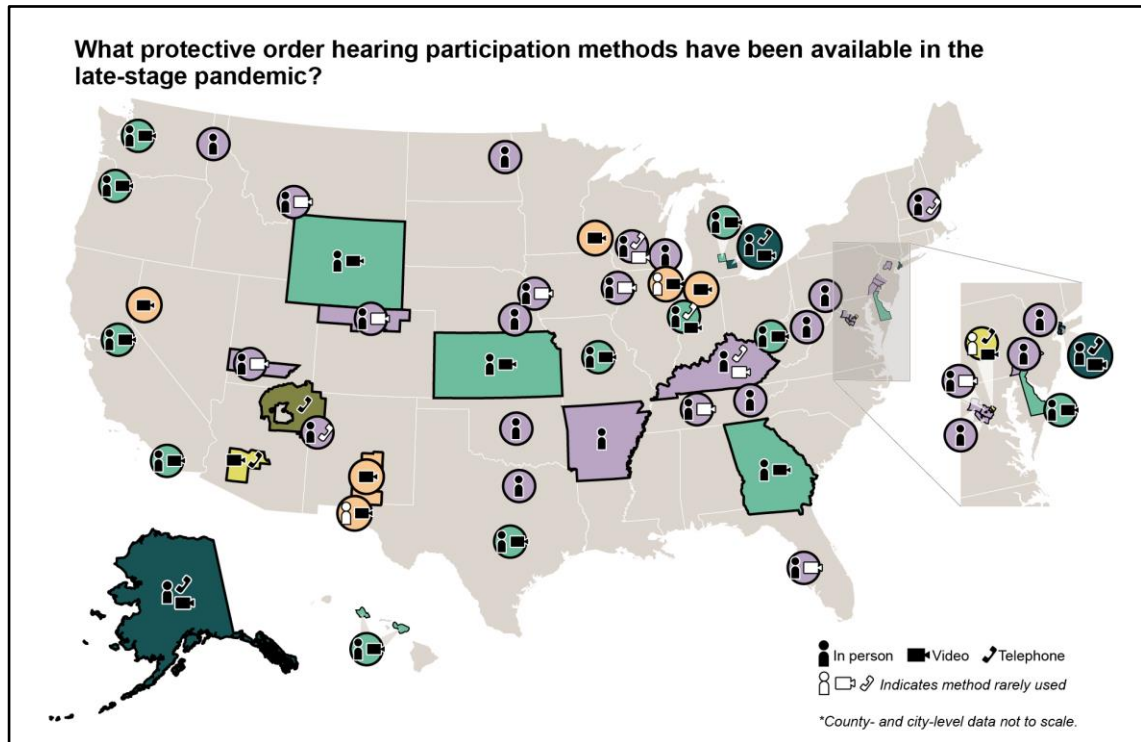
dispatch.com/news/new-program-prevents-victims-in-cabell-county-from-facing-aggressors/article_5e408931-494b-5e8f-8b20-091735040a2f.html.

¹⁵⁶ See *supra* note 154.

¹⁵⁷ *Id.*

¹⁵⁸ See Carrie Hodousek, *Cabell County Courts Launch Remote Tech for Victims of Sexual Assault, Domestic Violence*, WV METRONNEWS (Aug. 18, 2021), <http://wvmetronews.com/2021/08/18/cabell-county-courts-launch-remote-tech-for-victims-of-sexual-assault-domestic-violence/>.

¹⁵⁹ See *supra* note 154.



III. IPV SURVIVORS' EXPERIENCES AND VIEWS

Understanding IPV survivors' lived experiences and perspectives is critical to realizing an empowerment-based approach that facilitates survivors' exercise of agency within their lives. To this end, this part presents the results of original survey research conducted with sixty female IPV survivors who sought civil POs in one of New York City's five family courts during the pandemic. All participants had participated in at least one hearing for their PO between October 2020 and March 2022.¹⁶⁰ At the time they completed the survey, nearly 60% of the sample had participated in only one hearing for their PO, nearly a quarter had participated in two hearings, and the remainder had participated in more than two hearings.¹⁶¹ Those who had participated in multiple hearings were asked to reflect on their most recent hearing when responding to the survey. Almost 80% had participated in their

¹⁶⁰ Research participants completed the survey between January 2021 and April 2022, within three months of participating in their PO hearing. All participants were assisted with the PO process by Sanctuary for Families, a New York City-based non-profit organization serving IPV survivors. The author thanks Sanctuary for Families for assisting with participant recruitment for this study.

¹⁶¹ Two participants did not respond to the survey item asking about the number of hearings they had had concerning their PO petition.

first or most recent hearing via telephone, 20% had participated over video, and one had attended her hearing in person at the courthouse.¹⁶²

The survey was available in both English and Spanish. Eighty-five percent of the sample is comprised of IPV survivors who are women of color. It is especially important to conduct research with this population because women of color are disproportionately affected by IPV.¹⁶³ The pandemic exacerbated IPV overall, but with particularly detrimental impacts upon people of color, largely due to the pandemic's magnification of preexisting structural inequities with respect to factors associated with IPV—including unemployment, financial stress, substance use, neighborhood violence, and a lack of collective efficacy.¹⁶⁴

New York is an important setting for research on civil POs for IPV survivors. As mentioned above, it was the first U.S. jurisdiction to enact legislation establishing the civil PO as an option for IPV victims (though

¹⁶² The one participant who had attended her PO hearing in person was a sixty-seven-year-old monolingual Punjabi speaker. Sanctuary for Families assisted her with her PO petition and e-filed it with Queens Family Court in March 2021. At the end of the day of the e-filing, the court sent a Notice to Appear for the petitioner that required her in-person attendance at 9:00 am the following morning. Since she did not know how to take the subway, Sanctuary for Families provided her with reimbursement for a taxi to the courthouse. E-mail from legal services provider in Queens Cnty., N.Y., to author (June 30, 2023, 11:07 CST) (on file with author).

¹⁶³ RUTH W. LEEMIS ET AL., CTRS FOR DISEASE CONTROL & PREVENTION, NAT'L CTR. FOR INJURY PREVENTION CONTROL, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2016/2017 REPORT ON INTIMATE PARTNER VIOLENCE 14 (2022); Emiko Petrosky et al., *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence – United States, 2003-2014*, 66 CTRS. FOR DISEASE CONTROL & PREVENTION MMWR 741, 742, 745 (2017).

¹⁶⁴ Bhuptani et al., *supra* note 2, at 11; Amber M. Smith-Clapham et al., *Implications of the COVID-19 Pandemic on Interpersonal Violence within Marginalized Communities: Toward a New Prevention Paradigm*, 113 AM. J. PUB. HEALTH S149, S149-50, S155 (2023); Megan L. Evans, Margo Lindauer & Maureen E. Farrell, *A Pandemic within a Pandemic – Intimate Partner Violence during Covid-19*, 383 NEW ENG. J. MED. 2302, 2302 (2020). 'Collective efficacy' refers social cohesion and shared expectations of and engagement in local social control. Jeffrey D. Morenoff, Robert J. Sampson & Raudenbush, *Neighborhood Inequality, Collective Efficacy, and the Spatial Dynamics of Urban Violence*, 39 CRIMINOLOGY 517, 520-21 (2001). At least two empirical studies have found an inverse relationship between collective efficacy and IPV, which is likely related to a lesser ability of community members to act together to curb violence in the absence of collective willingness to socially enforce positive community norms. Kristen Beyer, Anne Baber Wallis & L. Kevin Hamberger, *Neighborhood Environment and Intimate Partner Violence: A Systematic Review*, 16 TRAUMA, VIOLENCE & ABUSE 16, 37, 43 (2013). During the pandemic, public health measures such as lockdowns greatly reduced opportunities for community members to observe violations of positive norms and intervene, which negatively impacted levels of collective efficacy.

initially limited to married intimate partners).¹⁶⁵ In 2016, New York was also the first jurisdiction to implement a remote temporary PO program on a statewide scale.¹⁶⁶ This is a significant step despite limiting eligibility to petitioners for whom traveling to or appearing in a courthouse would pose an undue hardship or create a risk of harm.¹⁶⁷ As the most populous city in the U.S.,¹⁶⁸ it is no surprise that New York City's family courts are kept very busy. In 2021 through 2023, New York City's five family courts cumulatively issued over 30,000 POs in IPV cases each year.¹⁶⁹ The figure was somewhat lower for 2020 at approximately 26,000, likely due to the challenges of transitioning to fully remote procedures and a lack of awareness among IPV victims about PO availability and procedures at the start of the pandemic.¹⁷⁰ Although the number of POs issued by New York City's family courts in IPV cases has been rising since 2021, it has not returned to pre-COVID levels, which topped 40,000 in the years leading up to the pandemic.¹⁷¹

New York City is also representative of broader trends concerning the disproportionate impact of IPV upon women of color. Between 2010 and 2022, Black females comprised 31.2% of intimate partner homicide victims in New York City despite constituting just 13% of the city's population.¹⁷² Likewise, Hispanic females made up 27.3% of the victims while comprising only 14.6% of the population.¹⁷³

Figure 4.

¹⁶⁵ Family Court Act of the State of New York, ch. 686, § 356, 1962 N.Y. Laws 3043, 3075 (1962).

¹⁶⁶ Press Release, N.Y. State Unified Ct. Sys., Chief Judge Announces Pioneering New Program to Promote Access to Justice for Victims of Domestic Violence (Nov. 4, 2016), http://ww2.nycourts.gov/sites/default/files/document/files/2018-05/PR16_14.pdf

¹⁶⁷ *Id.*; N.Y. Family Court Act, ch. 367, § 153-c(3)(i), 2015 N.Y. Laws 957, 958 (2016).

¹⁶⁸ *United States*, U.S. Census Bureau, <http://data.census.gov/profile?g=010XX00US> (last visited July 5, 2023).

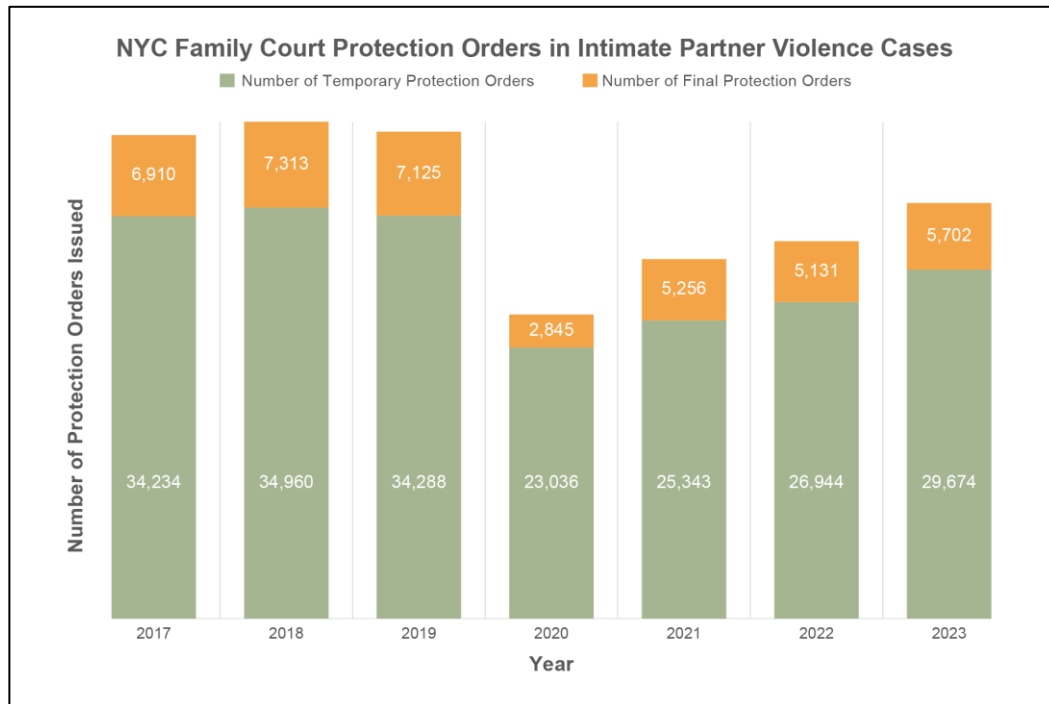
¹⁶⁹ Orders of Protection in the Unified Court System's Domestic Violence Registry, N.Y. STATE UNIFIED CT. SYS., DIV OF TECH. & CT. RSCH., <https://app.powerbigov.us/view?r=eyJrIjojNDMxZjNjNDEtNWJjMi00NjgyLWExZTYtMjRlMTRhNTQyZmJlIiwidCI6IjM0NTZmZTkyLWNiZDEtNDA2ZC1iNWEzLTUzNjRiZWMwYTgzMyJ9> (last visited Jan. 25, 2024). *See infra* Figure 4.

¹⁷⁰ *Id.* (showing that the number of POs that New York City's family courts issued in IPV cases in 2020 reached its lowest point in April of that year, with only 669 POs issued, as compared with January and February of that year, during which 3,738 and 3,282 POs were issued, respectively). *See infra* Figure 4.

¹⁷¹ *Id.* *See infra* Figure 4.

¹⁷² MAYOR'S OFF. TO END DOMESTIC & GENDER-BASED VIOLENCE, NEW YORK CITY DOMESTIC VIOLENCE FATALITY REVIEW COMMITTEE: 2023 ANNUAL REPORT 8 (2023), <http://www.nyc.gov/assets/ocdv/downloads/pdf/2023-Annual-FRC-Report.pdf>.

¹⁷³ *Id.*



A. Protection Order Hearing Experiences

Participants overall reported high levels of satisfaction with the PO hearing process they experienced.¹⁷⁴ On a scale of 1 to 10, the median satisfaction rating was 8 and the mean was 7.5. In explaining the reasons underlying their satisfaction rating, many survivors who were very satisfied praised the efficiency, speed, and convenience of the process. Examples include pithy comments from participants such as “[the hearing] went quickly and efficiently,”¹⁷⁵ “[i]t was fast,”¹⁷⁶ and “[i]t’s convenient.”¹⁷⁷ However, one petitioner viewed the hearing speed in a negative light and felt that “was a little too fast,” rating her satisfaction as only a 4 out of 10,¹⁷⁸ perhaps because she felt that there was inadequate time to give her case the attention it deserved.¹⁷⁹ This is but one example of the diversity of preferences among IPV victims.

¹⁷⁴ See *infra* Figure 5.

¹⁷⁵ Participant No. 30.

¹⁷⁶ Participant No. 41.

¹⁷⁷ Participant No. 33.

¹⁷⁸ Participant No. 11.

¹⁷⁹ Similarly, a participant in Schneider et al.’s empirical study with ninety-two IPV survivors who sought civil POs during the pandemic in Milwaukee County, Wisconsin remarked that the virtual process had felt “too quick, almost unreal.” Schneider et al., *supra* note 9, at 254.

As indicated above, all but one participant completed their hearing by virtual means, and it is likely that participating in their hearings remotely factored into petitioners' perceptions of convenience and efficiency. Several explicitly referenced virtual hearing participation in their explanations of their satisfaction ratings. One of these survivors commented, "I love that court is over the phone from home. It's a long process to get into a courthouse and getting there so over the phone is so much more convenient."¹⁸⁰ Another participant shared, "I believe that virtual hearings are better in the cases of orders of protection. Not having to be in the same room with that person is helpful in an already stressful situation."¹⁸¹ The ability to avoid seeing one's abuser in person through remote participation in PO hearings also emerged as a significant theme in response to the survey items specifically about hearing participation preferences.¹⁸²

A third petitioner noted both positive and negative aspects of her telephonic participation experience but still rated her satisfaction with the process as high.¹⁸³ She asserted, "[i]t is nice not to have to come in to Court, but the waiting over the phone is so long!"¹⁸⁴ Yet, this petitioner and others complaining of long wait times likely would have also encountered these at the courthouse had they participated in their hearing in person, as extended wait times for PO hearings have long been an issue, and are particularly problematic when victims are waiting for their hearing to start in the same courthouse area as their abusers.¹⁸⁵

Several participants reported that judicial or attorney behavior impacted their experiences with the PO hearing process. One survivor who rated her satisfaction as a 10 out of 10 explained her rating as follows: "The

¹⁸⁰ Participant No. 50.

¹⁸¹ Participant No. 20.

¹⁸² See discussion *infra* Section III.B.2.

¹⁸³ Participant No. 34.

¹⁸⁴ *Id.*

¹⁸⁵ See Stoeber, *Enjoining Abuse*, *supra* note 4, at 1027-30; Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J. L. & FEMINISM 3, 33-34 (1999); LAURIE DUKER & JUDY WHITON, COURT WATCH MONTGOMERY, JUST "A PIECE OF PAPER?" DOMESTIC VIOLENCE PEACE AND PROTECTIVE ORDERS IN MONTGOMERY COUNTY DISTRICT COURTS: SECOND MONITORING REPORT 8, 20 (2012); http://courtwatchmontgomery.org/wp-content/uploads/2012/11/courtwatchmontgomery_report_2.pdf; see also Lee Price, *Why Are Judges Forcing Survivors of Domestic Violence Back into Court While Delta Spreads?*, SLATE (Aug. 31, 2021), <http://slate.com/news-and-politics/2021/08/zoom-court-domestic-violence-covid-delta.html> (asserting that prior to the pandemic, the attorney author and his clients, who are low-income domestic violence survivors in New York City, "waited hours for a few minutes of the judge's time" and there were also "lines that wrapped the block" outside of the city's courthouses).

judge was very empathetic and willing to listen. Did not rush me. I felt heard.”¹⁸⁶ Previous qualitative research has found this judicial approach to be validating and helpful for IPV victims during the PO process.¹⁸⁷ In contrast, a survivor who rated her satisfaction with the hearing process as a 1 out of 10 and reported high levels of fear and anxiety during her hearing recounted, “[t]he judge said I needed to be more cooperative[, but] I gave all the information I have.”¹⁸⁸

A few participants who had court-appointed attorneys attributed their negative experiences with their PO hearing to a lack of assistance, competence, and/or concern on the part of their counsel. One of these survivors explained, “I got a court-appointed lawyer and she is not responding or [sic] any reminder or [to] any connection with me. I feel very abandoned . . . and vulnerable.” Another participant had strong criticisms of her court-appointed representation: “I have never met someone so unprofessional and disorganized when it came to handling my case. My case meant nothing to [my attorney] . . . and she demonstrated no empathy, concern or interest in my case.”¹⁸⁹ In response to the survey item asking for recommendations about how to improve the PO process generally, a third participant recommended that the court “have better appointed lawyers who actually care about people.”¹⁹⁰ Unsurprisingly, she also rated her satisfaction with the hearing process as very low.¹⁹¹

Petitioners’ negative experiences with their court-appointed attorneys is likely due at least in part to New York’s failure to raise panel attorney compensation rates since 2004, which has led to a substantial reduction in the number of lawyers willing to serve in this role and “has left those who remain vastly overworked[.]”¹⁹² Between around early 2016 and early 2022, the number of panel attorneys available to accept new cases in family court fell from seventy to thirty-nine in Manhattan and from eighty to forty-eight in the Bronx.¹⁹³ In Brooklyn and Queens, this figure fell by approximately twenty percent between 2011 and early 2022.¹⁹⁴ According to family law scholar

¹⁸⁶ Participant No. 9.

¹⁸⁷ See JAMES PTACEK, *BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSES* 150-53 (1999) (analyzing data based on qualitative telephone interviews with forty women who appeared in court to obtain an PO against an abusive male partner or former partner).

¹⁸⁸ Participant No. 26.

¹⁸⁹ Participant No. 4.

¹⁹⁰ Participant No. 17.

¹⁹¹ *Id.*

¹⁹² Jonah E. Bromwich, *Family Court Lawyers Flee Low-paying Jobs. Parents and Children Suffer.*, N.Y. TIMES (Apr. 29, 2022), <http://www.nytimes.com/2022/04/29/nyregion/family-court-attorneys-fees.html>.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

Cynthia Godsoe, the state is “[n]ot paying these attorneys remotely close to what they need to be able to do a good job[.]”¹⁹⁵

In contrast to petitioners’ experiences with their court-appointed attorneys, several explained their high satisfaction ratings by discussing the explanation of the process and support they received from Sanctuary for Families, which underscores the benefit of having a knowledgeable survivor support organization available to inform and assist with the PO process. For instance, one petitioner attributed her high satisfaction rating to the “mental support [she received] from the students,”¹⁹⁶ referring to the law students who assisted her through Sanctuary for Families’ Courtroom Advocates Project. Another participant shared, “[t]he counseling [from Sanctuary for Families] I had before the hearing was excellent and it helped me understand the process” as a primary reason for her high level of satisfaction with the hearing process.¹⁹⁷

However, based on their comments explaining their chosen satisfaction rating, some participants appeared to interpret the survey item asking about their satisfaction with the hearing *process* as pertaining to their satisfaction with the *outcome*, i.e., their satisfaction with the judge’s decision on their petition and requested relief. For instance, two petitioners explained their satisfaction rating of 1 out of 10 on the basis of the judge’s denial of their requests, specifically, an exclusionary order in one case¹⁹⁸ and electronic service and a court-appointed attorney prior to the next appearance in the other.¹⁹⁹ On the other end of the scale, the reason that a participant gave for her high satisfaction rating was that she “got the protection [she] needed[.]”²⁰⁰ This observation is supported by a positive correlation among participants’ satisfaction regarding the hearing process and a later survey item concerning their satisfaction with the order issued.²⁰¹

Having young or relatively young children also impacted participants’ PO hearing experiences. Petitioners with children under the age of twelve were significantly more likely to feel nervous during their hearing than petitioners who did not have children under twelve.²⁰² In addition, participants with children under eighteen were significantly less likely to feel confident and hopeful during their PO hearing than those without children under eighteen.²⁰³ A possible explanation for these findings is that petitioners

¹⁹⁵ *Id.*

¹⁹⁶ Participant No. 43.

¹⁹⁷ Participant No. 55.

¹⁹⁸ Participant No. 8.

¹⁹⁹ Participant No. 42.

²⁰⁰ Participant No. 37.

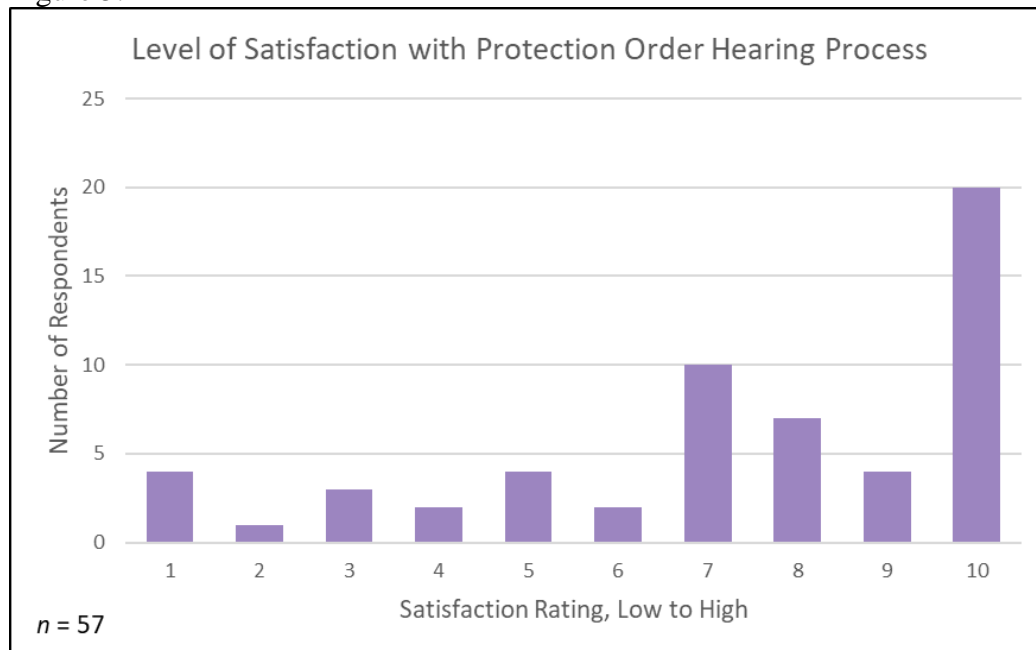
²⁰¹ $p < .01$.

²⁰² $p < .05$.

²⁰³ $p < .05$.

with minor children feel that the stakes are higher and that they potentially have more to lose if their PO petition is denied or if the petition is granted but the order does not include their desired relief. Since civil POs can include conditions related to child support, custody, visitation, and parental behavior towards their children,²⁰⁴ a petitioner with minor children may be more anxious, less confident, and less hopeful than one without minor children due to the chance that a judge may refuse to grant her requested relief with respect to her children. For example, a mother of two young children who reported experiencing high levels of fear and anxiety and low confidence during her PO hearing wrote that she was “just worried about custody.”²⁰⁵ Furthermore, a participant who was highly dissatisfied with the process shared, “[m]y daughter was not included in the order, yet the cat was added on. . . . [A] threat was made to my daughter, yet at both hearings the judge refused to add her to the order. This made me feel very uneasy. The cat is more protected than my 9-year-old.”²⁰⁶

Figure 5.



B. Participation Preferences During the Pandemic and Beyond

²⁰⁴ See *supra* note 34.

²⁰⁵ Participant No. 35.

²⁰⁶ Participant No. 26.

Figure 6.

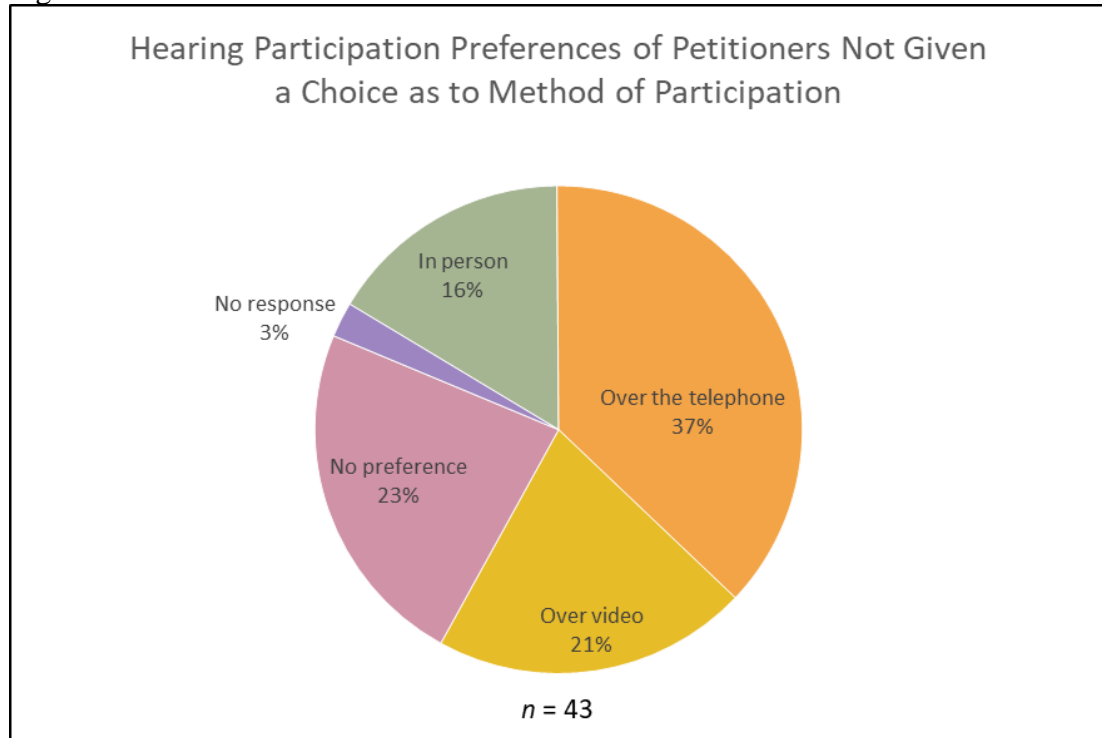
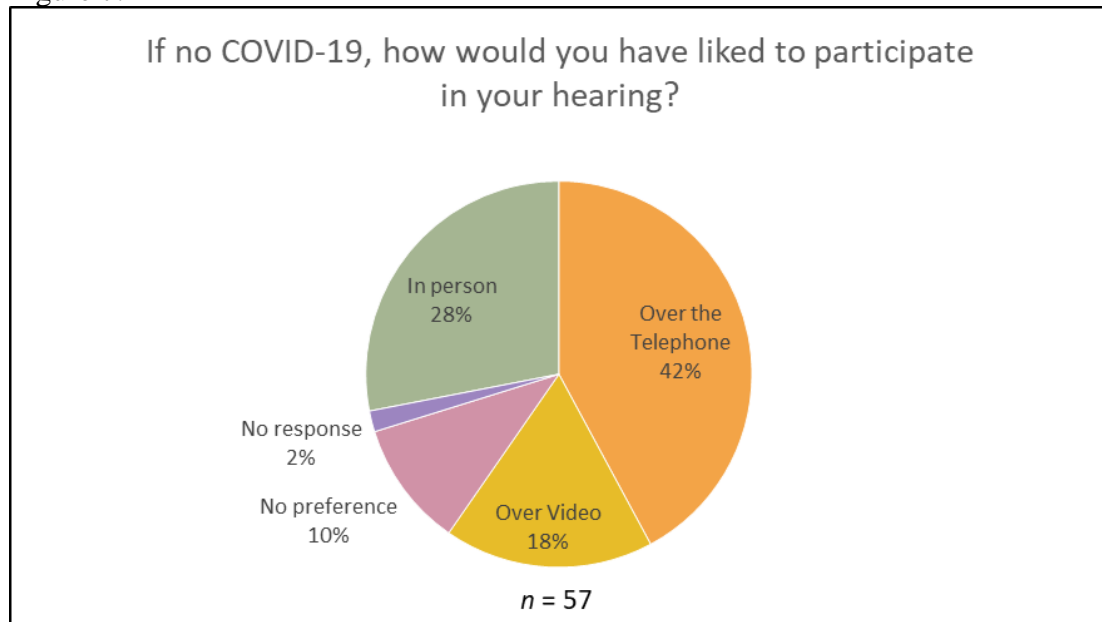


Figure 7.



1. Preference for In-Person Hearings

Of the approximately three-quarters of the sample not given a choice as to their method of participation in their PO hearing, 16% indicated that had they been asked, they would have chosen to participate in person at the courthouse.²⁰⁷ Furthermore, over a quarter of participants reported that they would have liked to participate in their hearing in person if COVID-19 did not exist,²⁰⁸ which is especially useful data to have as we reflect on moving forward with post-pandemic life.

A theme underlying some participants' desire for in-person hearings is a belief that being in the same physical space as the judge would bolster their credibility. This finding makes sense given that IPV victims' credibility is central to the civil PO process.²⁰⁹ Due to a widespread lack of legal representation, limited discovery, and few resources, "most civil protection order cases end up in the 'he said/she said,' or 'word on word' realm."²¹⁰ Thus, "most protection order cases boil down to this: if a survivor is believed, the judge will award her protection. If she is not believed, the judge will deny it."²¹¹

Heavy reliance upon credibility judgments in civil PO cases implicates the cultural phenomenon of discounts to women's credibility, which feminist legal scholars Deborah Epstein and Lisa Goodman argue "constitutes its own distinct obstacle to their ability to obtain safety and justice" in the face of abuse.²¹² The impact of this phenomenon is reflected in more than half a dozen participants' qualitative responses. For example, a survivor shared, "I was feeling very nervous and scared that the judge would question my petition or that I would not be believed by the judge."²¹³

Relatedly, some women explained that they would have preferred to have had their PO hearing in person rather than remotely because they believed it would have helped with communication and understanding of important information about the IPV they had experienced. One of these survivors shared, "I would have chose[n] in-person because I could better convey what I've been through and my feelings of what happened."²¹⁴ This communication is not only verbal. As another survivor explained, she would prefer an in-person hearing absent COVID-19 "[b]ecause I like to look at

²⁰⁷ See *supra* Figure 6.

²⁰⁸ See *supra* Figure 7.

²⁰⁹ Epstein & Goodman, *supra* note 13, at 404-05; see also Lucken, Rosky & Watkins, *supra* note 87, at 2058.

²¹⁰ Epstein & Goodman, *supra* note 13, at 404.

²¹¹ *Id.* at 404-05.

²¹² *Id.* at 402.

²¹³ Participant No. 51.

²¹⁴ Participant No. 1.

people[’s] eyes so they can see my hurt and pain.”²¹⁵ This theme concerning communication efficacy also emerged in Andrea Schneider and her co-authors’ study with IPV survivors in Milwaukee County, Wisconsin.²¹⁶ For instance, a participant in that study asserted, “when online, you cannot see how serious the matter is. It is important for the judge and higher authorities to see body language and expressions between both parties.”²¹⁷ In addition to facilitating the transfer of information, two participants in the present study believed that in-person hearings better foster individualized understanding and rapport among communicators than remote hearings. They described being present in the same physical space as more “personable”²¹⁸ and “intimate”²¹⁹ than only sharing a virtual space during the proceeding.

Attorney-client communication was a priority for a participant who would have liked to have participated in her hearing in person but for the risk of contracting COVID-19.²²⁰ She emphasized that this preference was based on her ability to “interact with the lawyer” during an in-person hearing.²²¹ Impairments to quick and confidential communication between attorneys and clients during court proceedings is a commonly-cited concern with remote court generally, as traditional whispering and note-passing is not an option when attorneys and clients are not seated next to one another.²²² In addition, having a petitioner’s attorney physically sit next to her during her PO hearing could be comforting and confidence-boosting while she recounts details of her IPV victimization before a judge.

Another reason for an in-person participation preference for PO hearings is that being in a courtroom in the presence of a judge could underscore the gravity of the situation. As one participant explained, “[s]uch important ones should not be decided on the phone, this is the fate of a person.”²²³ Another survivor shared, “[o]ver the phone and video I feel like it’s not really taken serious[ly].”²²⁴ These responses evoke what legal scholars Susan A. Bandes and Neal Feigenson observe about the “Courtroom as a Place”: “[t]he architecture and symbolism of the courtroom and courthouse encourage those who enter to perform their roles in the hearing or trial with

²¹⁵ Participant No. 45.

²¹⁶ Schneider et al., *supra* note 9, at 254.

²¹⁷ *Id.*

²¹⁸ Participant No. 47.

²¹⁹ Participant No. 43.

²²⁰ Participant No. 16.

²²¹ *Id.*

²²² Bannon & Keith, *supra* note 27, at 1893; *see also* Meredith Rossner & David Tait, *Presence and Participation in a Virtual Court*, 23 CRIMINOLOGY & CRIM. JUST. 135, 138 (2023).

²²³ Participant No. 40.

²²⁴ Participant No. 14.

an attitude of formality, respect, and seriousness.”²²⁵ The sense that consequential decisions should be made by decisionmakers in an environment that reminds all who are present of the importance of the matter at hand rather than in informal environments where everyday, non-serious matters occur reflects society’s traditional reverence of “the courtroom as a physical site of justice.”²²⁶

2. Preference for Virtual Hearings

Sixty percent of the sample expressed a preference for virtual PO hearings even if COVID-19 was not a risk.²²⁷ Of these participants, 42% reported a preference for telephonic hearings and 18% for video hearings.²²⁸ Only one petitioner cited COVID-19 as a reason for her preference for virtual proceedings.²²⁹ She explained that she preferred to participate in her PO hearing by telephone because “[p]eople are sick [a]n[d] I don[’]t want to get sick[.] COVID-19 is no joke.”²³⁰ She also indicated that if it had not been for the pandemic, she would have preferred to participate in her hearing in person.²³¹ The absence of COVID-19 as a reason for participants’ PO hearing participation preferences supports the applicability of the findings to non-pandemic procedural policymaking. The common themes underlying survivors’ preferences for virtual PO hearings are discussed below.

a. Convenience

Convenience was a major reason behind many participants’ preference for virtual procedures. One survivor explained that remote hearings are “[m]ore convenient as a single mom and not having to find a sitter. Plus I can continue with my studies and work for longer periods of time. This really should be the new way for these proceedings.”²³² Others also highlighted the benefits of virtual participation for their work schedules²³³ and childcare responsibilities,²³⁴ though perhaps surprisingly, only one mentioned the potential for distractions or disruptions from small

²²⁵ Susan A. Bandes & Neal Feigenson, *Virtual Trials: Necessity, Invention, and the Evolution of the Courtroom*, 68 BUFF. L. REV. 1275, 1316 (2020).

²²⁶ *Id.* at 1276.

²²⁷ *See supra* Figure 7.

²²⁸ *Id.*

²²⁹ Participant No. 16.

²³⁰ *Id.*

²³¹ *Id.*

²³² Participant No. 9.

²³³ *E.g.*, Participant Nos. 20, 41, 51.

²³⁴ *E.g.*, Participant Nos. 30, 56.

children during the hearing²³⁵ and none raised concerns that children may overhear troubling details of the IPV their mother had endured. Another common reason underlying a preference for virtual hearings is the ability to avoid the time and inconvenience of traveling to the courthouse.²³⁶ The significance of the convenience factor should not be underestimated; IPV victims often have a number of stressors in their lives and removing the need to find childcare, take time off from work or school, and spend time and money on transportation can make POs more accessible and less stressful.

The emergence of convenience as a common reason for preferring virtual hearings makes sense in light of prior research on IPV victims' PO process experiences. They have described the process as time-consuming²³⁷ and have struggled to attend court dates due to their work schedules.²³⁸ This was a significant problem with the PO process in New York City family courts prior to the pandemic. They typically scheduled the day's hearings for 9:00 am and parties often had to wait for hours, and sometimes all day, for their case to be called.²³⁹ When the courts went virtual due to the pandemic, they began scheduling PO hearings for specific time slots instead of instructing parties for all cases on the day's calendar to call or log on at the same time.²⁴⁰ This improved approach has been carried over to both virtual and in-person hearings in the advanced stages of the pandemic.²⁴¹ Currently, parties may have to wait approximately half an hour due to court delays but are not forced to wait for hours, as was the case under pre-pandemic scheduling procedures in New York City's family courts.²⁴² However, some still find current waiting times inconvenient.²⁴³

b. Anxiety, Fear, and Intimidation

Many participants expressed fear and anxiety related to various

²³⁵ Participant No. 37.

²³⁶ *E.g.*, Participant Nos. 26, 39, 55.

²³⁷ *See* Goldfarb, *supra* note 30, at 1515; *see also* NAT'L CTR. FOR STATE CTS., FACILITATING ACCESS, *supra* note 6, at 1-2 ("In navigating the civil protection order system, survivors may encounter significant challenges in . . . [a] time-consuming legal process to obtain a protection order.").

²³⁸ Lindsay B. Gezinski & Kwynn M. Gonzalez-Pons, *Legal Barriers and Re-Victimization for Survivors of Intimate Partner Violence Navigating Courts in Utah, United States*, WOMEN & CRIM. JUST. 1, 7 (2021).

²³⁹ Telephone Interview with legal services provider in N.Y.C., *supra* note 116; *see also* Price, *supra* note 185.

²⁴⁰ Telephone Interview with legal services provider in N.Y.C., *supra* note 116.

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *E.g.*, Participant No. 34 ("the waiting over the phone is so long!"); Participant No. 5 ("was waiting on the person").

aspects of the in-person court process to access a PO. As one petitioner explained, “I do not like going to the courthouse as it’s insanely anxiety-inducing.”²⁴⁴ Likewise, another shared that “going to court is frightening”²⁴⁵ and a third explained, “I feel much more comfortable speaking to a judge/court over the phone or video compared to in person.”²⁴⁶ This finding regarding a preference for virtual participation resonates with prior empirical research showing that some IPV victims find the formal courtroom setting and appearing before a judge intimidating, uncomfortable, embarrassing, and even degrading when they are seeking a PO.²⁴⁷

One of the strongest themes underlying participants’ preferences for virtual hearings was a desire to avoid being in the same physical space as their abuser.²⁴⁸ Although the initial hearing is typically *ex parte*, respondents are expected to attend subsequent hearings and may contest the PO.²⁴⁹ Many participants explained their desire for remote hearings with comments such as, “I’m afraid to be around him,”²⁵⁰ “I would feel very uncomfortable being in a place so close to the person that abused me,”²⁵¹ and “[n]ot having to be in the same room with that person is helpful in an already stressful situation.” Moreover, many indicated a preference for telephonic hearings to avoid having to see their abuser over video and/or to prevent their abuser from seeing them. Survivors felt that seeing their abuser’s face would trigger “bad memories,”²⁵² make them “nervous,”²⁵³ or cause them to “worry about his facial expressions of plotting something.”²⁵⁴ A participant who had just completed her initial hearing explained,

I anticipate the next hearing with my ex to be more nerve-wrecking [sic] and prefer he does not see me on video. If it is just the judge and court members then I prefer video because they can see I am a real person and not just another

²⁴⁴ Participant No. 42.

²⁴⁵ Participant No. 10.

²⁴⁶ Participant No. 51.

²⁴⁷ Goldfarb, *supra* note 30, at 1515; PTACEK, *supra* note 187, at 146-48; Fischer & Rose, *supra* note 67, at 418-19.

²⁴⁸ Participant No. 20.

²⁴⁹ See Stoever, *Enjoining Abuse*, *supra* note 4, at 1072-73; BARBARA J. HART & ANDREW R. KLEIN, PRACTICAL IMPLICATIONS OF CURRENT INTIMATE PARTNER VIOLENCE RESEARCH FOR VICTIM ADVOCATES AND SERVICE PROVIDERS 124 (2013), <http://www.ojp.gov/pdffiles1/nij/grants/244348.pdf>.

²⁵⁰ Participant No. 36.

²⁵¹ Participant No. 56.

²⁵² Participant No. 17.

²⁵³ Participant No. 15.

²⁵⁴ Participant No. 23.

number/name on the docket.”²⁵⁵

Like this survivor, it was not uncommon for participants in the study to weigh multiple factors when deciding which method of hearing participation would best meet their individual needs and preferences.

3. Factors Weighing in Both Directions

Certain factors driving participants’ PO hearing participation preferences pointed in different directions for different participants. In other words, at times the same factor was viewed as a reason to prefer in-person hearings by one participant and a reason to prefer telephonic or video hearings by another participant, due to variation among their individual perspectives, needs, and circumstances. This finding underscores the diversity in perspectives and situations among IPV survivors and the need for a pluralistic procedural approach that enables tailoring to their individual circumstances.

a. Disability

Accommodating individuals with disabilities is an important reason for ensuring that multiple means of PO hearing participation are available and easily accessible, since different types of disabilities create varying accessibility challenges. People with disabilities experience IPV at higher rates than people without disabilities,²⁵⁶ and therefore it is particularly important that measures to facilitate access to POs and other anti-IPV tools be developed with their needs in mind.

Four participants in the present study identified as disabled²⁵⁷ and there are indications from others’ survey responses that they also have one or more disabilities, as conceptualized in the CDC’s National Intimate Partner and Sexual Violence Survey, which includes “activity limitations an adult . . . [has] due to physical, mental, or emotional problems and health problems that require the use of special equipment such as a cane, wheelchair, special

²⁵⁵ Participant No. 9.

²⁵⁶ Matthew J. Breiding & Brian S. Armour, *The Association between Disability and Intimate Partner Violence in the United States*, 25 ANNALS EPIDEMIOLOGY 455, 455-57 (2015); *Sexual Violence and Intimate Partner Violence among People with Disabilities*, CTRS. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/violenceprevention/sexualviolence/svandipv.html> (last visited July 18, 2023).

²⁵⁷ Participant Nos. 16, 25, 42, 45.

bed, or special telephone.”²⁵⁸ Of these four participants, two indicated a preference for telephonic hearings whether or not COVID-19 existed,²⁵⁹ one preferred telephonic hearings due to the risk of COVID-19 but would have preferred in-person hearings if there had not been a pandemic,²⁶⁰ and one indicated that she did not have a preference for participating in her most recent hearing but preferred in-person hearings in the absence of a pandemic.²⁶¹ These varying responses are reflective of the broader diversity of needs, capabilities, and preferences among IPV survivors with disabilities.

A useful example relates to auditory needs. A participant with an auditory disability explained her preferred hearing method with reference to her disability, sharing that she felt most comfortable with “[v]ideo because I am a bit hard of hearing and I believe the video had subtitles.”²⁶² In contrast, another participant indicated a preference for attending hearings in person so she “[c]ould hear and understand better.”²⁶³ It is unclear whether this need is related to a disability or another issue, such as poor telephone or Internet connection.²⁶⁴ Regardless, this contrast highlights the need to be sensitive regarding individuals with similar challenges and to avoid presumptions about which method of participation would make court proceedings most accessible to them.

b. Safety

Safety emerged as another bi-directional factor underlying petitioners’ hearing participation preferences. Two participants indicated that fear of their abuser motivated their preference for remote hearings,²⁶⁵ while two others expressed that they felt safer participating in hearings in person.²⁶⁶ IPV survivors are usually very familiar with their abusers’ personality, tendencies, and triggers and are therefore well-placed to assess the relative safety and risk of different hearing participation methods.²⁶⁷

There are considerations that support both positions, depending on the circumstances. As legal scholar and IPV expert Jane Stoeber points out, “[d]omestic violence courts are more dangerous than any other type of court.

²⁵⁸ *Sexual Violence and Intimate Partner Violence among People with Disabilities*, *supra* note 256.

²⁵⁹ Participant Nos. 25, 42.

²⁶⁰ Participant No. 16.

²⁶¹ Participant No. 45.

²⁶² Participant No. 44.

²⁶³ Participant No. 28.

²⁶⁴ *See infra* Section III.B.4.c. for a discussion of the digital divide and remote hearings.

²⁶⁵ Participant Nos. 26, 36.

²⁶⁶ Participant Nos. 46, 53.

²⁶⁷ *See supra* note 79.

A court hearing provides an abusive party with a precise date and time where the abuser will find his or her target of abuse.”²⁶⁸ This consideration weighs in favor of a desire for virtual hearings, especially in the case of petitioners who have previously experienced abuse from the respondent in public places. On the other hand, if a petitioner knows that her abuser does not have a history of harming her in public places and would be particularly unlikely to do so in the presence of court officials and security, it makes sense that she prefers an in-person hearing, especially if she is concerned that her visual surroundings or background noises during a virtual hearing may reveal the location of her home to her abuser. Therefore, facilitating in-person and remote options for PO hearings is an important part of empowering survivors to protect their own safety, both by enabling her to choose the safest hearing participation method and by enabling her to access a PO when she otherwise might view the process as too risky to do so.

4. Are All Remote Hearing Options Created Equal?

IPV survivors seeking civil POs often have clear preferences regarding hearing participation method.²⁶⁹ As seen in the preceding discussion of survivor perspectives, many of those preferring remote hearings have rational reasons for specifically favoring either video or telephonic methods rather than remote hearings more generally.²⁷⁰ Factors underlying these specific preferences include safety, disability, and wanting to avoid seeing or being seen by the respondent.²⁷¹ Two other significant issues related to distinctions between telephonic and video hearings are discussed below.

a. Judicial Bias

Rigorous empirical research strongly suggests that judges hold implicit biases, which can influence their judgment and decision-making.²⁷² Because judges cannot see a party’s appearance over the telephone, telephonic hearings offer the important advantage over video and in-person hearings of potentially reducing the impact of judicial bias. Legal scholar Jerry Kang refers to this type of approach as “blinding”—preventing awareness of characteristics associated with social categories that are known

²⁶⁸ Stoever, *Enjoining Abuse*, *supra* note 4, at 1027.

²⁶⁹ *See supra* Figures 6 & 7.

²⁷⁰ *See supra* Section III.B.

²⁷¹ *See id.*

²⁷² *See* Jeffrey J. Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195, 1197 (2009); Jerry Kang, et al., *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124, 1146-52 (2012).

to trigger implicit biases.²⁷³ If judges are unaware of a PO petitioner's characteristics such as race, skin tone, grooming practices, and/or level of conformity with traditional gender presentations, their implicit biases related to these attributes will not be activated.²⁷⁴

However, in practice, judges can often draw inferences about at least some a petitioner's identity and social categories even without seeing her, based on her name, manner of speaking, address, sexual orientation, and other details in her PO application, but the lack of a visual image of the petitioner in front of them may effectively reduce the influence of their implicit biases.²⁷⁵ While likely not as effective at mitigating the impact of judicial bias as blinding, "dimming" the intensity of information related to parties' social categories through telephonic hearings could increase judicial consistency and fairness.²⁷⁶ Moreover, telephonic hearings provide less implicit-bias-triggering information than in-person and video hearings do. For example, even if a judge assumes that a petitioner is Black based on her name and manner of speaking, the judge will not have information about the Afrocentricity of her facial features through a telephonic hearing, which is a characteristic associated with implicit bias.²⁷⁷

Judges may think that telephonic hearings deprive them of information they need to assess parties' credibility. However, these types of hearings make it less likely that judges will see indicia of trauma that are often misinterpreted as signals of untruthfulness.²⁷⁸ Moreover, a robust body of psychological research demonstrates that nonverbal cues such as facial expressions, eye gaze, and bodily movements are poor predictors of deception, contrary to popular belief.²⁷⁹ Since in-person and video communication can lead to undue reliance upon these misleading cues in credibility assessments, law and psychology scholars Jean Sternlight and

²⁷³ Jerry Kang, *What Judges Can Do about Implicit Bias*, 57 CT. REV. 78, 83 (2021).

²⁷⁴ *See id.*

²⁷⁵ *See id.* at 84.

²⁷⁶ *See id.* at 83-84.

²⁷⁷ See Irene V. Blair, Charles M. Judd & Kristine M. Chapleau, *The Influence of Afrocentric Facial Features in Criminal Sentencing*, 15 PSYCH. SCI. 674, 677-78 (2004) (finding that individuals with more Afrocentric features (physical traits perceived as common among African Americans) received harsher sentences than those with less Afrocentric features, despite equivalent criminal histories).

²⁷⁸ See Louise Ellison, *Closing the Credibility Gap: The Prosecutorial Use of Expert Witness Testimony in Sexual Assault Cases*, 9 INT'L J. EVIDENCE & PROOF 239, 241 (2005) ("Psychological studies, in particular, suggest that commonly assumed credibility cues are potentially misleading when applied to the testimony of those who have witnessed or experienced a traumatic event, such as sexual assault.").

²⁷⁹ Jean R. Sternlight & Jennifer K. Robbenolt, *In-Person or Via Technology? Drawing on Psychology to Choose and Design Dispute Resolution Processes*, 71 DEPAUL L. REV. 537, 572-73, 573 nn.194-97 (2022).

Jennifer Robbennolt posit that communication channels that focus the listener on the content of the communication, which is a much more reliable indicator of truthfulness, and diminish exposure to nonverbal cues, can assist with credibility determinations.²⁸⁰ Telephone communication falls into this category and thus telephonic hearings likely facilitate more accurate credibility assessments than in-person and video hearings by blinding or dimming judges' awareness of unhelpful nonverbal cues stereotypically associated with dishonesty.²⁸¹

b. Digital Divide

There has been much discussion and concern about the digital divide in the context of remote court processes, particularly during the pandemic.²⁸² Consideration of this issue is essential to analysis of different types of remote participation in court proceedings. Despite modest improvements over the last few years, approximately a quarter of U.S. adults lack high-speed broadband Internet in their homes—45% of whom attribute this to the unaffordable monthly cost of a broadband subscription and 37% of whom cite the high cost of a computer.²⁸³ Over 40% of those with annual household incomes under \$30,000 do not have a home broadband subscription or a computer.²⁸⁴ Nearly a quarter of this group does not own a smartphone and more than half does not own a tablet.²⁸⁵ Since low household income and poverty are linked with a higher incidence of IPV,²⁸⁶ the digital divide likely disproportionately affects IPV victims as compared with the general population, which can impair their ability to participate in video PO hearings. The Women's Resource Center to End Domestic Violence in DeKalb

²⁸⁰ *Id.* at 573-75, 574 nn.201-03, 575 nn.204-05.

²⁸¹ *See id.* at 573-75, 573 nn.196-97.

²⁸² *See, e.g.,* Bannon & Keith, *supra* note 27, at 1889-93; Schneider et al., *supra* note 9, at 257-61; Andrew Guthrie Ferguson, *Courts without Court*, 75 VAND. L. REV. 1461, 1501-03 (2022).

²⁸³ Andrew Perrin, *Mobile Technology and Home Broadband 2021*, PEW RSCH. CTR. (June 3, 2021), <http://www.pewresearch.org/internet/2021/06/03/mobile-technology-and-home-broadband-2021/>.

²⁸⁴ Emily A. Vogels, *Digital Divide Persists Even as Americans with Lower Incomes Make Gains in Tech Adoption*, PEW RSCH. CTR. (June 22, 2021), <http://www.pewresearch.org/short-reads/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/>; Anna Read, *How Can the United States Address Broadband Affordability?*, PEW TRUSTS (Apr. 29, 2022), <http://www.pewtrusts.org/en/research-and-analysis/articles/2022/04/29/how-can-the-united-states-address-broadband-affordability>.

²⁸⁵ Vogels, *supra* note 284.

²⁸⁶ Zohre Ahmadabadi et al., *Income, Gender, and Forms of Intimate Partner Violence*, 35 J. INTERPERSONAL VIOLENCE 5500, 5501, 5511 (2020).

County, Georgia shared the following about the impact of the digital divide upon access to video hearings in their jurisdiction during the pandemic:

Our staff has worked with so many petitioners (and sometimes respondents) who lack the necessary tools for virtual court processes such as internet access, computer literacy, and devices adequate for video conferencing. The courts eventually had to implement an in-person kiosk at the courthouse for those who couldn't participate in hearings from home.²⁸⁷

Participation in telephonic hearings may be less likely to be impaired by the digital divide than video hearings because 97% of U.S. adults own a cell phone,²⁸⁸ but the cost of phone plans and spotty connections can still pose barriers to hearing participants. For example, a petitioner who participated in a telephonic PO hearing shared, “The intake person at court asked me two questions[.] I didn’t know what the 2nd question was but said ‘yes’ because I was nervous. The line was choppy.”²⁸⁹ In addition, the Kentucky Coalition against Domestic Violence reported that it was not uncommon for petitioners assigned to telephonic hearings during the pandemic to “not hav[e] enough minutes on their phone” or to experience their “phones dying as they waited hours for their hearings.”²⁹⁰

The digital divide is not only an issue for parties and witnesses, but can pose challenges for courts as well. For instance, courts in some Virginia counties faced budgetary barriers to enabling virtual participation in hearings:

Fairfax quickly moved to video hearings over WebEx. Surrounding jurisdictions tried, but there were issues with the hardware – the computers had to come from the Supreme Court budget, and the judges in most of our courts complained that they just couldn’t get the funding for webcams, etc. Fairfax already had high-tech courtrooms, so the switch took less effort.²⁹¹

Thus, the digital divide is multi-directional and investments need to be made

²⁸⁷ E-mail from legal services provider in Douglass Cnty., Neb., *supra* note 113.

²⁸⁸ PEW RSCH. CTR., MOBILE FACT SHEET (Apr. 7, 2021), <https://www.pewresearch.org/internet/fact-sheet/mobile/>.

²⁸⁹ Participant No. 37.

²⁹⁰ E-mail from legal services provider in Ky., *supra* note 120.

²⁹¹ E-mail from legal services provider in Fairfax, Alexandria Cty., Arlington, Prince, William, and Loudoun Cntys., Va., *supra* note 101.

to bridge the accessibility gap among both individuals and institutions.

IV. MOVING FORWARD: CODIFYING ACCESSIBLE PROCESS PLURALISM

The present study conducted with IPV survivors who have experienced the PO process demonstrates their diversity of preferences with respect to hearing participation methods, as reflective of their varying priorities, concerns, and circumstances.²⁹² Consequently, if we are to empower survivors who have determined that pursuing a PO would mitigate the IPV in their lives, we must take down barriers within the process.

The pandemic had a disastrous effect on those vulnerable to IPV.²⁹³ But it did also spur innovation, experimentation, and investments in technological infrastructure within the court system, the lessons and benefits of which should be harnessed to increase access to justice and legal protection for marginalized populations in particular. These include women of color, people with disabilities, and those with low household incomes, all of whom are disproportionately impacted by IPV.²⁹⁴ But as the survey with legal services providers has revealed, many jurisdictions are failing to build on the lessons and innovations from the pandemic to empower and increase access to protection for IPV survivors.²⁹⁵ For many, it's just back to "business as usual" for PO procedures—as if the pandemic and its consequences never happened.²⁹⁶

Building on Schneider and her co-authors' compelling call for process pluralism within the civil PO context,²⁹⁷ I argue that it is an essential tool of empowerment that should be codified in state PO statutes. A plurality of PO filing and hearing participation methods would facilitate IPV survivors' empowerment by increasing access to POs for more survivors who wish to pursue them. Being able to set and achieve personally meaningful goals oriented towards increasing their power within social interaction, such as seeking a PO against their abuser, contributes to survivors' empowerment and sense of agency.²⁹⁸ But if their jurisdiction's PO process requires them to file their petition or attend a hearing at a physical courthouse and they cannot do so due to mobility issues, safety risks, a lack of transportation or childcare, or other reasons, they will be unable to achieve (or encounter significant difficulty in achieving) their self-defined goal. The same goes for

²⁹² See *supra* Section III.B.

²⁹³ See *supra* note 2.

²⁹⁴ See *supra* notes 163, 256, 286.

²⁹⁵ See *supra* Section II.B.2.

²⁹⁶ See *id.*; *supra* Figure 3.

²⁹⁷ Schneider et al., *supra* note 9, at 271-73.

²⁹⁸ See Cattaneo & Chapman, *supra* note 14, at 651-52; Cattaneo & Goodman, *supra* note 14, at 85, 89.

a survivor in a jurisdiction favoring virtual filings and hearings but who, for example, lacks high-speed Internet or an adequate phone plan, whose abuser monitors her devices, or who is not tech savvy. In these situations, a petitioner's desire to participate in her PO hearings via a particular method merits being framed as a 'need' rather than as a 'preference.' Process pluralism would enable survivors in circumstances like these to achieve their goal of pursuing a PO, thereby promoting their empowerment.

Making process pluralism accessible is also crucial to creating the conditions for empowerment. Since most PO petitioners are *pro se*,²⁹⁹ requirements that they make a motion or formal request to the court to access particular methods of filing or hearing participation renders these methods inaccessible to many in practice.³⁰⁰ Furthermore, petitioners may not even be aware that these options exist in the first place. These considerations weigh against establishing a default participation method for PO filings or hearings and requiring petitioners to request an exception.

Codifying an accessible form of process pluralism for civil PO filings and hearings would be a far-reaching means to combat existing barriers to PO accessibility based on local policy or the idiosyncratic preferences of individual jurists. The Washington and California statutes are certainly a step in the right direction and I propose a statutory framework that likewise applies to all hearing participants, including respondents, requires courts to honor hearing participation preferences absent good cause not to do so,³⁰¹ and requires courts to provide both electronic and in-person petition filing options (Washington allows filing by mail as well under certain circumstances,³⁰² which should be included as a filing method without limitation).

²⁹⁹ Epstein & Goodman, *supra* note 13, at 404.

³⁰⁰ *See, e.g.*, WASH. REV. CODE § 7.105.105(2) (“No later than three judicial days before the hearing, the parties may request to appear at the hearing, with witnesses, remotely by telephone, video, or other electronic means.”); E-mail from legal services provider in Bozeman, Mont., *supra* note 129 (“you have to file a motion to request a remote hearing . . . which the court can grant or deny” in Montana after the lifting of courts’ pandemic-related restrictions); E-mail from legal services provider in El Paso Cnty., Tex., to author (July 6, 2023, 13:52) (on file with author) (explaining that currently in El Paso County, Texas, “if a party d[oes] not want to have a remote hearing, that party would file an objection and then we would have a hearing in which the party wanting to have a remote hearing would have to show good cause as to why the hearing should be remote.”); E-mail from legal services provider in Wyo., *supra* note 100 (sharing that after the end of pandemic-related precautions in Wyoming courts, “[t]here are some [judges] that are making video appearances more difficult now, and who are requiring a stronger motion to appear by video.”).

³⁰¹ ‘Good cause’ may include an unforeseen malfunction of the court’s videoconferencing equipment or evidence that a party is seeking to participate in the hearing via a certain method in order to more easily inflict a type of abuse upon the other party during the hearing. A judge’s personal preference regarding a party’s participation method should not constitute ‘good cause.’

³⁰² WASH. REV. CODE § 7.105.105(1)(a).

However, the Washington and California statutes do not go far enough to make process pluralism accessible to parties. Instead, I propose that the framework requires courts to enable PO hearing participation in person, via video, and via telephone and to communicate to parties that they have these options. In addition, this communication should provide parties with clear directions for an easy means of conveying their preferences to the court. This requirement should not be a significant burden on courts; they can simply include an item on a template or form petition (e.g. petitioners can check a box next to their desired participation method), include instructions for how to enter a preference online or over the telephone on notices of hearing, and also include these instructions clearly on their website.

This approach would promote access to justice for both petitioners and respondents. It would empower IPV victims who desire a PO through better access to protection and more control over the process. It would also facilitate respondents' exercise of their due process rights by reducing barriers to their participation in hearings.³⁰³ This proposal would not be without costs—it would require funding to equip courts impacted by the digital divide, such as those in the jurisdictions surrounding Fairfax County, Virginia,³⁰⁴ with the technology needed for high-quality video and audio hearings. Fortunately, there are grants available for this purpose from governmental and non-profit entities.³⁰⁵ For example, the National Center for

³⁰³ See, e.g., BRIAN OSTROM ET AL., NAT'L CTR. FOR STATE CTS., *THE USE OF REMOTE HEARINGS IN TEXAS STATE COURTS: THE IMPACT ON JUDICIAL WORKLOAD 10* (2021), <http://www.ncsc.org/consulting-and-research/areas-of-expertise/access-to-justice/remote-hearings-and-services/resources-docs/TX-Remote-Hearing-Assessment-Report.pdf> (“Judges across the board indicated that attendance at remote hearings for Civil and Family cases tends to be higher [than attendance at in-person hearings], reducing the number of default judgments that occur when one party does not appear for a hearing.”); E-mail from legal services provider in El Paso Cnty., Tex., to author (June 26, 2023, 15:19 CST) (on file with author) (“Respondents are more likely to participate [in remote PO hearings than they are in in-person PO hearings] (we tracked these numbers pre- and post-pandemic)” in El Paso County, Texas).

³⁰⁴ E-mail from legal services provider in Fairfax, Alexandria Cty., Arlington, Prince, William, and Loudoun Cntys., Va., *supra* note 101.

³⁰⁵ See, e.g., Marcia M. Meis, *Technology Grant Program Transforming the Illinois Courts*, ILL. CTS., <http://www.illinoiscourts.gov/News/1120/Technology-grant-program-transforming-the-Illinois-Courts/news-detail/> (last visited Jan. 15, 2024) (Technology Modernization Grants from the Illinois Supreme Court and the Administrative Office of the Illinois Courts); *2024 Court Reform Grants*, OFF. CT. SERVS., <http://www.in.gov/courts/iocs/court-reform-grants> (last visited Jan. 15, 2024) (Innovation Grants from the Indiana Office of Court Services); *Grants*, SUP. CT. OHIO & OHIO JUD. SYS., <http://www.supremecourt.ohio.gov/courts/judicial-system/supreme-court-of-ohio/admin-offices/office-of-fiscal-resources/grants/> (last visited Jan. 15, 2024). (Technology Grants from the Ohio Supreme Court); *Hybrid Hearings Improvement*

State Courts offers grants through its Hybrid Hearings Improvement Initiative to “provide state and local courts an opportunity to learn from and improve upon pandemic-era practices to create permanent changes to their hearing practices.”³⁰⁶

With respect to parties’ ability to choose among different participation options, additional resources for private computer booths at courthouses and at non-profit organizations’ offices, plus resources to expand broadband subsidy programs for low-income households, would be needed to bridge the digital divide. But these investments in infrastructure are certainly worthwhile as they would support greater access to justice, not only for PO parties, but for parties in all types of cases heard by these courts for years to come.

CONCLUSION

Empirical research has demonstrated that civil POs can be a valuable tool against IPV for many survivors. In response to the COVID-19 pandemic, most courts adapted their PO procedures, with many utilizing technology to enable electronic filing and remote hearing methods. Since the lifting of pandemic-related health restrictions, which occurred at different times across the country, many courts and judges have returned to “business as usual” and are once again requiring in-person filings and court appearances for POs. Other jurisdictions are predominantly using virtual procedures, while still others utilize a combination. Regardless of the method used, it can undermine survivors’ access to justice and protection when it is decided for them rather than empowering them with the awareness and ability to decide which method of filing and hearing participation would best fit their particular needs and situations. The empirical study with IPV survivors in New York City conducted for this Article has demonstrated that this population is far from a monolith; instead, they have diverse preferences, priorities, and concerns that impact their perspectives on the PO process. Thus, we should harness the innovations and lessons from our collective pandemic experience to facilitate access to POs for IPV victims who wish to pursue them in ways that are sensitive to their individual circumstances. Through the codification of accessible process pluralism within state PO statutes, we can promote survivor empowerment and enhance access to justice for all involved.

Initiative, NAT’L CTR. FOR STATE CTS., <http://www.ncsc.org/consulting-and-research/areas-of-expertise/access-to-justice/remote-and-virtual-hearings/hybrid-hearings> (last visited Jan. 11, 2024) [hereinafter *Hybrid Hearings*, NAT’L CTR. FOR STATE CTS.].

³⁰⁶ *Hybrid Hearings*, NAT’L CTR. FOR STATE CTS., *supra* note 305 (click on plus sign next to “What is the Hybrid Hearings Improvement Initiative?”).